

CHAPTER 290

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 06-1323

BY REPRESENTATIVE(S) Marshall, Massey, Carroll M., Carroll T., Coleman, Crane, Frangas, Madden, McGihon, Merrifield, Paccione, Riesberg, Romanoff, Schultheis, Stafford, Vigil, Buescher, Garcia, and Kerr J.;
also SENATOR(S) Kester, Boyd, Grossman, Isgar, Shaffer, Spence, Tapia, Teck, Tochtrop, Tupa, and Williams.

AN ACT

CONCERNING FRAUD IN THE MORTGAGE LENDING PROCESS, AND, IN CONNECTION THEREWITH, IMPOSING A MINIMUM FINE, LIMITING PLEA BARGAINS, AND GIVING THE ATTORNEY GENERAL CONCURRENT JURISDICTION.

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

SECTION 1. Legislative declaration. (1) The general assembly hereby determines that mortgage lending has a significant effect upon Colorado's economy; an estimated two trillion five hundred billion dollars in mortgage loans were made in the United States in 2005; an estimated eighty percent of reported mortgage fraud involves collusion by industry insiders; and Colorado's per capita incidents of mortgage fraud is one of the ten highest in the nation.

(2) The general assembly hereby declares that the high rates of mortgage fraud in Colorado are unacceptable and that residential mortgage fraud shall not be tolerated. The general assembly further declares that the goals of Colorado law are to deter residential mortgage fraud and to make the victim whole.

SECTION 2. 18-4-401, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

18-4-401. Theft. (9) (a) IF A PERSON IS CONVICTED OF OR PLEADS GUILTY OR NOLO CONTENDERE TO THEFT BY DECEPTION AND THE UNDERLYING FACTUAL BASIS OF THE CASE INVOLVES THE MORTGAGE LENDING PROCESS, A MINIMUM FINE OF THE AMOUNT OF PECUNIARY HARM RESULTING FROM THE THEFT SHALL BE MANDATORY, IN ADDITION TO ANY OTHER PENALTY THE COURT MAY IMPOSE.

(b) A COURT SHALL NOT ACCEPT A PLEA OF GUILTY OR NOLO CONTENDERE 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.

ANOTHER OFFENSE FROM A PERSON CHARGED WITH A VIOLATION OF THIS SECTION THAT INVOLVES THE MORTGAGE LENDING PROCESS UNLESS THE PLEA AGREEMENT CONTAINS AN ORDER OF RESTITUTION IN ACCORDANCE WITH PART 6 OF ARTICLE 1.3 OF THIS TITLE THAT COMPENSATES THE VICTIM FOR ANY COSTS TO THE VICTIM CAUSED BY THE OFFENSE.

(c) THE DISTRICT ATTORNEYS AND THE ATTORNEY GENERAL HAVE CONCURRENT JURISDICTION TO INVESTIGATE AND PROSECUTE A VIOLATION OF THIS SECTION THAT INVOLVES MAKING FALSE STATEMENTS OR FILING OR FACILITATING THE USE OF A DOCUMENT KNOWN TO CONTAIN A FALSE STATEMENT OR MATERIAL OMISSION RELIED UPON BY ANOTHER PERSON IN THE MORTGAGE LENDING PROCESS.

(d) DOCUMENTS INVOLVED IN THE MORTGAGE LENDING PROCESS INCLUDE, BUT ARE NOT LIMITED TO, UNIFORM RESIDENTIAL LOAN APPLICATIONS OR OTHER LOAN APPLICATIONS; APPRAISAL REPORTS; HUD-1 SETTLEMENT STATEMENTS; SUPPORTING PERSONAL DOCUMENTATION FOR LOAN APPLICATIONS SUCH AS W-2 FORMS, VERIFICATIONS OF INCOME AND EMPLOYMENT, BANK STATEMENTS, TAX RETURNS, AND PAYROLL STUBS; AND ANY REQUIRED DISCLOSURES.

(e) FOR THE PURPOSES OF THIS SUBSECTION (9):

(I) "MORTGAGE LENDING PROCESS" MEANS THE PROCESS THROUGH WHICH A PERSON SEEKS OR OBTAINS A RESIDENTIAL MORTGAGE LOAN, INCLUDING, WITHOUT LIMITATION, SOLICITATION, APPLICATION, OR ORIGINATION; NEGOTIATION OF TERMS; THIRD-PARTY PROVIDER SERVICES; UNDERWRITING; SIGNING AND CLOSING; FUNDING OF THE LOAN; AND PERFECTING AND RELEASING THE MORTGAGE.

(II) "RESIDENTIAL MORTGAGE LOAN" MEANS A LOAN OR AGREEMENT TO EXTEND CREDIT, MADE TO A PERSON AND SECURED BY A MORTGAGE OR LIEN ON RESIDENTIAL REAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE REFINANCING OR RENEWAL OF A LOAN SECURED BY RESIDENTIAL REAL PROPERTY.

(III) "RESIDENTIAL REAL PROPERTY" MEANS REAL PROPERTY USED AS A RESIDENCE AND CONTAINING NO MORE THAN FOUR FAMILIES HOUSED SEPARATELY.

SECTION 3. Part 1 of article 21 of title 13, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

13-21-125. Civil actions for theft in the mortgage lending process. A PERSON WHO SUFFERS DAMAGES AS A RESULT OF A VIOLATION OF SECTION 18-4-401, C.R.S., IN THE MORTGAGE LENDING PROCESS, AS DEFINED BY SECTION 18-4-401 (9) (e) (I), C.R.S., SHALL HAVE A PRIVATE CIVIL RIGHT OF ACTION AGAINST THE PERPETRATOR, REGARDLESS OF WHETHER THE PERPETRATOR WAS CONVICTED OF THE CRIME. A CLAIM ARISING UNDER THIS SECTION SHALL NOT BE ASSERTED AGAINST A BONA FIDE PURCHASER OF A MORTGAGE CONTRACT.

SECTION 4. Article 76 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-76-103. Federal grants - mortgage lending process. THE DIVISION OF REAL ESTATE AND ANY STATE AGENCY INVOLVED IN THE PROSECUTION OF OR PUBLIC

EDUCATION ABOUT MORTGAGE FRAUD AND THEFT IN THE MORTGAGE LENDING PROCESS MAY ACCEPT ON BEHALF OF THE STATE GRANTS OF FEDERAL FUNDS FOR THE PURPOSE OF LOWERING THE INCIDENTS OF MORTGAGE FRAUD IN COLORADO. THE STATE AGENCY, WITH THE APPROVAL OF THE GOVERNOR, SHALL HAVE THE POWER TO DIRECT THE DISPOSITION OF A FEDERAL GRANT CONSISTENT WITH THE TERMS AND CONDITIONS OF THE GRANT SO LONG AS THE TERMS AND CONDITIONS DO NOT CONFLICT WITH STATE LAW.

SECTION 5. Effective date - applicability. This act shall take effect July 1, 2006, and shall apply to offenses committed on or after said date.

SECTION 6. 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: May 30, 2006