

CHAPTER 323

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 02-1259

BY REPRESENTATIVE(S) Marshall, Bacon, Borodkin, Boyd, Clapp, Coleman, Crane, Daniel, Garcia, Groff, Grossman, Harvey, Jahn, Lee, Mace, Madden, Miller, Plant, Rhodes, Romanoff, Sanchez, Vigil, Weddig, Williams S., and Young;
also SENATOR(S) Tate, Epps, Fitz-Gerald, Hanna, Linkhart, Teck, Tupa, and Windels.

AN ACT**CONCERNING PROTECTION OF CONSUMERS' HOME OWNERSHIP EQUITY.**

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

SECTION 1. Title 5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 3.5
Consumer Equity Protection

PART 1
OBLIGOR PROTECTION

5-3.5-101. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BRIDGE LOAN" MEANS TEMPORARY OR SHORT-TERM FINANCING WITH A MATURITY OF LESS THAN EIGHTEEN MONTHS THAT REQUIRES PAYMENTS OF ONLY INTEREST UNTIL THE ENTIRE UNPAID BALANCE IS DUE AND PAYABLE.

(2) "COVERED LOAN" MEANS A CONSUMER CREDIT MORTGAGE LOAN TRANSACTION INVOLVING PROPERTY LOCATED WITHIN THIS STATE THAT IS CONSIDERED A MORTGAGE UNDER SECTION 152 OF THE FEDERAL "HOME OWNERSHIP AND EQUITY PROTECTION ACT OF 1994", 15 U.S.C. SEC. 1602 (aa), AS AMENDED, AND REGULATIONS ADOPTED PURSUANT THERETO BY THE FEDERAL RESERVE BOARD, INCLUDING, WITHOUT LIMITATION, 12 CFR 226.32, AS AMENDED; EXCEPT THAT IF THE TOTAL POINTS AND FEES ON A LOAN PAID BY THE OBLIGOR AT OR BEFORE CLOSING EXCEED SIX PERCENT OF THE TOTAL LOAN AMOUNT, SUCH LOAN SHALL BE DEEMED TO

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

BE A COVERED LOAN IF THE LOAN OTHERWISE MEETS THE REQUIREMENTS OF THIS SUBSECTION (2).

(3) "LENDER" MEANS ANY INDIVIDUAL OR ENTITY THAT ORIGINATES ONE OR MORE COVERED LOANS. THE INDIVIDUAL OR ENTITY TO WHOM A COVERED LOAN IS INITIALLY PAYABLE, EITHER ON THE FACE OF THE NOTE OR CONTRACT OR BY AGREEMENT WHEN THERE IS NO NOTE OR CONTRACT, SHALL BE DEEMED TO BE THE LENDER.

(4) "MORTGAGE BROKER" MEANS A PERSON OTHER THAN AN EMPLOYEE OR EXCLUSIVE AGENT OF A LENDER WHO, FOR COMPENSATION, BRINGS AN OBLIGOR AND LENDER TOGETHER TO OBTAIN A COVERED LOAN.

(5) "OBLIGOR" MEANS EACH OBLIGOR, CO-OBLIGOR, CO-SIGNER, OR GRANTOR OBLIGATED TO REPAY A COVERED LOAN.

(6) "POLITICAL SUBDIVISION" MEANS A COUNTY, CITY AND COUNTY, CITY, TOWN, SERVICE AUTHORITY, SCHOOL DISTRICT, LOCAL IMPROVEMENT DISTRICT, LAW ENFORCEMENT AUTHORITY, CITY OR COUNTY HOUSING AUTHORITY, OR WATER, SANITATION, FIRE PROTECTION, METROPOLITAN, IRRIGATION, DRAINAGE, OR OTHER SPECIAL DISTRICT OR ANY OTHER KIND OF MUNICIPAL, QUASI-MUNICIPAL, OR PUBLIC CORPORATION ORGANIZED PURSUANT TO LAW.

(7) "PRINCIPAL BALANCE" MEANS THE AMOUNT FINANCED PLUS PREPAID FINANCE CHARGES AS DEFINED IN THE FEDERAL "TRUTH IN LENDING ACT", 15 U.S.C. SEC. 1601, ET. SEQ., AS AMENDED.

(8) "SERVICER" HAS THE SAME MEANING AS SET FORTH IN SECTION 2605 (i) (2) OF THE FEDERAL "REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974", 12 U.S.C. SEC. 2601, ET. SEQ., AS AMENDED.

5-3.5-102. Protection of obligors. (1) A COVERED LOAN IS SUBJECT TO THE FOLLOWING LIMITATIONS:

(a) **Limitation on balloon payment.** NO COVERED LOAN MAY CONTAIN A PROVISION FOR A SCHEDULED PAYMENT THAT IS MORE THAN TWICE AS LARGE AS THE AVERAGE OF EARLIER SCHEDULED MONTHLY PAYMENTS, UNLESS SUCH BALLOON PAYMENT BECOMES DUE AND PAYABLE NOT LESS THAN ONE HUNDRED TWENTY MONTHS AFTER THE DATE OF EXECUTION OF THE LOAN. THIS PROHIBITION DOES NOT APPLY WHEN THE PAYMENT SCHEDULE IS ADJUSTED TO ACCOUNT FOR THE SEASONAL OR IRREGULAR INCOME OF THE OBLIGOR OR IF THE PURPOSE OF THE LOAN IS A BRIDGE LOAN CONNECTED WITH, OR RELATED TO, THE ACQUISITION OR CONSTRUCTION OF A DWELLING INTENDED TO BECOME THE OBLIGOR'S PRINCIPAL DWELLING.

(b) **No call provision.** NO COVERED LOAN MAY CONTAIN A CALL PROVISION THAT PERMITS THE LENDER, IN ITS SOLE DISCRETION, TO ACCELERATE THE INDEBTEDNESS. THIS PROHIBITION SHALL NOT APPLY WHEN:

(I) ACCELERATION OF REPAYMENT OF THE LOAN IS JUSTIFIED:

(A) BY DEFAULT IN WHICH THE OBLIGOR FAILS TO MEET THE REPAYMENT TERMS

OF THE AGREEMENT FOR ANY OUTSTANDING BALANCE; OR

(B) PURSUANT TO A DUE-ON-SALE PROVISION;

(II) THERE IS FRAUD OR MATERIAL MISREPRESENTATION BY AN OBLIGOR IN CONNECTION WITH THE LOAN;

(III) THERE IS A PROVISION PERMITTING ACCELERATION IF THE LENDER, IN GOOD FAITH, BELIEVES ITSELF TO BE MATERIALLY INSECURE OR BELIEVES THAT THE PROSPECT OF FUTURE PAYMENT HAS BECOME MATERIALLY IMPAIRED; OR

(IV) THERE IS ANY ACTION OR INACTION BY THE OBLIGOR THAT ADVERSELY AFFECTS THE LENDER'S SECURITY FOR THE LOAN OR ANY RIGHTS OF THE LENDER IN SUCH SECURITY.

(c) **No negative amortization.** NO COVERED LOAN MAY CONTRACT FOR A PAYMENT SCHEDULE WITH REGULAR PERIODIC PAYMENTS THAT CAUSE THE PRINCIPAL BALANCE TO INCREASE; EXCEPT THAT THIS PARAGRAPH (c) SHALL NOT PROHIBIT NEGATIVE AMORTIZATION AS A CONSEQUENCE OF A TEMPORARY FORBEARANCE OR RESTRUCTURE SOUGHT BY THE OBLIGOR.

(d) **No increased interest rate upon default.** NO COVERED LOAN MAY CONTRACT FOR ANY INCREASE IN THE INTEREST RATE AS A RESULT OF A DEFAULT; EXCEPT THAT THIS PARAGRAPH (d) SHALL NOT APPLY TO PERIODIC INTEREST RATE CHANGES IN A VARIABLE RATE LOAN THAT IS OTHERWISE CONSISTENT WITH THE PROVISIONS OF THE LOAN AGREEMENT IF THE CHANGE IN THE INTEREST RATE IS NOT OCCASIONED BY THE EVENT OF DEFAULT OR A PERMISSIBLE ACCELERATION OF THE INDEBTEDNESS.

(e) **Limitations on mandatory arbitration clauses.** NO COVERED LOAN MAY BE SUBJECT TO A MANDATORY ARBITRATION CLAUSE THAT:

(I) DOES NOT COMPLY WITH RULES SET FORTH BY A NATIONALLY RECOGNIZED ARBITRATION ORGANIZATION SUCH AS THE AMERICAN ARBITRATION ASSOCIATION;

(II) DOES NOT REQUIRE THE ARBITRATION PROCEEDING TO BE CONDUCTED:

(A) WITHIN THE FEDERAL JUDICIAL DISTRICT IN WHICH THE SUBJECT PROPERTY IS LOCATED;

(B) IN THE CITY NEAREST THE OBLIGOR'S RESIDENCE WHERE A FEDERAL DISTRICT COURT IS LOCATED; OR

(C) AT SUCH OTHER LOCATION AS MAY BE MUTUALLY AGREED UPON BY THE PARTIES;

(III) DOES NOT REQUIRE THE LENDER TO CONTRIBUTE AT LEAST FIFTY PERCENT OF THE AMOUNT OF ANY FILING FEE; AND

(IV) DOES NOT REQUIRE THE LENDER TO PAY STANDARD DAILY ARBITRATION FEES, BOTH ITS OWN AND THOSE OF THE OBLIGOR, FOR AT LEAST THE FIRST DAY OF

ARBITRATION.

(f) **No advance payments.** NO COVERED LOAN MAY INCLUDE TERMS UNDER WHICH ANY PERIODIC PAYMENTS REQUIRED UNDER THE LOAN ARE PAID IN ADVANCE FROM THE LOAN PROCEEDS PROVIDED TO THE OBLIGOR.

(g) **Limitations on prepayment fees.** (I) **First thirty-six months only.** A PREPAYMENT FEE OR PENALTY SHALL BE PERMITTED ONLY ON A REFINANCE TO A DIFFERENT LENDER OTHER THAN PURSUANT TO A SALE AND ONLY DURING THE FIRST THIRTY-SIX MONTHS AFTER THE DATE OF EXECUTION OF A COVERED LOAN. PREPAYMENT FEES AND PENALTIES SHALL NOT EXCEED SIX MONTHS' INTEREST FOR PREPAYMENT WITHIN THE FIRST THREE YEARS OF THE LOAN. THE PREPAYMENT FEES OR PENALTIES PERMITTED BY THIS PARAGRAPH (g) SHALL APPLY ONLY TO COVERED LOANS THAT ARE SECURED BY A FIRST MORTGAGE, DEED OF TRUST, OR SECURITY INTEREST TO REFINANCE, BY AMENDMENT, PAYOFF, OR OTHERWISE, AN EXISTING LOAN MADE TO FINANCE THE ACQUISITION OR CONSTRUCTION OF A DWELLING, INCLUDING A REFINANCE LOAN PROVIDING ADDITIONAL SUMS OF MONEY FOR ANY PURPOSE, REGARDLESS OF WHETHER RELATED TO ACQUISITION OR CONSTRUCTION. NO PREPAYMENT FEES OR PENALTIES SHALL BE INCLUDED IN THE LOAN DOCUMENTS OR CHARGED TO THE OBLIGOR FOR PREPAYMENT:

(A) AFTER THE THIRD YEAR OF THE LOAN;

(B) PURSUANT TO A REFINANCE WITH THE SAME LENDER; OR

(C) THAT IS PARTIAL.

(II) **No prepayment fees for certain refinancing.** NO PREPAYMENT FEE OR PENALTY MAY BE CHARGED ON A REFINANCING OF A COVERED LOAN IF THE COVERED LOAN BEING REFINANCED IS OWNED BY THE REFINANCING LENDER AT THE TIME OF SUCH REFINANCING.

(III) **Lender must offer choice.** A LENDER SHALL NOT INCLUDE A PREPAYMENT PENALTY FEE IN A COVERED LOAN UNLESS THE LENDER OFFERS THE OBLIGOR THE OPTION OF CHOOSING A LOAN PRODUCT WITHOUT A PREPAYMENT PENALTY FEE. A LENDER SHALL BE DEEMED TO HAVE COMPLIED WITH THIS REQUIREMENT IF THE OBLIGOR RECEIVES AND EXECUTES THE FOLLOWING DISCLOSURE, WHICH MAY BE INCORPORATED WITH ANY OTHER REQUIRED DISCLOSURE:

"LOAN PRODUCT CHOICE

I WAS PROVIDED WITH AN OFFER TO ACCEPT A PRODUCT BOTH WITH AND WITHOUT A PREPAYMENT PENALTY PROVISION. I HAVE CHOSEN TO ACCEPT THE PRODUCT _____ WITH / _____ WITHOUT A PREPAYMENT PENALTY."

5-3.5-103. Restricted acts and practices. (1) THE FOLLOWING ACTS AND PRACTICES ARE PROHIBITED IN THE MAKING OF A COVERED LOAN:

(a) **No lending without cautionary notice.** (I) A LENDER MAY NOT MAKE A COVERED LOAN UNLESS THE LENDER OR A MORTGAGE BROKER HAS GIVEN THE FOLLOWING NOTICE, OR A SUBSTANTIALLY SIMILAR NOTICE, IN WRITING TO THE

OBLIGOR WITHIN A REASONABLE PERIOD OF TIME AFTER DETERMINING THAT THE LOAN WOULD RESULT IN A COVERED LOAN, BUT NO LATER THAN THE TIME BY WHICH THE NOTICE IS REQUIRED UNDER THE NOTICE PROVISION CONTAINED IN 12 CFR 226.31 (c), AS AMENDED:

"CONSUMER CAUTION

IF YOU OBTAIN THIS LOAN, THE LENDER WILL HAVE A MORTGAGE IN COLORADO; THIS IS A DEED OF TRUST ON YOUR HOME. YOU COULD LOSE YOUR HOME, AND ANY MONEY YOU HAVE PUT INTO IT, IF YOU DO NOT MEET YOUR OBLIGATIONS UNDER THE LOAN. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EARNINGS HISTORY, THE LOAN-TO-VALUE REQUESTED, AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE AND FEES COULD VARY BASED ON WHICH LENDER OR BROKER YOU SELECT.

YOU ARE NOT REQUIRED TO COMPLETE ANY LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THESE DISCLOSURES OR HAVE SIGNED A LOAN APPLICATION. IF YOU PROCEED WITH THIS MORTGAGE LOAN, YOU SHOULD ALSO REMEMBER THAT YOU MAY FACE SERIOUS FINANCIAL RISKS IF YOU USE THIS LOAN TO PAY OFF CREDIT CARD DEBTS AND OTHER DEBTS IN CONNECTION WITH THIS TRANSACTION AND THEN LATER INCUR SIGNIFICANT NEW CREDIT CARD CHARGES OR OTHER DEBTS. IF YOU CONTINUE TO ACCUMULATE DEBT AFTER THIS LOAN IS CLOSED AND THEN EXPERIENCE FINANCIAL DIFFICULTIES, YOU COULD LOSE YOUR HOME AND ANY EQUITY YOU HAVE IN IT IF YOU DO NOT MEET YOUR MORTGAGE LOAN OBLIGATIONS.

PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL LENDERS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR LENDER ABOUT THESE SERVICES.

YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING CREDITORS."

(II) IT SHALL BE A REBUTTABLE PRESUMPTION THAT A LENDER OR BROKER HAS MET ITS OBLIGATION TO PROVIDE THIS DISCLOSURE IF THE CONSUMER PROVIDES THE LENDER OR BROKER WITH A SIGNED ACKNOWLEDGMENT OF RECEIPT OF A COPY OF THE NOTICE SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a).

(b) **No lending without due regard to repayment ability.** (I) A LENDER MAY NOT MAKE A COVERED LOAN TO A CONSUMER BASED ON THE CONSUMER'S COLLATERAL WITHOUT REGARD TO THE CONSUMER'S REPAYMENT ABILITY, INCLUDING THE CONSUMER'S CURRENT AND EXPECTED INCOME, CURRENT OBLIGATIONS, AND EMPLOYMENT.

(II) THERE IS A PRESUMPTION THAT A CREDITOR HAS VIOLATED THIS PARAGRAPH (b) IF THE CREDITOR ENGAGES IN A PATTERN OR PRACTICE OF MAKING LOANS SUBJECT TO 12 CFR 226.32 WITHOUT VERIFYING AND DOCUMENTING CONSUMERS' REPAYMENT ABILITIES.

(III) (A) IN THE CASE OF A STATED INCOME LOAN, THE REASONABLE BASIS FOR

BELIEVING THAT THERE ARE SUFFICIENT FUNDS TO SUPPORT THE COVERED LOAN MAY NOT BE BASED SOLELY ON THE INCOME STATED BY THE OBLIGOR, BUT MAY INCLUDE OTHER INFORMATION IN THE POSSESSION OF THE LENDER AFTER THE SOLICITATION OF ALL INFORMATION THAT THE LENDER CUSTOMARILY SOLICITS IN CONNECTION WITH STATED INCOME LOANS. A LENDER SHALL NOT KNOWINGLY OR WILLFULLY ORIGINATE A COVERED LOAN AS A STATED INCOME LOAN WITH THE INTENT OF EVADING THIS SUBPARAGRAPH (III).

(B) A PERSON WHO WILLFULLY AND KNOWINGLY GIVES FALSE OR INACCURATE INFORMATION OR FAILS TO PROVIDE INFORMATION THAT THE PERSON IS REQUIRED TO DISCLOSE PURSUANT TO APPLICABLE LAW MAY HAVE VIOLATED AND MAY BE SUBJECT TO PENALTIES ESTABLISHED IN 15 U.S.C. SEC. 1611.

(c) **Refinancing within a one-year period.** WITHIN ONE YEAR AFTER HAVING EXTENDED CREDIT SUBJECT TO 12 CFR 226.32, NO LENDER SHALL REFINANCE ANY LOAN SUBJECT TO 12 CFR 226.32 TO THE SAME OBLIGOR INTO ANOTHER LOAN SUBJECT TO 12 CFR 226.32 UNLESS THE REFINANCING IS IN THE OBLIGOR'S INTEREST. AN ASSIGNEE HOLDING OR SERVICING AN EXTENSION OF MORTGAGE CREDIT SUBJECT TO 12 CFR 226.32 SHALL NOT, FOR THE REMAINDER OF THE ONE-YEAR PERIOD FOLLOWING THE DATE OF ORIGINATION OF THE CREDIT, REFINANCE ANY LOAN SUBJECT TO 12 CFR 226.32 TO THE SAME OBLIGOR INTO ANOTHER LOAN SUBJECT TO 12 CFR 226.32 UNLESS THE REFINANCING IS IN THE OBLIGOR'S INTEREST. A CREDITOR OR ASSIGNEE SHALL NOT ENGAGE IN ACTS OR PRACTICES TO EVADE THIS PARAGRAPH (c), INCLUDING A PATTERN OR PRACTICE OF ARRANGING FOR THE REFINANCING OF ITS OWN LOANS BY AFFILIATED OR UNAFFILIATED CREDITORS, OR MODIFYING A LOAN AGREEMENT, REGARDLESS OF WHETHER THE EXISTING LOAN IS SATISFIED AND REPLACED BY THE NEW LOAN, AND CHARGING A FEE.

(d) **No refinancing certain low-rate loans.** A LENDER SHALL NOT REPLACE OR CONSOLIDATE A ZERO INTEREST RATE, OR OTHER LOW-RATE, LOAN MADE BY A GOVERNMENTAL OR NONPROFIT LENDER WITH A COVERED LOAN WITHIN THE FIRST TEN YEARS AFTER THE LOW-RATE LOAN WAS MADE UNLESS THE CURRENT HOLDER OF THE LOAN CONSENTS IN WRITING TO THE REFINANCING. FOR PURPOSES OF THIS PARAGRAPH (d), A "LOW-RATE" LOAN IS A LOAN THAT CARRIES A CURRENT INTEREST RATE TWO PERCENTAGE POINTS OR MORE BELOW THE CURRENT YIELD ON UNITED STATES DEPARTMENT OF THE TREASURY SECURITIES WITH A COMPARABLE MATURITY. IF THE LOAN'S CURRENT INTEREST RATE IS EITHER A DISCOUNTED INTRODUCTORY RATE OR A RATE THAT AUTOMATICALLY STEPS UP OVER TIME, THEN THE FULLY-INDEXED RATE OR THE FULLY STEPPED-UP RATE, AS APPROPRIATE, SHOULD BE USED IN LIEU OF THE CURRENT RATE TO DETERMINE WHETHER A LOAN IS A LOW-RATE LOAN.

(e) **Restrictions on covered loan proceeds to pay home improvement contracts.** A LENDER SHALL NOT PAY A CONTRACTOR UNDER A HOME-IMPROVEMENT CONTRACT FROM THE PROCEEDS OF A COVERED LOAN OTHER THAN BY AN INSTRUMENT PAYABLE TO THE OBLIGOR OR JOINTLY TO THE OBLIGOR AND THE CONTRACTOR OR, AT THE ELECTION OF THE OBLIGOR, THROUGH A THIRD-PARTY ESCROW AGENT IN ACCORDANCE WITH TERMS ESTABLISHED IN A WRITTEN AGREEMENT SIGNED BY THE OBLIGOR, THE LENDER, AND THE CONTRACTOR PRIOR TO THE DISBURSEMENT OF FUNDS TO THE CONTRACTOR.

(f) **No financing of credit insurance.** NO COVERED LOAN MAY INCLUDE, DIRECTLY OR INDIRECTLY, FINANCING OF ANY PREMIUMS FOR ANY CREDIT LIFE, CREDIT DISABILITY, CREDIT PROPERTY, OR CREDIT UNEMPLOYMENT INSURANCE, ANY OTHER LIFE OR HEALTH INSURANCE PRODUCTS, OR ANY PAYMENTS FOR ANY DEBT CANCELLATION OR SUSPENSION AGREEMENT OR CONTRACTS; EXCEPT THAT CALCULATED INSURANCE PREMIUMS OR DEBT CANCELLATION OR SUSPENSION FEES PAID ON A MONTHLY BASIS SHALL NOT BE CONSIDERED TO HAVE BEEN FINANCED BY THE LENDER FOR PURPOSES OF THIS PARAGRAPH (f).

(g) **No recommending default.** NO LENDER SHALL RECOMMEND OR ENCOURAGE DEFAULT ON AN EXISTING LOAN OR OTHER DEBT PRIOR TO AND IN CONNECTION WITH THE CLOSING OR PLANNED CLOSING OF A COVERED LOAN THAT REFINANCES ALL OR ANY PORTION OF SUCH EXISTING LOAN OR DEBT.

(h) **No fee for payoff quote.** NO CREDITOR MAY CHARGE A FEE FOR INFORMING OR TRANSMITTING TO ANY PERSON THE BALANCE DUE TO PAY OFF A COVERED LOAN OR TO PROVIDE A RELEASE UPON PREPAYMENT. A CREDITOR SHALL PROVIDE A PAYOFF BALANCE WITHIN A REASONABLE TIME AFTER A REQUEST, BUT IN ANY EVENT NOT MORE THAN FIVE BUSINESS DAYS AFTER A WRITTEN REQUEST.

5-3.5-104. Reporting to credit bureaus. A LENDER OR ITS SERVICER SHALL REPORT AT LEAST QUARTERLY BOTH THE FAVORABLE AND UNFAVORABLE PAYMENT HISTORY INFORMATION OF THE OBLIGOR ON PAYMENTS DUE TO THE LENDER ON A COVERED LOAN TO A NATIONALLY RECOGNIZED CONSUMER CREDIT REPORTING AGENCY. THIS SECTION SHALL NOT PREVENT A LENDER OR ITS SERVICER FROM AGREEING WITH THE OBLIGOR NOT TO REPORT SPECIFIED PAYMENT HISTORY INFORMATION IN THE EVENT OF A RESOLVED OR UNRESOLVED DISPUTE WITH AN OBLIGOR, AND SHALL NOT APPLY TO COVERED LOANS HELD OR SERVICED BY A LENDER FOR LESS THAN NINETY DAYS.

PART 2 ENFORCEMENT AND LIABILITY

5-3.5-201. Enforcement - liability. THE ATTORNEY GENERAL AND ANY OBLIGOR OF A COVERED LOAN MAY ENFORCE THIS ARTICLE WITH RESPECT TO SUCH COVERED LOAN IN THE MANNER PROVIDED FOR VIOLATIONS OF THE FEDERAL "HOME OWNERSHIP AND EQUITY PROTECTION ACT OF 1994", 15 U.S.C. SEC. 1639, AND REGULATIONS ADOPTED PURSUANT THERETO BY THE FEDERAL RESERVE BOARD, INCLUDING, WITHOUT LIMITATION, 12 CFR 226.32, AS SET FORTH IN THE FEDERAL "TRUTH IN LENDING ACT", 15 U.S.C. SEC. 1640, AND REGULATIONS ADOPTED PURSUANT THERETO BY THE FEDERAL RESERVE BOARD, INCLUDING THE PROVISIONS ON CIVIL LIABILITY, CLASS ACTIONS, RECISSION, CORRECTION, AND BONA FIDE ERROR. PERSONS ENGAGED IN THE PURCHASE, SALE, ASSIGNMENT, SECURITIZATION, OR SERVICING OF COVERED LOANS SHALL BE LIABLE UNDER THIS ARTICLE FOR THE ACTION OR INACTION OF PERSONS ORIGINATING SUCH LOANS ONLY IN THE MANNER AND TO THE EXTENT PROVIDED FOR VIOLATION OF THE FEDERAL "HOME OWNERSHIP AND EQUITY PROTECTION ACT OF 1994" AND THE FEDERAL "TRUTH IN LENDING ACT", 15 U.S.C. SEC. 1641, AND REGULATIONS ADOPTED PURSUANT THERETO BY THE FEDERAL RESERVE BOARD.

PART 3
MISCELLANEOUS PROVISIONS

5-3.5-301. Effective date - applicability. SECTION 5-3.5-303 IS INTENDED TO RESTATE AND CONFIRM THE EXISTING LAW OF THIS STATE, NAMELY THAT THE LAWS OF THIS STATE RELATING TO THE FINANCIAL AND LENDING ACTIVITIES ARE TO BE APPLIED ON A UNIFORM, STATEWIDE BASIS. PARTS 1 AND 2 OF THIS ARTICLE SHALL TAKE EFFECT JANUARY 1, 2003. THIS PART 3 SHALL TAKE EFFECT UPON PASSAGE. THIS ARTICLE SHALL APPLY TO COVERED LOANS OFFERED OR ENTERED INTO ON OR AFTER JANUARY 1, 2003.

5-3.5-302. Severability. THE PROVISIONS OF THIS ARTICLE ARE SEVERABLE AND IF ANY OF ITS PROVISIONS ARE HELD UNCONSTITUTIONAL, THE DECISION OF THE COURT SHALL NOT AFFECT OR IMPAIR ANY OF THE REMAINING PROVISIONS OF THIS ARTICLE. IT IS HEREBY DECLARED TO BE THE LEGISLATIVE INTENT THAT THIS ARTICLE WOULD HAVE BEEN ADOPTED IF THE UNCONSTITUTIONAL PROVISIONS HAD NOT BEEN INCLUDED.

5-3.5-303. Relationship to other laws. (1) General rule. ALL POLITICAL SUBDIVISIONS OF THIS STATE, INCLUDING MUNICIPALITIES, SHALL BE PROHIBITED FROM ENACTING AND ENFORCING ORDINANCES, RESOLUTIONS, AND REGULATIONS PERTAINING TO LENDING ACTIVITIES.

(2) **Preemption.** ANY PROVISION OF THIS ARTICLE PREEMPTED BY FEDERAL LAW WITH RESPECT TO A NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION SHALL ALSO, TO THE SAME EXTENT, NOT APPLY TO AN OPERATING SUBSIDIARY OF A NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION THAT SATISFIES THE REQUIREMENTS FOR OPERATING SUBSIDIARIES ESTABLISHED IN 12 CFR 5.34, RELATING TO OPERATING SUBSIDIARIES, OR 12 CFR 559.3, RELATING TO THE CHARACTERISTICS OF AND REQUIREMENTS FOR SUBORDINATE ORGANIZATIONS OF FEDERAL SAVINGS ASSOCIATIONS, NOR TO A BANK CHARTERED UNDER THE LAWS OF COLORADO OR ANY OPERATING SUBSIDIARY OF SUCH A STATE CHARTERED BANK.

(3) **Interpretation.** THE PROVISIONS OF THIS ARTICLE SHALL BE INTERPRETED AND APPLIED TO THE FULLEST EXTENT PRACTICAL IN A MANNER CONSISTENT WITH APPLICABLE FEDERAL LAWS AND REGULATIONS, AND SHALL NOT BE DEEMED TO CONSTITUTE AN ATTEMPT TO OVERRIDE FEDERAL LAW.

SECTION 2. Article 40 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

38-40-105. Prohibited acts by originators of certain mortgage loans. (1) THE FOLLOWING ACTS BY ANY MORTGAGE BROKER OR MORTGAGE ORIGINATOR WITH RESPECT TO ANY LOAN THAT IS SECURED BY A FIRST OR SUBORDINATE MORTGAGE OR DEED OR TRUST LIEN AGAINST A DWELLING ARE PROHIBITED:

(a) TO KNOWINGLY ADVERTISE, DISPLAY, DISTRIBUTE, BROADCAST, TELEVISION, OR CAUSE OR PERMIT TO BE ADVERTISED, DISPLAYED, DISTRIBUTED, BROADCAST, OR TELEVISIONED, IN ANY MANNER, ANY FALSE, MISLEADING, OR DECEPTIVE STATEMENT WITH REGARD TO RATES, TERMS, OR CONDITIONS FOR A MORTGAGE LOAN;

(b) TO KNOWINGLY MAKE A FALSE PROMISE OR MISREPRESENTATION OR CONCEAL AN ESSENTIAL OR MATERIAL FACT TO ENTICE EITHER A BORROWER OR A CREDITOR TO ENTER INTO A MORTGAGE AGREEMENT;

(c) TO KNOWINGLY AND WITH INTENT TO DEFRAUD PRESENT, CAUSE TO BE PRESENTED, OR PREPARE WITH KNOWLEDGE OR BELIEF THAT IT WILL BE PRESENTED TO OR BY A LENDER OR AN AGENT THEREOF ANY WRITTEN STATEMENT OR INFORMATION IN SUPPORT OF AN APPLICATION FOR A MORTGAGE LOAN THAT HE OR SHE KNOWS TO CONTAIN FALSE INFORMATION CONCERNING ANY FACT MATERIAL THERETO OR IF HE OR SHE KNOWINGLY AND WITH INTENT TO DEFRAUD OR MISLEAD CONCEALS INFORMATION CONCERNING ANY FACT MATERIAL THERETO;

(d) TO FACILITATE THE CONSUMMATION OF A MORTGAGE LOAN AGREEMENT THAT IS UNCONSCIONABLE GIVEN THE TERMS AND CIRCUMSTANCES OF THE TRANSACTION.

(2) (a) IF A COURT, AS A MATTER OF LAW, FINDS A MORTGAGE CONTRACT OR ANY CLAUSE OF THE CONTRACT TO HAVE BEEN UNCONSCIONABLE AT THE TIME IT WAS MADE, THE COURT MAY REFUSE TO ENFORCE THE CONTRACT, OR IT MAY ENFORCE THE REMAINDER OF THE CONTRACT WITHOUT THE UNCONSCIONABLE CLAUSE, OR IT MAY SO LIMIT THE APPLICATION OF ANY UNCONSCIONABLE CLAUSE AS TO AVOID ANY UNCONSCIONABLE RESULT.

(b) WHEN IT IS CLAIMED OR APPEARS TO THE COURT THAT THE CONTRACT OR ANY CLAUSE THEREOF MAY BE UNCONSCIONABLE, THE PARTIES SHALL BE AFFORDED A REASONABLE OPPORTUNITY TO PRESENT EVIDENCE AS TO ITS COMMERCIAL SETTING, PURPOSE, AND EFFECT, TO AID THE COURT IN MAKING THE DETERMINATION.

(c) IN ORDER TO SUPPORT A FINDING OF UNCONSCIONABILITY, THERE MUST BE EVIDENCE OF SOME OVERREACHING ON THE PART OF THE MORTGAGE BROKER OR MORTGAGE ORIGINATOR SUCH AS THAT WHICH RESULTS FROM AN INEQUALITY OF BARGAINING POWER OR UNDER OTHER CIRCUMSTANCES IN WHICH THERE IS AN ABSENCE OF MEANINGFUL CHOICE ON THE PART OF ONE OF THE PARTIES, TOGETHER WITH CONTRACT TERMS THAT ARE UNREASONABLY FAVORABLE TO THE MORTGAGE BROKER, MORTGAGE ORIGINATOR, OR LENDER.

(3) A VIOLATION OF THIS SECTION SHALL BE DEEMED A DECEPTIVE TRADE PRACTICE AS PROVIDED IN SECTION 6-1-105 (1) (uu), C.R.S.

(4) THE PROVISIONS OF THIS SECTION ARE IN ADDITION TO AND ARE NOT INTENDED TO SUPERSEDE THE DECEPTIVE TRADE PRACTICES ACTIONABLE AT COMMON LAW OR UNDER OTHER STATUTES OF THIS STATE.

SECTION 3. 6-1-105 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

6-1-105. Deceptive trade practices. (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

(uu) VIOLATES SECTION 38-40-105, C.R.S.

SECTION 4. 6-1-110, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

6-1-110. Restraining orders - injunctions - assurances of discontinuance.

(3) WHEN THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY SHOWS BY A PREPONDERANCE OF EVIDENCE THAT A MORTGAGE BROKER OR MORTGAGE ORIGINATOR HAS CONTINUED TO CONDUCT THE BUSINESS OF ORIGINATING MORTGAGE LOANS IN VIOLATION OF SECTION 38-40-105, C.R.S., AFTER HAVING BEEN PREVIOUSLY ENJOINED FROM PRACTICES IN VIOLATION OF SUCH SECTION, THE ATTORNEY GENERAL OR DISTRICT ATTORNEY MAY, IN ADDITION TO ANY OTHER REMEDIES, APPLY FOR AND OBTAIN, IN THE COURT THAT HAS PREVIOUSLY ISSUED AN INJUNCTION, A FURTHER INJUNCTION AGAINST CONTINUING TO PARTICIPATE IN THE BUSINESS OF ORIGINATING MORTGAGE LOANS FOR UP TO TWO YEARS.

SECTION 5. 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.

Approved: June 7, 2002