

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 21-0508.02 Thomas Morris x4218

HOUSE BILL 21-1282

HOUSE SPONSORSHIP

Weissman,

SENATE SPONSORSHIP

(None),

House Committees

Business Affairs & Labor
Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING ADDITIONAL CONSUMER PROTECTIONS RESULTING FROM**
102 **THE REGULATION OF MORTGAGE SERVICERS, AND, IN**
103 **CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill subjects mortgage servicers to regulation by an assistant attorney general, including the requirements of notification, record keeping, reporting, examinations, inspections, and enforcement. A violation of the requirements is an unfair or deceptive trade practice.

*Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

1 INCLUDE:

2 (a) A SUPERVISED FINANCIAL ORGANIZATION AS DEFINED IN
3 SECTION 5-1-301 (45);

4 (b) A MORTGAGE LOAN ORIGINATOR REGULATED BY THE DIVISION
5 OF REAL ESTATE OR AS DEFINED IN SECTION 12-10-702 (14)(a) OR A
6 MORTGAGE COMPANY REGULATED BY THE DIVISION OF REAL ESTATE OR
7 AS DEFINED IN SECTION 12-10-702 (12); EXCEPT THAT A MORTGAGE LOAN
8 ORIGINATOR OR MORTGAGE COMPANY THAT ALSO SERVICES A
9 RESIDENTIAL MORTGAGE LOAN IS A MORTGAGE SERVICER;

10 (c) A FEDERAL AGENCY OR DEPARTMENT;

11 (d) A COLLECTION AGENCY AS DEFINED IN SECTION 5-16-103 (3)
12 THAT IS LICENSED PURSUANT TO SECTION 5-16-120 OR IS EXEMPT FROM
13 LICENSURE UNDER SECTION 5-16-103 (3)(e) AND WHOSE MORTGAGE DEBT
14 COLLECTION BUSINESS INVOLVES COLLECTION OF RESIDENTIAL MORTGAGE
15 LOANS OBTAINED BY THE COLLECTION AGENCY AFTER DEFAULT; EXCEPT
16 THAT A COLLECTION AGENCY THAT ALSO SERVICES RESIDENTIAL
17 MORTGAGE LOANS ASSIGNED TO THE COLLECTION AGENCY BEFORE
18 DEFAULT IS A MORTGAGE SERVICER;

19 (e) AN AGENCY, INSTRUMENTALITY, OR POLITICAL SUBDIVISION OF
20 THIS STATE;

21 (f) A SUPERVISED LENDER AS DEFINED IN SECTION 5-1-301 (46);
22 EXCEPT THAT A SUPERVISED LENDER, OTHER THAN A SUPERVISED
23 FINANCIAL ORGANIZATION AS DEFINED IN SECTION 5-1-301 (45), THAT
24 ALSO SERVICES RESIDENTIAL MORTGAGE LOANS IS A MORTGAGE SERVICER;

25 (g) A SMALL SERVICER THAT SERVICES FEWER THAN FIVE
26 THOUSAND RESIDENTIAL MORTGAGE LOANS IN ANY CALENDAR YEAR,
27 EXCLUSIVE OF LOANS HELD FOR SALE, AS DETERMINED BY THE

1 ADMINISTRATOR, WHO SHALL APPLY THE CRITERIA IN 12 CFR 1026.41
2 (e)(4)(iii) OR ANY SUCCESSOR REGULATION;

3 (h) A PERSON THAT THE ADMINISTRATOR DESIGNATES BY RULE OR
4 ORDER AS EXEMPT. THESE EXEMPTIONS ARE LIMITED TO NONPROFIT
5 ORGANIZATIONS, GOVERNMENT AGENCIES, OR OTHER ENTITIES WHOSE
6 PRIMARY BUSINESS IS NOT TO SERVICE MORTGAGES AND THAT SEEK TO
7 PROMOTE AFFORDABLE HOUSING OR FINANCING.

8 (i) AN ORIGINATOR OR SERVICER THAT UTILIZES A SUBSERVICER TO
9 CARRY OUT THE ADMINISTRATIVE FUNCTIONS OF SERVICING A MORTGAGE
10 UNLESS THE SUBSERVICER IS ACTING AT THE DIRECTION OF THE
11 ORIGINATOR OR SERVICER; OR

12 (j) A PERSON THAT SERVICES LOANS HELD FOR SALE.

13 (5) "NOTIFIER" MEANS A PERSON REQUIRED TO NOTIFY THE
14 ADMINISTRATOR OF THE PERSON'S ACTIVITIES AS A MORTGAGE SERVICER
15 PURSUANT TO THIS ARTICLE 21.

16 (6) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
17 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER
18 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

19 (7) "RESIDENTIAL MORTGAGE LOAN" MEANS A LOAN THAT IS
20 PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD USE AND THAT IS
21 SECURED BY A MORTGAGE, DEED OF TRUST, OR OTHER EQUIVALENT,
22 CONSENSUAL SECURITY INTEREST ON A DWELLING OR RESIDENTIAL REAL
23 PROPERTY UPON WHICH IS CONSTRUCTED OR INTENDED TO BE
24 CONSTRUCTED A DWELLING AS DEFINED BY SECTION 5-1-301 (18).

25 (8) "SERVICING" MEANS RECEIVING ANY SCHEDULED PERIODIC
26 PAYMENTS FROM A BORROWER PURSUANT TO THE TERMS OF A
27 RESIDENTIAL MORTGAGE LOAN, INCLUDING AMOUNTS FOR ESCROW

1 ACCOUNTS, AND MAKING THE PAYMENTS TO THE OWNER OF THE LOAN OR
2 OTHER THIRD PARTIES OF PRINCIPAL AND INTEREST AND SUCH OTHER
3 PAYMENTS WITH RESPECT TO THE AMOUNTS RECEIVED FROM THE
4 BORROWER AS MAY BE REQUIRED PURSUANT TO THE TERMS OF THE
5 RESIDENTIAL MORTGAGE SERVICING LOAN DOCUMENTS OR SERVICING
6 CONTRACT. IN THE CASE OF A REVERSE MORTGAGE, SERVICING INCLUDES
7 MAKING PAYMENTS TO THE BORROWER.

8 **5-21-104. Notification required.** ON AND AFTER JANUARY 31,
9 2022, A PERSON SHALL NOT ACT AS A MORTGAGE SERVICER, DIRECTLY OR
10 INDIRECTLY, WITHOUT NOTIFYING THE ADMINISTRATOR PURSUANT TO
11 SECTION 5-21-105.

12 **5-21-105. Notification by mortgage servicers - rules.**

13 (1) **Notification.** (a) A PERSON ACTING AS A MORTGAGE SERVICER MUST
14 NOTIFY THE ADMINISTRATOR AND PAY THE FEE PRESCRIBED IN SECTION
15 5-21-106 WITHIN THIRTY DAYS AFTER COMMENCING SERVICING IN THE
16 STATE, AND, THEREAFTER, ON OR BEFORE JANUARY 31 OF EACH YEAR. THE
17 NOTIFICATION MUST STATE THE NOTIFIER'S LEGAL NAME AND ALL TRADE
18 NAMES USED, THE ADDRESS OF THE NOTIFIER'S PRINCIPAL OFFICE, WHICH
19 MAY BE OUTSIDE THIS STATE, AND SUCH OTHER INFORMATION AS THE
20 ADMINISTRATOR MAY REQUIRE.

21 (b) WITH EVERY RENEWAL NOTIFICATION OR AT A DATE
22 PRESCRIBED BY RULE BY THE ADMINISTRATOR, EACH NOTIFIER SHALL
23 SUBMIT AN ANNUAL REPORT RELATING TO MORTGAGE SERVICING BY THE
24 NOTIFIER IN THE FORM PRESCRIBED BY THE ADMINISTRATOR.
25 INFORMATION CONTAINED IN ANNUAL REPORTS IS CONFIDENTIAL, IS NOT
26 SUBJECT TO DISCLOSURE PURSUANT TO PART 2 OF ARTICLE 72 OF TITLE 24,
27 AND MAY BE PUBLISHED ONLY IN COMPOSITE FORM.

1 (2) **Records retention - records request.** (a) A MORTGAGE
2 SERVICER SHALL MAINTAIN ADEQUATE RECORDS FOR NOT LESS THAN FOUR
3 YEARS FOLLOWING THE FINAL PAYMENT ON THE RESIDENTIAL MORTGAGE
4 LOAN, TRANSFER OF THE MORTGAGE SERVICING RIGHTS, OR THE
5 ASSIGNMENT OF THE LOAN, WHICHEVER OCCURS FIRST. UPON REQUEST BY
6 THE ADMINISTRATOR, A MORTGAGE SERVICER SHALL MAKE THE RECORDS
7 AVAILABLE OR SHALL SEND THE RECORDS TO THE ADMINISTRATOR BY
8 REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY ANY
9 EXPRESS DELIVERY CARRIER THAT PROVIDES A DATED DELIVERY RECEIPT,
10 NOT LATER THAN THIRTY BUSINESS DAYS AFTER REQUESTED BY THE
11 ADMINISTRATOR OR OTHER METHOD OF DELIVERY AS AGREED TO IN
12 WRITING BY THE ADMINISTRATOR, INCLUDING SECURE ELECTRONIC
13 TRANSMISSION. UPON A NOTIFIER'S REQUEST, THE ADMINISTRATOR MAY
14 GRANT THE NOTIFIER ADDITIONAL TIME TO MAKE THE RECORDS
15 AVAILABLE OR TO SEND THE RECORDS TO THE ADMINISTRATOR.

16 (b) EVERY MORTGAGE SERVICER SHALL MAINTAIN RECORDS IN
17 CONFORMITY WITH THIS ARTICLE 21, RULES ADOPTED PURSUANT TO THIS
18 ARTICLE 21, AND GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AND
19 PRACTICES IN A MANNER THAT WILL ENABLE THE ADMINISTRATOR TO
20 DETERMINE WHETHER THE SERVICER IS COMPLYING WITH THIS ARTICLE 21.
21 A MORTGAGE SERVICER'S RECORD-KEEPING SYSTEM IS SUFFICIENT IF THE
22 SERVICER MAKES THE REQUIRED INFORMATION REASONABLY AVAILABLE.
23 THE RECORDS NEED NOT BE KEPT IN THE PLACE OF BUSINESS WHERE
24 MORTGAGE LOANS ARE SERVICED IF THE ADMINISTRATOR IS GIVEN FREE
25 ACCESS TO THE RECORDS WHEREVER LOCATED.

26 **5-21-106. Fees.** (1) A NOTIFIER SHALL PAY THE FOLLOWING
27 NONREFUNDABLE FEES ESTABLISHED BY THE ADMINISTRATOR PURSUANT

1 TO SUBSECTION (3) OF THIS SECTION:

2 (a) AN INITIAL NOTIFICATION FEE; AND

3 (b) AN ANNUAL NOTIFICATION FEE.

4 (2) THE ADMINISTRATOR SHALL TRANSMIT THE FEES TO THE STATE
5 TREASURER, WHO SHALL CREDIT THEM TO THE UNIFORM CONSUMER
6 CREDIT CODE CASH FUND CREATED IN SECTION 5-6-204 (1).

7 (3) THE ADMINISTRATOR SHALL SET THE FEES REQUIRED BY
8 SUBSECTION (1) OF THIS SECTION IN AN AMOUNT ESTIMATED TO COVER
9 THE ADMINISTRATOR'S COSTS IN IMPLEMENTING THIS ARTICLE 21 AND MAY
10 PERIODICALLY REDUCE OR INCREASE THE AMOUNT OF ONE OR MORE OF
11 THE FEES IF NECESSARY PURSUANT TO SECTION 24-75-402 (3) AND (4) TO
12 REDUCE THE UNCOMMITTED RESERVES OF THE UNIFORM CONSUMER
13 CREDIT CODE CASH FUND.

14 **5-21-107. Federal laws.** (1) A MORTGAGE SERVICER SHALL
15 COMPLY WITH ALL APPLICABLE FEDERAL LAWS AND REGULATIONS
16 RELATING TO RESIDENTIAL MORTGAGE LOAN SERVICING, INCLUDING:

17 (a) THE FEDERAL "REAL ESTATE SETTLEMENT PROCEDURES ACT
18 OF 1974", 12 U.S.C. SEC. 2601 ET SEQ., AS AMENDED; AND

19 (b) THE "TRUTH IN LENDING ACT", 15 U.S.C. SEC. 1601 ET SEQ.,
20 AS AMENDED.

21 (2) IN ADDITION TO ANY OTHER REMEDIES PROVIDED BY LAW, A
22 VIOLATION OF ANY FEDERAL LAW OR REGULATION RELATING TO
23 RESIDENTIAL MORTGAGE LOAN SERVICING SHALL BE DEEMED A VIOLATION
24 OF THIS ARTICLE 21.

25 (3) ALL FINANCIAL RESPONSIBILITY REQUIREMENTS OF THIS
26 ARTICLE 21 SHALL BE PRESUMED TO BE MET IF A MORTGAGE SERVICER IS
27 CURRENTLY APPROVED TO SERVICE LOANS BY THE FEDERAL NATIONAL

1 MORTGAGE ASSOCIATION, FEDERAL HOME LOAN MORTGAGE
2 CORPORATION, OR GOVERNMENT NATIONAL MORTGAGE ASSOCIATION OR
3 IF IT MEETS PRUDENTIAL STANDARDS ESTABLISHED BY THE CONFERENCE
4 OF STATE BANK SUPERVISORS.

5 **5-21-108. Powers and duties of the administrator - rules.**

6 (1) THE ADMINISTRATOR MAY CONDUCT INVESTIGATIONS AND
7 EXAMINATIONS AS FOLLOWS:

8 (a) FOR PURPOSES OF GENERAL OR SPECIFIC INQUIRY OR
9 INVESTIGATION TO DETERMINE COMPLIANCE WITH THIS ARTICLE 21, THE
10 ADMINISTRATOR MAY ACCESS, RECEIVE, AND USE ANY RECORDS OR
11 INFORMATION BELONGING TO A NOTIFIER OR PERSON SUBJECT TO THIS
12 ARTICLE 21 WHO MAY HAVE FAILED TO NOTIFY THE ADMINISTRATOR
13 PURSUANT TO SECTION 5-21-104, INCLUDING CRIMINAL, CIVIL, AND
14 ADMINISTRATIVE HISTORY INFORMATION; PERSONAL HISTORY AND
15 EXPERIENCE INFORMATION, INCLUDING INDEPENDENT CREDIT REPORTS
16 OBTAINED FROM A CONSUMER REPORTING AGENCY DESCRIBED IN SECTION
17 603 (p) OF THE FEDERAL "FAIR CREDIT REPORTING ACT", 15 U.S.C. SEC.
18 1681a, AS AMENDED; AND ANY OTHER RECORDS OR INFORMATION THE
19 ADMINISTRATOR CONSIDERS RELEVANT TO THE INQUIRY OR
20 INVESTIGATION REGARDLESS OF THE LOCATION, POSSESSION, CONTROL, OR
21 CUSTODY OF THE RECORDS OR INFORMATION.

22 (b) THE ADMINISTRATION MAY INITIATE AN INVESTIGATION OR
23 EXAMINATION WHERE THERE IS REASON TO BELIEVE THAT THERE IS A
24 POTENTIAL VIOLATION THAT RISKS CONSUMER HARM, WHERE A PERSON
25 WHO MAY BE SUBJECT TO THIS ARTICLE 21 MAY HAVE FAILED TO NOTIFY
26 THE ADMINISTRATOR, OR BASED ON A SUBSTANTIATED COMPLAINT. THE
27 ADMINISTRATOR MAY REVIEW, INVESTIGATE, OR EXAMINE ANY NOTIFIER

1 OR PERSON SUBJECT TO THIS ARTICLE 21 AS OFTEN AS NECESSARY IN
2 ORDER TO CARRY OUT THE PURPOSES OF THIS ARTICLE 21. THE
3 ADMINISTRATOR MAY DIRECT, SUBPOENA, OR ORDER THE ATTENDANCE OF
4 AND EXAMINE UNDER OATH ANY PERSON WHOSE TESTIMONY MAY BE
5 REQUIRED ABOUT THE RESIDENTIAL MORTGAGE LOAN, RESIDENTIAL
6 MORTGAGE LOAN SERVICING, OR THE BUSINESS OR SUBJECT MATTER OF AN
7 EXAMINATION OR INVESTIGATION AND MAY DIRECT, SUBPOENA, OR ORDER
8 THE PERSON TO PRODUCE RECORDS THE ADMINISTRATOR CONSIDERS
9 RELEVANT TO THE INQUIRY. NOTHING LIMITS THE SCOPE OF THE
10 ADMINISTRATOR'S AUTHORITY TO REVIEW AND INVESTIGATE POTENTIAL
11 VIOLATIONS OR HARM DISCOVERED IN THE COURSE OF AN INVESTIGATION.

12 (c) (I) IN MAKING AN EXAMINATION OR INVESTIGATION
13 AUTHORIZED BY THIS SECTION, THE ADMINISTRATOR MAY CONTROL
14 ACCESS TO ANY RECORDS OF THE NOTIFIER OR PERSON UNDER
15 EXAMINATION OR INVESTIGATION. THE ADMINISTRATOR MAY TAKE
16 POSSESSION OF THE RECORDS OR PLACE A PERSON IN EXCLUSIVE CHARGE
17 OF THE RECORDS IN THE PLACE WHERE THEY ARE USUALLY KEPT.

18 (II) DURING THE PERIOD OF CONTROL, A PERSON MAY NOT REMOVE
19 OR ATTEMPT TO REMOVE ANY OF THE RECORDS EXCEPT PURSUANT TO A
20 COURT ORDER OR WITH THE WRITTEN CONSENT OF THE ADMINISTRATOR.
21 UNLESS THE ADMINISTRATOR HAS REASONABLE GROUNDS TO BELIEVE THE
22 RECORDS OF THE NOTIFIER OR PERSON HAVE BEEN, OR ARE AT RISK OF
23 BEING, ALTERED OR DESTROYED FOR PURPOSES OF CONCEALING A
24 VIOLATION OF THIS ARTICLE 21, THE NOTIFIER OR OWNER OF THE RECORDS
25 MAY HAVE ACCESS TO THE RECORDS AS NECESSARY TO CONDUCT ITS
26 ORDINARY BUSINESS AFFAIRS.

27 (2) IN ORDER TO CARRY OUT THE PURPOSES OF THIS SECTION, THE

1 ADMINISTRATOR MAY:

2 (a) RETAIN ATTORNEYS, ACCOUNTANTS, OR OTHER PROFESSIONALS
3 AND SPECIALISTS AS EXAMINERS, AUDITORS, OR INVESTIGATORS TO
4 CONDUCT OR ASSIST IN CONDUCTING EXAMINATIONS OR INVESTIGATIONS;

5 (b) ENTER INTO AGREEMENTS OR RELATIONSHIPS WITH OTHER
6 GOVERNMENT OFFICIALS OR REGULATORY ASSOCIATIONS IN ORDER TO
7 IMPROVE EFFICIENCIES AND REDUCE REGULATORY BURDEN BY SHARING
8 RESOURCES, STANDARDIZED OR UNIFORM METHODS OR PROCEDURES, AND
9 RECORDS OR INFORMATION OBTAINED UNDER THIS SECTION;

10 (c) USE, HIRE, CONTRACT FOR, OR EMPLOY PUBLICLY OR
11 PRIVATELY AVAILABLE ANALYTICAL SYSTEMS, METHODS, OR SOFTWARE
12 TO EXAMINE OR INVESTIGATE THE NOTIFIER OR PERSON SUBJECT TO THIS
13 ARTICLE 21;

14 (d) ACCEPT AND RELY ON EXAMINATION OR INVESTIGATION
15 REPORTS MADE BY OTHER GOVERNMENT OFFICIALS WITHIN OR OUTSIDE
16 THIS STATE; AND

17 (e) ACCEPT AUDIT REPORTS MADE BY AN INDEPENDENT CERTIFIED
18 PUBLIC ACCOUNTANT FOR THE NOTIFIER OR PERSON SUBJECT TO THIS
19 ARTICLE 21 IN THE COURSE OF THAT PART OF THE EXAMINATION COVERING
20 THE SAME GENERAL SUBJECT MATTER AS THE AUDIT AND MAY
21 INCORPORATE THE AUDIT REPORT IN A REPORT OF EXAMINATION, REPORT
22 OF INVESTIGATION, OR OTHER WRITING OF THE ADMINISTRATOR.

23 (3) A PERSON SUBJECT TO INVESTIGATION OR EXAMINATION UNDER
24 THIS SECTION MAY NOT KNOWINGLY WITHHOLD, ABSTRACT, REMOVE,
25 MUTILATE, OR DESTROY ANY RECORDS OR OTHER INFORMATION RELATING
26 TO INFORMATION REGULATED UNDER THIS ARTICLE 21.

27 (4) WHENEVER IT APPEARS TO THE ADMINISTRATOR THAT A

1 PERSON HAS VIOLATED, IS VIOLATING, OR IS ABOUT TO VIOLATE THIS
2 SECTION OR A RULE ADOPTED PURSUANT TO THIS ARTICLE 21 OR THAT A
3 NOTIFIER OR AN OWNER, DIRECTOR, OFFICER, MEMBER, PARTNER,
4 SHAREHOLDER, TRUSTEE, EMPLOYEE, OR AGENT OF THE NOTIFIER HAS
5 COMMITTED FRAUD, ENGAGED IN DISHONEST ACTIVITIES, OR MADE A
6 MISREPRESENTATION, THE ADMINISTRATOR MAY TAKE ACTION AGAINST
7 THE PERSON OR NOTIFIER IN ACCORDANCE WITH THIS ARTICLE 21.

8 (5) THE ADMINISTRATOR SHALL ADOPT RULES AS NECESSARY TO
9 IMPLEMENT THIS ARTICLE 21.

10

11 **5-21-109. Application of administrative procedures.** EXCEPT AS
12 OTHERWISE PROVIDED IN THIS ARTICLE 21, SECTIONS 24-4-102 TO
13 24-4-106 APPLY TO AND GOVERN ALL RULES PROMULGATED AND ALL
14 ADMINISTRATIVE ACTION TAKEN BY THE ADMINISTRATOR PURSUANT TO
15 THIS ARTICLE 21; EXCEPT THAT SECTION 24-4-104 (3) DOES NOT APPLY TO
16 ANY SUCH ACTION.

17 **5-21-110. Administrative enforcement orders.** (1) AFTER
18 NOTICE AND HEARING, THE ADMINISTRATOR MAY ORDER A MORTGAGE
19 SERVICER OR A PERSON ACTING IN THE MORTGAGE SERVICER'S BEHALF TO
20 CEASE AND DESIST FROM ENGAGING IN VIOLATIONS OF THIS ARTICLE 21 OR
21 ANY RULE OR ORDER LAWFULLY MADE PURSUANT TO THIS ARTICLE 21.
22 THE ORDER ISSUED BY THE ADMINISTRATOR MAY ALSO REQUIRE THE
23 MORTGAGE SERVICER OR PERSON TO MAKE REFUNDS TO INDIVIDUALS OF
24 OVERCHARGES OR OTHER DAMAGES SUFFERED BY THE BORROWER
25 UNDER THIS ARTICLE 21 AND A CIVIL PENALTY IN THE AMOUNTS STATED
26 IN 12 U.S.C. SEC. 5565 (c)(2), ALL OR PART OF WHICH MAY BE
27 SPECIFICALLY DESIGNATED FOR CONSUMER AND CREDITOR EDUCATIONAL

1 PURPOSES. WHEN SEEKING CIVIL PENALTIES, THE ADMINISTRATOR SHALL
2 CONSIDER THE MITIGATING FACTORS IN 12 U.S.C. SEC. 5565 (c)(3).

3 (2) A MORTGAGE SERVICER AGGRIEVED BY AN ORDER OF THE
4 ADMINISTRATOR MAY OBTAIN JUDICIAL REVIEW OF THE ORDER IN THE
5 COLORADO COURT OF APPEALS. THE ADMINISTRATOR MAY OBTAIN AN
6 ORDER OF THE COURT FOR ENFORCEMENT OF THE ADMINISTRATOR'S ORDER
7 IN THE DISTRICT COURT UNDER SECTION 24-4-106. ALL PROCEEDINGS
8 UNDER THIS SECTION ARE GOVERNED BY SECTIONS 24-4-105 AND
9 24-4-106.

10 **5-21-111. Assurance of discontinuance.** IF IT IS CLAIMED THAT
11 A PERSON HAS VIOLATED THIS ARTICLE 21, THE ADMINISTRATOR MAY
12 ACCEPT AN ASSURANCE IN WRITING THAT THE PERSON WILL NOT ENGAGE
13 IN THE CONDUCT IN THE FUTURE. THE ASSURANCE MAY ALSO REQUIRE THE
14 PERSON TO MAKE REFUNDS TO INDIVIDUALS OF UNLAWFUL CHARGES
15 UNDER THIS ARTICLE 21, PAY A PENALTY AUTHORIZED IN SECTION
16 5-21-110, ALL OR PART OF WHICH MAY BE SPECIFICALLY DESIGNATED FOR
17 CONSUMER AND CREDITOR EDUCATIONAL PURPOSES, AND REIMBURSE THE
18 ADMINISTRATOR FOR THE ADMINISTRATOR'S REASONABLE COSTS
19 INCURRED IN INVESTIGATING THE CONDUCT. IF A PERSON GIVING AN
20 ASSURANCE OF DISCONTINUANCE FAILS TO COMPLY WITH ITS TERMS, THE
21 ASSURANCE IS EVIDENCE THAT PRIOR TO THE ASSURANCE, THAT PERSON
22 ENGAGED IN THE CONDUCT DESCRIBED IN THE ASSURANCE.

23 **5-21-112. Injunctions.** THE ADMINISTRATOR MAY BRING A CIVIL
24 ACTION TO RESTRAIN A PERSON FROM VIOLATING THIS ARTICLE 21 OR
25 RULES PROMULGATED PURSUANT TO THIS ARTICLE 21 AND FOR OTHER
26 APPROPRIATE RELIEF, INCLUDING SUCH ORDERS OR JUDGMENTS AS MAY BE
27 NECESSARY TO COMPLETELY COMPENSATE OR RESTORE TO THE

1 INDIVIDUAL'S ORIGINAL POSITION ANY INDIVIDUAL AFFECTED BY THE
2 VIOLATION. THE ADMINISTRATOR MAY ALSO APPLY FOR A TEMPORARY
3 RESTRAINING ORDER OR A PRELIMINARY INJUNCTION AGAINST A
4 RESPONDENT PENDING FINAL DETERMINATION OF PROCEEDINGS. NO BOND
5 OR OTHER SECURITY IS REQUIRED OF THE ADMINISTRATOR BEFORE RELIEF
6 UNDER THIS SECTION MAY BE GRANTED.

7 **5-21-113. Civil actions by the administrator.** (1) THE
8 ADMINISTRATOR MAY BRING A CIVIL ACTION AGAINST A MORTGAGE
9 SERVICER OR ANY OTHER PERSON FOR ANY VIOLATIONS OF THIS ARTICLE
10 21. AN ACTION MAY RELATE TO TRANSACTIONS WITH MORE THAN ONE
11 INDIVIDUAL. THE COURT MAY ORDER A MORTGAGE SERVICER TO REFUND
12 TO INDIVIDUALS OVERCHARGES OR OTHER DAMAGES SUFFERED BY THE
13 BORROWER COLLECTED IN VIOLATION OF THIS ARTICLE 21 AND MAY ALSO
14 ASSESS CIVIL PENALTIES AGAINST THE MORTGAGE SERVICER AS SET FORTH
15 IN SECTION 5-21-110. IF THE ADMINISTRATOR PREVAILS IN AN ACTION
16 BROUGHT UNDER THIS SECTION, THE ADMINISTRATOR MAY RECOVER
17 REASONABLE COSTS IN INVESTIGATING AND BRINGING THE ACTION AND
18 MAY RECOVER REASONABLE ATTORNEY FEES. WHEN DETERMINING
19 WHETHER TO SEEK CIVIL PENALTIES UNDER THIS SECTION, THE
20 ADMINISTRATOR SHALL CONSIDER WHETHER THE FEDERAL CONSUMER
21 FINANCIAL PROTECTION BUREAU HAS IMPOSED CIVIL PENALTIES ON THE
22 SAME SERVICER FOR THE SAME VIOLATION AND ANY OTHER MITIGATING
23 FACTORS, IN ORDER TO AVOID DUPLICATIVE CIVIL PENALTIES. IF THE
24 FEDERAL CONSUMER FINANCIAL PROTECTION BUREAU IS AWARDED CIVIL
25 PENALTIES BASED ON A PARTICULAR ACT OR OMISSION OR A SERIES OF
26 ACTS OR OMISSIONS, CIVIL PENALTIES UNDER SECTION 5-21-110 THAT ARE
27 BASED ON THE SAME ACTS OR OMISSIONS ARE REDUCED BY THE SAME

1 AMOUNT. THE ADMINISTRATOR SHALL, TO THE EXTENT POSSIBLE,
2 COORDINATE WITH THE FEDERAL CONSUMER FINANCIAL PROTECTION
3 BUREAU BEFORE TAKING ACTION IN ORDER TO AVOID DUPLICATION OF
4 INVESTIGATIONS AND PENALTIES, UNLESS THE ADMINISTRATOR'S
5 INVESTIGATION OR PENALTIES RELATE TO ACTS OR OMISSIONS SEPARATE
6 FROM THE FEDERAL CONSUMER FINANCIAL PROTECTION BUREAU
7 ACTIVITIES.

8 (2) NOTHING IN THIS ARTICLE 21:

9 (a) CREATES A PRIVATE RIGHT OF ACTION; OR

10 (b) AFFECTS ANY REMEDY THAT A BORROWER MAY HAVE
11 PURSUANT TO LAW OTHER THAN THIS ARTICLE 21.

12 **5-21-114. Limitations.** NOTWITHSTANDING ARTICLE 80 OF TITLE
13 13, ALL ACTIONS BROUGHT UNDER THIS ARTICLE 21 MUST BE COMMENCED
14 WITHIN FOUR YEARS AFTER THE DATE ON WHICH ANY VIOLATION OF THIS
15 ARTICLE 21 OCCURRED OR THE DATE ON WHICH THE LAST IN A SERIES OF
16 THE ACTS OR PRACTICES OCCURRED OR WITHIN FOUR YEARS AFTER THE
17 PLAINTIFF DISCOVERED OR IN THE EXERCISE OF REASONABLE DILIGENCE
18 SHOULD HAVE DISCOVERED THE OCCURRENCE OF A VIOLATION OF THIS
19 ARTICLE 21; EXCEPT THAT THE PERIOD OF LIMITATION PROVIDED IN THIS
20 SECTION MAY BE EXTENDED FOR A PERIOD OF ONE YEAR IF THE PLAINTIFF
21 PROVES THAT FAILURE TO TIMELY COMMENCE THE ACTION WAS CAUSED
22 BY THE DEFENDANT ENGAGING IN CONDUCT CALCULATED TO INDUCE THE
23 PLAINTIFF TO REFRAIN FROM OR POSTPONE THE COMMENCEMENT OF THE
24 ACTION.

25 **5-21-115. Confidential information.** (1) THE ADMINISTRATOR
26 SHALL NOT MAKE PUBLIC THE NAME OR IDENTITY OF A PERSON WHOSE
27 ACTS OR CONDUCT THE ADMINISTRATOR INVESTIGATES OR EXAMINES

1 PURSUANT TO THIS ARTICLE 21 OR THE FACTS DISCLOSED IN THE
2 INVESTIGATION OR EXAMINATION.

3 (2) THE ADMINISTRATOR MAY DISCLOSE NOTIFICATION RECORDS
4 PROVIDED TO THE ADMINISTRATOR AND OTHER CONTENTS OF THE
5 RECORDS MAINTAINED PURSUANT TO THIS ARTICLE 21, BUT THE
6 ADMINISTRATOR SHALL NOT MAKE PUBLIC THE CONFIDENTIAL
7 INFORMATION CONTAINED IN THE RECORDS.

8 (3) THE RESTRICTIONS ON THE DISCLOSURE OF INFORMATION IN
9 SUBSECTIONS (1) AND (2) OF THIS SECTION DO NOT APPLY TO DISCLOSURES
10 BY THE ADMINISTRATOR IN ACTIONS OR ENFORCEMENT PROCEEDINGS
11 PURSUANT TO THIS ARTICLE 21.

12 **5-21-116. Reporting.** (1) THE DEPARTMENT OF LAW SHALL
13 INCLUDE IN ITS ANNUAL PRESENTATIONS HELD PURSUANT TO SECTION
14 2-7-203 UPDATES CONCERNING THE ADMINISTRATION OF THIS ARTICLE 21,
15 INCLUDING:

16 (a) COMPLAINTS DATA, ENFORCEMENT ACTIONS, AND OTHER
17 RELEVANT REGULATORY DATA; AND

18 (b) THE USE OF FEES COLLECTED BY THE ADMINISTRATOR
19 PURSUANT TO THIS ARTICLE 21.

20 **SECTION 2.** In Colorado Revised Statutes, 13-4-102, **add**
21 (2)(nn) as follows:
22

23 **13-4-102. Jurisdiction.** (2) The court of appeals has initial
24 jurisdiction to:

25 (nn) REVIEW FINAL DECISIONS OR ORDERS OF THE ADMINISTRATOR
26 AS PROVIDED IN ARTICLE 21 OF TITLE 5.

27 **SECTION 3. Appropriation.** For the 2021-22 state fiscal year,

1 \$51,783 is appropriated to the department of law for use by consumer
2 protection. This appropriation is from the uniform consumer credit code
3 cash fund created in section 5-6-204 (1), C.R.S., and is based on an
4 assumption that the department will require an additional 0.5 FTE. To
5 implement this act, the department may use this appropriation for
6 consumer credit unit.

7 **SECTION 4. Act subject to petition - effective date -**
8 **applicability.** (1) This act takes effect January 1, 2022; except that, if a
9 referendum petition is filed pursuant to section 1 (3) of article V of the
10 state constitution against this act or an item, section, or part of this act
11 within the ninety-day period after final adjournment of the general
12 assembly, then the act, item, section, or part will not take effect unless
13 approved by the people at the general election to be held in November
14 2022 and, in such case, will take effect on the date of the official
15 declaration of the vote thereon by the governor.

16 (2) This act applies to conduct occurring on or after the applicable
17 effective date of this act.