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An Act

HOUSE BILL 06-1161

BY REPRESENTATIVE(S) Vigil and Massey, Berens, Borodkin, Boyd, Buescher, Carroll M., Coleman, Frangas, Garcia, Jahn, Kerr J., Madden, Marshall, McFadyen, McGihon, Merrifield, Paccione, Plant, Pommer, Ragsdale, Carroll T., and Solano;
also SENATOR(S) Veiga, Fitz-Gerald, Isgar, Shaffer, Tochtrop, and Williams.

CONCERNING THE REGULATION OF MORTGAGE BROKERS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 61 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 9 MORTGAGE BROKERS

12-61-901. Short title. THIS PART 9 SHALL BE KNOWN AND MAY BE CITED AS THE "MORTGAGE BROKER REGISTRATION ACT".

12-61-902. Definitions. AS USED IN THIS PART 9, UNLESS THE CONTEXT OTHERWISE REQUIRES:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(1) "AFFILIATE" MEANS A PERSON WHO, DIRECTLY OR INDIRECTLY, THROUGH INTERMEDIARIES CONTROLS, IS CONTROLLED BY, OR IS UNDER THE COMMON CONTROL OF ANOTHER PERSON ADDRESSED BY THIS PART 9.

(2) "BROKER A MORTGAGE" MEANS TO DIRECTLY OR INDIRECTLY ACT AS A MORTGAGE BROKER.

(3) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION OF REAL ESTATE.

(4) "DIVISION" MEANS THE DIVISION OF REAL ESTATE.

(5) "MORTGAGE BROKER" MEANS AN INDIVIDUAL WHO NEGOTIATES, ORIGINATES, OR OFFERS OR ATTEMPTS TO NEGOTIATE OR ORIGINATE FOR A BORROWER, AND FOR A COMMISSION OR OTHER THING OF VALUE, A LOAN TO BE CONSUMMATED AND FUNDED BY A MORTGAGE LENDER.

(6) "MORTGAGE LENDER" MEANS A LENDER WHO IS IN THE BUSINESS OF MAKING MORTGAGE LOANS IF:

(a) THE LENDER IS THE PAYEE ON THE PROMISSORY NOTE EVIDENCING THE LOAN; AND

(b) THE LOAN PROCEEDS ARE OBTAINED BY THE LENDER FROM ITS OWN FUNDS OR FROM A LINE OF CREDIT MADE AVAILABLE TO THE LENDER FROM A BANK OR OTHER ENTITY WHO REGULARLY LOANS MONEY TO LENDERS FOR THE PURPOSE OF FUNDING MORTGAGE LOANS.

(7) "ORIGINATE" MEANS TO SUBMIT AN APPLICATION OR DOCUMENTATION TO A LENDER OR UNDERWRITER IN AN ATTEMPT TO OBTAIN A LOAN.

12-61-903. Registration required. (1) (a) ON OR AFTER JANUARY 1, 2007, UNLESS REGISTERED WITH THE DIRECTOR, A PERSON SHALL NOT BROKER A MORTGAGE, OFFER TO BROKER A MORTGAGE, ACT AS A MORTGAGE BROKER, OR OFFER TO ACT AS A MORTGAGE BROKER.

(b) A REGISTERED MORTGAGE BROKER SHALL APPLY FOR REGISTRATION IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION

EVERY THREE YEARS.

(2) AN APPLICANT FOR REGISTRATION SHALL SUBMIT TO THE DIRECTOR THE FOLLOWING:

(a) A CRIMINAL HISTORY BACKGROUND CHECK IN COMPLIANCE WITH SUBSECTION (3) OF THIS SECTION;

(b) A DISCLOSURE OF ALL ADMINISTRATIVE DISCIPLINE TAKEN AGAINST THE APPLICANT CONCERNING THE CATEGORIES LISTED IN SECTION 12-61-905 (1) (c); AND

(c) THE APPLICATION FEE ESTABLISHED BY THE DIRECTOR IN ACCORDANCE WITH SECTION 12-61-908.

(3) PRIOR TO SUBMITTING AN APPLICATION FOR REGISTRATION, AN APPLICANT SHALL SUBMIT A SET OF FINGERPRINTS TO THE COLORADO BUREAU OF INVESTIGATION. UPON RECEIPT OF THE APPLICANT'S FINGERPRINTS, THE COLORADO BUREAU OF INVESTIGATION SHALL USE THE FINGERPRINTS TO CONDUCT A STATE AND NATIONAL CRIMINAL HISTORY RECORD CHECK USING RECORDS OF THE COLORADO BUREAU OF INVESTIGATION AND THE FEDERAL BUREAU OF INVESTIGATION. ALL COSTS ARISING FROM SUCH CRIMINAL HISTORY RECORD CHECK SHALL BE BORNE BY THE APPLICANT AND SHALL BE PAID WHEN THE SET OF FINGERPRINTS IS SUBMITTED. UPON COMPLETION OF THE CRIMINAL HISTORY RECORD CHECK, THE BUREAU SHALL FORWARD THE RESULTS TO THE DIRECTOR.

(4) BEFORE REGISTERING AN APPLICANT, THE DIRECTOR SHALL REQUIRE THE APPLICANT TO POST A BOND AS REQUIRED BY SECTION 12-61-907.

(5) THE DIRECTOR SHALL ISSUE OR DENY A REGISTRATION WITHIN TWENTY-ONE DAYS AFTER RECEIVING THE COMPLETED CRIMINAL HISTORY RECORD CHECK, COMPLETED APPLICATION, APPLICATION FEE, AND PROOF OF THE POSTING OF THE SURETY BOND.

12-61-904. Exemptions. (1) THIS PART 9 SHALL NOT APPLY TO THE FOLLOWING:

(a) EMPLOYEES OF AN AGENCY OF THE FEDERAL GOVERNMENT, OF

THE COLORADO GOVERNMENT, OR OF ANY OF COLORADO'S POLITICAL SUBDIVISIONS;

(b) AN OWNER OF REAL PROPERTY WHO OFFERS CREDIT SECURED BY A MORTGAGE OR DEED OF TRUST ON THE PROPERTY SOLD;

(c) A BANK, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, BUILDING AND LOAN ASSOCIATION, INDUSTRIAL BANK, INDUSTRIAL LOAN COMPANY, CREDIT UNION, OR BANK OR SAVINGS ASSOCIATION HOLDING COMPANY ORGANIZED UNDER THE LAWS OF ANY STATE, THE DISTRICT OF COLUMBIA, A TERRITORY OR PROTECTORATE OF THE UNITED STATES, OR THE UNITED STATES, SUBJECT TO REGULATION AND SUPERVISION BY A FEDERAL BANKING AGENCY, OR AN OPERATING SUBSIDIARY OR AFFILIATE OF SUCH ENTITIES, OR AN EMPLOYEE OR EXCLUSIVE AGENT OF ANY OF SUCH ENTITIES, INCLUDING, WITHOUT LIMITATION, A SUBSIDIARY OR AFFILIATE OF SUCH ENTITIES;

(d) AN ATTORNEY WHO RENDERS SERVICES IN THE COURSE OF PRACTICE, WHO IS LICENSED IN COLORADO, AND WHO IS NOT PRIMARILY ENGAGED IN THE BUSINESS OF NEGOTIATING RESIDENTIAL MORTGAGE LOANS;

(e) A FEDERAL HOUSING ADMINISTRATION APPROVED MORTGAGEE OR AN APPOINTED FEDERAL HOUSING ADMINISTRATION CORRESPONDENT, ACTING THROUGH OFFICERS, PARTNERS, MEMBERS, EXCLUSIVE AGENTS, CONTRACTORS, OR EMPLOYEES OF SUCH ENTITIES WHEN MAKING OR BROKERING ANY MORTGAGE LOAN; OR

(f) A PERSON WHO:

(I) FUNDS A RESIDENTIAL MORTGAGE LOAN THAT HAS BEEN ORIGINATED AND PROCESSED BY A REGISTERED PERSON OR BY AN EXEMPT PERSON;

(II) DOES NOT SOLICIT BORROWERS IN COLORADO FOR THE PURPOSE OF MAKING RESIDENTIAL MORTGAGE LOANS; AND

(III) DOES NOT PARTICIPATE IN THE NEGOTIATION OF RESIDENTIAL MORTGAGE LOANS WITH THE BORROWER, EXCEPT FOR SETTING THE TERMS UNDER WHICH A PERSON MAY BUY OR FUND A RESIDENTIAL MORTGAGE LOAN

ORIGINATED BY A REGISTERED OR EXEMPT PERSON.

(2) THE EXEMPTIONS IN SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY TO PERSONS ACTING BEYOND THE SCOPE OF SUCH EXEMPTIONS.

12-61-905. Powers and duties of the division. (1) THE DIRECTOR SHALL DENY, REFUSE TO RENEW, OR REVOKE THE REGISTRATION OF AN APPLICANT WHO HAS:

(a) FILED AN APPLICATION WITH THE DIRECTOR CONTAINING MATERIAL MISSTATEMENTS OF FACT OR OMITTED ANY DISCLOSURE REQUIRED BY THIS PART 9;

(b) WITHIN THE LAST FIVE YEARS, BEEN CONVICTED OF OR PLED GUILTY OR NOLO CONTENDERE TO A CRIME INVOLVING FRAUD, DECEIT, MATERIAL MISREPRESENTATION, THEFT, OR THE BREACH OF A FIDUCIARY DUTY; OR

(c) HAD A LICENSE, REGISTRATION, OR CERTIFICATION ISSUED BY COLORADO OR ANOTHER STATE REVOKED OR SUSPENDED FOR FRAUD, DECEIT, MATERIAL MISREPRESENTATION, THEFT, OR THE BREACH OF A FIDUCIARY DUTY, AND SUCH DISCIPLINE DENIED THE PERSON AUTHORIZATION TO PRACTICE AS:

(I) A MORTGAGE BROKER;

(II) A REAL ESTATE BROKER, AS DEFINED BY SECTION 12-61-101 (2);

(III) A REAL ESTATE SALESPERSON, AS DEFINED BY SECTION 12-61-101 (3);

(IV) A REAL ESTATE APPRAISER, AS DEFINED BY SECTION 12-61-702 (5);

(V) AN INSURANCE PRODUCER, AS DEFINED BY SECTION 10-2-103 (6), C.R.S.;

(VI) AN ATTORNEY;

(VII) A SECURITIES BROKER-DEALER, AS DEFINED BY SECTION

11-51-201 (2), C.R.S.;

(VIII) A SECURITIES SALES REPRESENTATIVE, AS DEFINED BY SECTION 11-51-201 (14), C.R.S.;

(IX) AN INVESTMENT ADVISOR, AS DEFINED BY SECTION 11-51-201 (9.5), C.R.S.; OR

(X) AN INVESTMENT ADVISOR REPRESENTATIVE, AS DEFINED BY SECTION 11-51-201 (9.6), C.R.S.

(2) THE DIRECTOR MAY INVESTIGATE THE ACTIVITIES OF A REGISTRANT OR OTHER PERSON THAT PRESENT GROUNDS FOR DISCIPLINARY ACTION UNDER THIS PART 9 OR THAT VIOLATE SECTION 12-61-910 (1).

(3) (a) IF THE DIRECTOR HAS REASONABLE GROUNDS TO BELIEVE THAT A MORTGAGE BROKER IS NO LONGER QUALIFIED UNDER SUBSECTION (1) OF THIS SECTION, THE DIRECTOR MAY SUMMARILY SUSPEND THE MORTGAGE BROKER'S REGISTRATION PENDING A HEARING TO REVOKE THE REGISTRATION. A SUMMARY SUSPENSION SHALL CONFORM TO ARTICLE 4 OF TITLE 24, C.R.S.

(b) THE DIRECTOR SHALL SUSPEND THE REGISTRATION OF A BROKER WHO FAILS TO MAINTAIN THE BOND REQUIRED BY SECTION 12-61-907 UNTIL THE REGISTRANT COMPLIES WITH SUCH SECTION.

(4) THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE APPOINTED PURSUANT TO PART 10 OF ARTICLE 30 OF TITLE 24, C.R.S., SHALL CONDUCT DISCIPLINARY HEARINGS CONCERNING MORTGAGE BROKERS. SUCH HEARINGS SHALL CONFORM TO ARTICLE 4 OF TITLE 24, C.R.S.

(5) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (5), A PERSON WHOSE REGISTRATION HAS BEEN REVOKED SHALL NOT BE ELIGIBLE FOR REGISTRATION FOR TWO YEARS AFTER THE EFFECTIVE DATE OF THE REVOCATION.

(b) IF THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE DETERMINES THAT AN APPLICATION CONTAINED A MISSTATEMENT OF FACT OR OMITTED A REQUIRED DISCLOSURE DUE TO AN UNINTENTIONAL ERROR, THE DIRECTOR SHALL ALLOW THE APPLICANT TO CORRECT THE APPLICATION.

UPON RECEIPT OF THE CORRECTED AND COMPLETED APPLICATION, THE DIRECTOR OR ADMINISTRATIVE LAW JUDGE SHALL NOT BAR THE APPLICANT FROM BEING REGISTERED ON THE BASIS OF THE UNINTENTIONAL MISSTATEMENT OR OMISSION.

(6) (a) THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE MAY ADMINISTER OATHS, TAKE AFFIRMATIONS OF WITNESSES, AND ISSUE SUBPOENAS TO COMPEL THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF ALL RELEVANT PAPERS, BOOKS, RECORDS, DOCUMENTARY EVIDENCE, AND MATERIALS IN ANY HEARING OR INVESTIGATION CONDUCTED BY THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE.

(b) UPON FAILURE OF A WITNESS TO COMPLY WITH A SUBPOENA OR PROCESS, THE DISTRICT COURT OF THE COUNTY IN WHICH THE SUBPOENAED WITNESS RESIDES OR CONDUCTS BUSINESS MAY ISSUE AN ORDER REQUIRING THE WITNESS TO APPEAR BEFORE THE DIRECTOR OR ADMINISTRATIVE LAW JUDGE AND PRODUCE THE RELEVANT PAPERS, BOOKS, RECORDS, DOCUMENTARY EVIDENCE, TESTIMONY, OR MATERIALS IN QUESTION. FAILURE TO OBEY THE ORDER OF THE COURT MAY BE PUNISHED AS A CONTEMPT OF COURT. THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE MAY APPLY FOR SUCH ORDER.

(7) IF THE DIRECTOR HAS REASONABLE CAUSE TO BELIEVE THAT A PERSON IS VIOLATING THIS PART 9, INCLUDING BUT NOT LIMITED TO SECTION 12-61-910 (1), THE DIRECTOR MAY ENTER AN ORDER REQUIRING SUCH PERSON TO CEASE AND DESIST SUCH VIOLATIONS.

(8) THE DIRECTOR SHALL KEEP RECORDS OF THE PERSONS REGISTERED AS MORTGAGE BROKERS AND OF DISCIPLINARY PROCEEDINGS. THE RECORDS KEPT BY THE DIRECTOR SHALL BE OPEN TO PUBLIC INSPECTION IN A REASONABLE TIME AND MANNER DETERMINED BY THE DIRECTOR.

(9) (a) THE DIRECTOR SHALL MAINTAIN A SYSTEM, WHICH MAY INCLUDE, WITHOUT LIMITATION, A HOTLINE OR WEB SITE, THAT GIVES CONSUMERS A REASONABLY EASY METHOD FOR MAKING COMPLAINTS ABOUT A MORTGAGE BROKER.

(b) THE DIRECTOR SHALL REVIEW THE COMPLAINTS ANNUALLY AND PREPARE A REPORT TO BE ISSUED TO THE COMMITTEE OF THE GENERAL ASSEMBLY THAT HAS OVERSIGHT OF MORTGAGE BROKERS. SUCH REPORT

SHALL CONTAIN THE TRENDS IN COMPLAINTS AND INVESTIGATIONS UNDER THIS PART 9.

12-61-906. Immunity. A PERSON PARTICIPATING IN GOOD FAITH IN THE FILING OF A COMPLAINT OR REPORT OR PARTICIPATING IN AN INVESTIGATION OR HEARING BEFORE THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE PURSUANT TO THIS PART 9 SHALL BE IMMUNE FROM ANY LIABILITY, CIVIL OR CRIMINAL, THAT OTHERWISE MIGHT RESULT BY REASON OF SUCH ACTION.

12-61-907. Bond required. (1) PRIOR TO REGISTRATION, AN APPLICANT FOR REGISTRATION SHALL POST WITH THE DIRECTOR A SURETY BOND, OR AN ALTERNATIVE AUTHORIZED BY ARTICLE 35 OF TITLE 11, C.R.S., OF TWENTY-FIVE THOUSAND DOLLARS. A REGISTERED MORTGAGE BROKER SHALL MAINTAIN SUCH BOND AT ALL TIMES.

(2) THE SURETY SHALL NOT BE REQUIRED TO PAY A PERSON MAKING A CLAIM UPON THE BOND UNTIL A FINAL DETERMINATION OF FRAUD, FORGERY, CRIMINAL IMPERSONATION, OR FRAUDULENT REPRESENTATION HAS BEEN MADE BY A COURT WITH JURISDICTION.

(3) THE SURETY BOND SHALL REQUIRE THE SURETY TO PROVIDE NOTICE TO THE DIRECTOR WITHIN THIRTY DAYS IF PAYMENT IS MADE FROM THE SURETY BOND OR IF THE BOND IS CANCELLED.

12-61-908. Fees. (1) THE DIRECTOR MAY SET THE FEE FOR REGISTRATION UNDER THIS PART 9. THE FEE SHALL BE SET IN AN AMOUNT, NOT TO EXCEED TWO HUNDRED DOLLARS, THAT OFFSETS THE DIRECT AND INDIRECT COSTS OF IMPLEMENTING THIS PART 9. THE MONEYS COLLECTED PURSUANT TO THIS SECTION SHALL BE TRANSFERRED TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO THE MORTGAGE BROKER REGISTRATION CASH FUND.

(2) THERE IS HEREBY CREATED IN THE STATE TREASURY THE MORTGAGE BROKER REGISTRATION CASH FUND. MONEYS IN THE FUND SHALL BE SPENT ONLY TO IMPLEMENT THIS PART 9 AND SHALL NOT REVERT TO THE GENERAL FUND AT THE END OF THE FISCAL YEAR. THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY.

12-61-909. Attorney general - district attorney - jurisdiction.

THE ATTORNEY GENERAL SHALL HAVE CONCURRENT JURISDICTION WITH THE DISTRICT ATTORNEYS OF THIS STATE TO INVESTIGATE AND PROSECUTE ALLEGATIONS OF CRIMINAL VIOLATIONS OF THIS PART 9.

12-61-910. Violations - injunctions. (1) (a) BROKERING A MORTGAGE OR PRACTICING AS A MORTGAGE BROKER WITHOUT REGISTERING UNDER THIS PART 9 SHALL BE A CLASS 1 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-501, C.R.S.

(b) EACH MORTGAGE BROKERED BY AN UNREGISTERED PERSON SHALL BE A SEPARATE VIOLATION OF THIS SUBSECTION (1).

(2) THE DIRECTOR MAY FORWARD INFORMATION CONCERNING POSSIBLE VIOLATIONS OF THE LAW COMMITTED BY OR COMPLAINTS FILED AGAINST A MORTGAGE BROKER TO THE ATTORNEY GENERAL, A DISTRICT ATTORNEY, OR A STATE OR FEDERAL LAW ENFORCEMENT AGENCY.

(3) THE DIRECTOR MAY REQUEST THAT AN ACTION BE BROUGHT IN THE NAME OF THE PEOPLE OF THE STATE OF COLORADO BY THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY OF THE DISTRICT IN WHICH THE VIOLATION IS ALLEGED TO HAVE OCCURRED TO ENJOIN A PERSON FROM ENGAGING IN OR CONTINUING THE VIOLATION OR FROM DOING ANY ACT THAT FURTHERS THE VIOLATION. IN SUCH AN ACTION, AN ORDER OR JUDGMENT MAY BE ENTERED AWARDING SUCH PRELIMINARY OR FINAL INJUNCTION AS IS DEEMED PROPER BY THE COURT. THE NOTICE, HEARING, OR DURATION OF AN INJUNCTION OR RESTRAINING ORDER SHALL BE MADE IN ACCORDANCE WITH THE COLORADO RULES OF CIVIL PROCEDURE.

(4) A VIOLATION OF THIS PART 9 SHALL NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF ANY MORTGAGE.

12-61-911. Repeal. (1) THE PROVISIONS OF SECTION 24-34-104, C.R.S., CONCERNING THE TERMINATION SCHEDULE FOR REGULATORY BODIES OF THE STATE UNLESS EXTENDED, APPLY TO THE REGISTRATION OF MORTGAGE BROKERS UNDER THIS PART 9.

(2) THE SUNSET REVIEW, PERFORMED PURSUANT TO SECTION 24-34-104, C.R.S., SHALL INCLUDE AN ANALYSIS OF THE NUMBER AND TYPES OF COMPLAINTS AND WHETHER THE REGISTRATION OF MORTGAGE BROKERS CORRELATES WITH THE PUBLIC BEING PROTECTED FROM FRAUDULENT

ACTIVITIES.

(3) THIS PART 9 IS REPEALED, EFFECTIVE JULY 1, 2011.

SECTION 2. 11-35-101 (1), Colorado Revised Statutes, is amended to read:

11-35-101. Alternatives to surety bonds permitted - requirements. (1) The requirement of a surety bond as a condition to licensure or authority to conduct business or perform duties in this state provided in sections 12-5.5-202 (2) (b), 12-6-111, 12-6-112, 12-6-112.2, 12-11-101 (1) (d), 12-11-104, 12-11-106, 12-14-124 (1), 12-59-115 (1), ~~12-60-509(2.5)(b), 33-4-101(1)~~, 12-60-509(2.5) (b), 12-61-907, 33-4-101 (1), 33-12-104 (1), 35-33-403 (3), 35-55-104 (1), 37-91-107 (2) and (3), 38-29-119 (2), 39-21-105 (4), 39-27-104 (2) (a), (2) (b), (2) (c), (2) (d), (2) (e), (2.1) (a), (2.1) (b), (2.1) (c), (2.5) (a), and (2.5) (b), 39-28-105 (1), 42-6-115 (3), and 42-7-301 (6), C.R.S., may be satisfied by a savings account or deposit in or a certificate of deposit issued by a state or national bank doing business in this state or by a savings account or deposit in or a certificate of deposit issued by a state or federal savings and loan association doing business in this state. Such savings account, deposit, or certificate of deposit shall be in the amount specified by statute, if any, and shall be assigned to the appropriate state agency for the use of the people of the state of Colorado. The aggregate liability of the bank or savings and loan association shall in no event exceed the amount of the deposit. For the purposes of the sections referred to in this section, "bond" includes the savings account, deposit, or certificate of deposit authorized by this section.

SECTION 3. 24-34-104 (42), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (42) The following agencies, functions, or both, shall terminate on July 1, 2011:

(k) THE REGISTRATION OF MORTGAGE BROKERS PURSUANT TO PART 9 OF ARTICLE 61 OF TITLE 12, C.R.S.

SECTION 4. 12-61-103.6 (1), Colorado Revised Statutes, is amended to read:

12-61-103.6. Errors and omissions insurance - duties of the commission - certificate of coverage, when required - group plan made available - effect - repeal. (1) ~~Commencing January 1, 1998,~~ Every licensee under this part 1, except an inactive broker or salesperson or an attorney licensee who maintains a policy of professional malpractice insurance which provides coverage for errors and omissions for their activities as a licensee under this part 1, shall maintain errors and omissions insurance to cover all activities contemplated under PARTS 1 TO 8 OF this article. The commission shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after a competitive bid process in accordance with article 103 of title 24, C.R.S. Any group policy obtained by the commission shall be available to all licensees with no right on the part of the insurer to cancel any licensee. Any licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.

SECTION 5. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the mortgage broker registration cash fund created in section 12-61-908 (2), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the executive director's office, for legal services, for the fiscal year beginning July 1, 2006, the sum of twenty-five thousand seven hundred eighty dollars (\$25,780), or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the mortgage broker registration cash fund created in section 12-61-908 (2), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of real estate, for regulation of mortgage brokers, for the fiscal year beginning July 1, 2006, the sum of ninety-seven thousand three hundred seventy-three dollars (\$97,373) and 1.5 FTE, or so much thereof as may be necessary, for the implementation of this act.

(3) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2006, the sum of twenty-five thousand seven hundred eighty dollars (\$25,780), and 0.2 FTE, or so much thereof as may be necessary, for the provision of legal services to the department of regulatory agencies related

to the implementation of this act. Said sum shall be from cash funds exempt received from the department of regulatory agencies, executive director's office, out of the appropriation made in subsection (1) of this section.

(4) In addition to any other appropriation, there is hereby appropriated, to the department of public safety, for allocation to the Colorado bureau of investigation, for processing of fingerprint-based criminal history checks for mortgage brokers, for the fiscal year beginning July 1, 2006, the sum of forty-six thousand eight hundred ninety-four dollars (\$46,894) and 0.6 FTE, or so much thereof as may be necessary, for the implementation of this act. Said sum shall be from fingerprint processing fees collected by the Colorado bureau of investigation.

(5) In addition to any other appropriation, there is hereby appropriated to the department of public safety, for the fiscal year beginning July 1, 2006, the sum of sixty-six thousand dollars (\$66,000), or so much thereof as may be necessary, for pass through to the federal bureau of investigation for fingerprint-based national criminal history checks for mortgage brokers related to the implementation of this act. Said sum shall be from cash funds exempt fingerprint processing fees collected by the Colorado bureau of investigation.

SECTION 6. Effective date - applicability. This act shall take effect July 1, 2006, and shall apply to acts committed and loans made on or after said date.

SECTION 7. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Joan Fitz-Gerald
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO