

Second Regular Session
Sixty-third General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 02-0745.01 Thomas Morris

HOUSE BILL 02-1259

HOUSE SPONSORSHIP

Marshall,

SENATE SPONSORSHIP

Tate,

House Committees
Information & Technology
Appropriations

Senate Committees
Business, Labor, and Finance
Appropriations

SENATE
Amended 3rd Reading
May 8, 2002

A BILL FOR AN ACT

101 **CONCERNING PROTECTION OF CONSUMERS' HOME OWNERSHIP EQUITY.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Adds a new article to the "Uniform Consumer Credit Code" creating increased consumer protections regarding "covered loans" under the federal "Home Ownership and Equity Protection Act of 1994".

Defines terms. Creates additional protections regarding covered loans, including limitations on balloon payments, accelerations of indebtedness, negative amortization, increased interest rates after default, mandatory arbitration clauses, prepayment penalties, the use of loan proceeds to pay home improvement contractors, the financing of credit insurance, recommendations to default on existing loans, and charging a

SENATE
Amended 2nd Reading
May 7, 2002

HOUSE
Amended 3rd Reading
April 11, 2002

HOUSE
Amended 2nd Reading
April 10, 2002

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

fee for providing a credit balance.

Further protects covered loan consumers by requiring certain disclosures and reporting and by prohibiting advance payments, lending without regard to repayment ability, and refinancing that does not benefit the borrower or that results in a loss of certain benefits to the borrower.

Preempts local law attempting to regulate lending activities that are subject to the act or to certain federal authorities. Specifies civil remedies and grants the attorney general authority to enforce the consumer protections.

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

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

4 **ARTICLE 3.5**

5 **Consumer Equity Protection**

6 **PART 1**

7 **OBLIGOR PROTECTION**

8 **5-3.5-101. Definitions.** AS USED IN THIS **ARTICLE**, UNLESS THE
9 CONTEXT OTHERWISE REQUIRES:

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

14 (2) "COVERED LOAN" MEANS A CONSUMER CREDIT MORTGAGE
15 LOAN TRANSACTION INVOLVING PROPERTY LOCATED WITHIN THIS STATE
16 THAT IS CONSIDERED A MORTGAGE UNDER SECTION 152 OF THE FEDERAL
17 "HOME OWNERSHIP AND EQUITY PROTECTION ACT OF 1994", 15 U.S.C.
18 SEC. 1602 (aa), AS AMENDED, AND REGULATIONS ADOPTED PURSUANT
19 THERETO BY THE FEDERAL RESERVE BOARD, INCLUDING, WITHOUT
20 LIMITATION, 12 CFR 226.32, AS AMENDED; EXCEPT THAT IF THE TOTAL

1 POINTS AND FEES ON A LOAN PAID BY THE OBLIGOR AT OR BEFORE CLOSING
2 EXCEED SIX PERCENT OF THE TOTAL LOAN AMOUNT, SUCH LOAN SHALL BE
3 DEEMED TO BE A COVERED LOAN IF THE LOAN OTHERWISE MEETS THE
4 REQUIREMENTS OF THIS SUBSECTION (2).

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

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

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

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

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

25 (8) "SERVICER" HAS THE SAME MEANING AS SET FORTH IN SECTION
26 2605 (i) (2) OF THE FEDERAL "REAL ESTATE SETTLEMENT PROCEDURES
27 ACT OF 1974", 12 U.S.C. SEC. 2601, ET. SEQ., AS AMENDED.

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

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

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

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

19 (A) **BY DEFAULT IN WHICH THE OBLIGOR FAILS TO MEET THE**
20 **REPAYMENT TERMS OF THE AGREEMENT FOR ANY OUTSTANDING BALANCE;**

21 OR

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

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

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

1 MATERIALLY IMPAIRED; OR

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

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

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

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

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

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

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

27 (B) IN THE CITY NEAREST THE OBLIGOR'S RESIDENCE WHERE A

1 FEDERAL DISTRICT COURT IS LOCATED; OR

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

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

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

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

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

1 CHARGED TO THE OBLIGOR FOR PREPAYMENT:

2 (A) AFTER THE THIRD YEAR OF THE LOAN;

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

4 (C) THAT IS PARTIAL.

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

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

16 "LOAN PRODUCT CHOICE

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

21 **5-3.5-103. Restricted acts and practices.** (1) THE FOLLOWING
22 ACTS AND PRACTICES ARE PROHIBITED IN THE MAKING OF A COVERED
23 LOAN.

24 (a) **No lending without cautionary notice.** (I) A LENDER MAY
25 NOT MAKE A COVERED LOAN UNLESS THE LENDER OR A MORTGAGE BROKER
26 HAS GIVEN THE FOLLOWING NOTICE, OR A SUBSTANTIALLY SIMILAR
27 NOTICE, IN WRITING TO THE OBLIGOR WITHIN A REASONABLE PERIOD OF

1 TIME AFTER DETERMINING THAT THE LOAN WOULD RESULT IN A COVERED
2 LOAN, BUT NO LATER THAN THE TIME BY WHICH THE NOTICE IS REQUIRED
3 UNDER THE NOTICE PROVISION CONTAINED IN 12 CFR 226.31 (c), AS
4 AMENDED:

5 **"CONSUMER CAUTION**

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

18 YOU ARE NOT REQUIRED TO COMPLETE ANY LOAN
19 AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THESE
20 DISCLOSURES OR HAVE SIGNED A LOAN APPLICATION. IF
21 YOU PROCEED WITH THIS MORTGAGE LOAN, YOU SHOULD
22 ALSO REMEMBER THAT YOU MAY FACE SERIOUS FINANCIAL
23 RISKS IF YOU USE THIS LOAN TO PAY OFF CREDIT CARD
24 DEBTS AND OTHER DEBTS IN CONNECTION WITH THIS
25 TRANSACTION AND THEN LATER INCUR SIGNIFICANT NEW
26 CREDIT CARD CHARGES OR OTHER DEBTS. IF YOU CONTINUE
27 TO ACCUMULATE DEBT AFTER THIS LOAN IS CLOSED AND

1 THEN EXPERIENCE FINANCIAL DIFFICULTIES, YOU COULD
2 LOSE YOUR HOME AND ANY EQUITY YOU HAVE IN IT IF YOU
3 DO NOT MEET YOUR MORTGAGE LOAN OBLIGATIONS.

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

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

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

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

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

26 (III) (A) IN THE CASE OF A STATED INCOME LOAN, THE REASONABLE
27 BASIS FOR BELIEVING THAT THERE ARE SUFFICIENT FUNDS TO SUPPORT THE

1 COVERED LOAN MAY **NOT** BE BASED **SOLELY** ON THE INCOME STATED BY
2 THE **OBLIGOR**, **BUT MAY INCLUDE** OTHER INFORMATION IN THE POSSESSION
3 OF THE LENDER AFTER THE SOLICITATION OF ALL INFORMATION THAT THE
4 LENDER CUSTOMARILY SOLICITS IN CONNECTION WITH STATED INCOME
5 LOANS. A LENDER SHALL NOT KNOWINGLY OR WILLFULLY ORIGINATE A
6 COVERED LOAN AS A STATED INCOME LOAN WITH THE INTENT OF EVADING
7 THIS SUBPARAGRAPH (III).

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

13 **(c) Refinancing within a one-year period.** WITHIN ONE YEAR
14 AFTER HAVING EXTENDED CREDIT SUBJECT TO 12 CFR 226.32, NO LENDER
15 SHALL REFINANCE ANY LOAN SUBJECT TO 12 CFR 226.32 TO THE SAME
16 **OBLIGOR** INTO ANOTHER LOAN SUBJECT TO 12 CFR 226.32 UNLESS THE
17 REFINANCING IS IN THE **OBLIGOR'S** INTEREST. AN ASSIGNEE HOLDING OR
18 SERVICING AN EXTENSION OF MORTGAGE CREDIT SUBJECT TO 12 CFR
19 226.32 SHALL NOT, FOR THE REMAINDER OF THE ONE-YEAR PERIOD
20 FOLLOWING THE DATE OF ORIGATION OF THE CREDIT, REFINANCE ANY
21 LOAN SUBJECT TO 12 CFR 226.32 TO THE SAME **OBLIGOR** INTO ANOTHER
22 LOAN SUBJECT TO 12 CFR 226.32 UNLESS THE REFINANCING IS IN THE
23 **OBLIGOR'S** INTEREST. A CREDITOR OR ASSIGNEE SHALL NOT ENGAGE IN
24 ACTS OR PRACTICES TO EVADE THIS PARAGRAPH (c), INCLUDING A PATTERN
25 OR PRACTICE OF ARRANGING FOR THE REFINANCING OF ITS OWN LOANS BY
26 AFFILIATED OR UNAFFILIATED CREDITORS, OR MODIFYING A LOAN
27 AGREEMENT, REGARDLESS OF WHETHER THE EXISTING LOAN IS SATISFIED

1 AND REPLACED BY THE NEW LOAN, AND CHARGING A FEE.

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

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

26

27 (f) **No financing of credit insurance.** NO COVERED LOAN MAY

1 INCLUDE, DIRECTLY OR INDIRECTLY, FINANCING OF ANY PREMIUMS FOR
2 ANY CREDIT LIFE, CREDIT DISABILITY, CREDIT PROPERTY, OR CREDIT
3 UNEMPLOYMENT INSURANCE, ANY OTHER LIFE OR HEALTH INSURANCE
4 PRODUCTS, OR ANY PAYMENTS FOR ANY DEBT CANCELLATION OR
5 SUSPENSION AGREEMENT OR CONTRACTS; EXCEPT THAT CALCULATED
6 INSURANCE PREMIUMS OR DEBT CANCELLATION OR SUSPENSION FEES PAID
7 ON A MONTHLY BASIS SHALL NOT BE CONSIDERED TO HAVE BEEN FINANCED
8 BY THE LENDER FOR PURPOSES OF THIS PARAGRAPH (f).

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

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

20 **5-3.5-104. Reporting to credit bureaus.** A LENDER OR ITS
21 SERVICER SHALL REPORT AT LEAST QUARTERLY BOTH THE FAVORABLE AND
22 UNFAVORABLE PAYMENT HISTORY INFORMATION OF THE OBLIGOR ON
23 PAYMENTS DUE TO THE LENDER ON A COVERED LOAN TO A NATIONALLY
24 RECOGNIZED CONSUMER CREDIT REPORTING AGENCY. THIS SECTION
25 SHALL NOT PREVENT A LENDER OR ITS SERVICER FROM AGREEING WITH THE
26 OBLIGOR NOT TO REPORT SPECIFIED PAYMENT HISTORY INFORMATION IN
27 THE EVENT OF A RESOLVED OR UNRESOLVED DISPUTE WITH AN OBLIGOR,

1 AND SHALL NOT APPLY TO COVERED LOANS HELD OR SERVICED BY A
2 LENDER FOR LESS THAN NINETY DAYS.

3 PART 2

4 ENFORCEMENT AND LIABILITY

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

23

24 PART 3

25 MISCELLANEOUS PROVISIONS

26 **5-3.5-301. Effective date - applicability.** SECTION 5-3.5-303 IS
27 INTENDED TO RESTATE AND CONFIRM THE EXISTING LAW OF THIS STATE,

1 NAMESLY THAT THE LAWS OF THIS STATE RELATING TO THE FINANCIAL AND
2 LENDING ACTIVITIES ARE TO BE APPLIED ON A UNIFORM, STATEWIDE BASIS.
3 PARTS 1 AND 2 OF THIS ARTICLE SHALL TAKE EFFECT JANUARY 1, 2003.
4 THIS PART 3 SHALL TAKE EFFECT UPON PASSAGE. THIS ARTICLE SHALL
5 APPLY TO COVERED LOANS OFFERED OR ENTERED INTO ON OR AFTER
6 JANUARY 1, 2003.

7 **5-3.5-302. Severability.** THE PROVISIONS OF THIS ARTICLE ARE
8 SEVERABLE AND IF ANY OF ITS PROVISIONS ARE HELD UNCONSTITUTIONAL,
9 THE DECISION OF THE COURT SHALL NOT AFFECT OR IMPAIR ANY OF THE
10 REMAINING PROVISIONS OF THIS ARTICLE. IT IS HEREBY DECLARED TO BE
11 THE LEGISLATIVE INTENT THAT THIS ARTICLE WOULD HAVE BEEN ADOPTED
12 IF THE UNCONSTITUTIONAL PROVISIONS HAD NOT BEEN INCLUDED.

13 **5-3.5-303. Relationship to other laws. (1) General rule.**
14 ALL POLITICAL SUBDIVISIONS OF THIS STATE, INCLUDING MUNICIPALITIES,
15 SHALL BE PROHIBITED FROM ENACTING AND ENFORCING ORDINANCES,
16 RESOLUTIONS, AND REGULATIONS PERTAINING TO [REDACTED]
17 LENDING ACTIVITIES.

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

1 BANK.

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

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

9 **38-40-105. Prohibited acts by originators of certain mortgage**
10 **loans.** (1) THE FOLLOWING ACTS BY ANY MORTGAGE BROKER OR
11 MORTGAGE ORIGINATOR WITH RESPECT TO ANY LOAN THAT IS SECURED BY
12 A FIRST OR SUBORDINATE MORTGAGE OR DEED OR TRUST LIEN AGAINST A
13 DWELLING ARE PROHIBITED:

14 (a) TO KNOWINGLY ADVERTISE, DISPLAY, DISTRIBUTE, BROADCAST,
15 TELEWISE, OR CAUSE OR PERMIT TO BE ADVERTISED, DISPLAYED,
16 DISTRIBUTED, BROADCAST, OR TELEVISED, IN ANY MANNER, ANY FALSE,
17 MISLEADING, OR DECEPTIVE STATEMENT WITH REGARD TO RATES, TERMS,
18 OR CONDITIONS FOR A MORTGAGE LOAN.

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

23 (c) TO KNOWINGLY AND WITH INTENT TO DEFRAUD PRESENT,
24 CAUSE TO BE PRESENTED, OR PREPARE WITH KNOWLEDGE OR BELIEF THAT
25 IT WILL BE PRESENTED TO OR BY A LENDER OR AN AGENT THEREOF ANY
26 WRITTEN STATEMENT OR INFORMATION IN SUPPORT OF AN APPLICATION
27 FOR A MORTGAGE LOAN THAT HE OR SHE KNOWS TO CONTAIN FALSE

1 INFORMATION CONCERNING ANY FACT MATERIAL THERETO OR IF HE OR SHE
2 KNOWINGLY AND WITH INTENT TO DEFRAUD OR MISLEAD CONCEALS
3 INFORMATION CONCERNING ANY FACT MATERIAL THERETO.

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

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

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

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

27 (3) A VIOLATION OF THIS SECTION SHALL BE DEEMED A DECEPTIVE

1 TRADE PRACTICE AS PROVIDED IN SECTION 6-1-105 (1) (uu), C.R.S.

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

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

7 **6-1-105. Deceptive trade practices.** (1) A person engages in a
8 deceptive trade practice when, in the course of such person's business,
9 vocation, or occupation, such person:

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

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

13 **6-1-110. Restraining orders - injunctions - assurances of**
14 **discontinuance.** (3) WHEN THE ATTORNEY GENERAL OR A DISTRICT
15 ATTORNEY SHOWS BY A PREPONDERANCE OF EVIDENCE THAT A MORTGAGE
16 BROKER OR MORTGAGE ORIGINATOR HAS CONTINUED TO CONDUCT THE
17 BUSINESS OF ORIGINATING MORTGAGE LOANS IN VIOLATION OF SECTION
18 38-40-105, C.R.S., AFTER HAVING BEEN PREVIOUSLY ENJOINED FROM
19 PRACTICES IN VIOLATION OF SUCH SECTION, THE ATTORNEY GENERAL OR
20 DISTRICT ATTORNEY MAY, IN ADDITION TO ANY OTHER REMEDIES, APPLY
21 FOR AND OBTAIN, IN THE COURT THAT HAS PREVIOUSLY ISSUED AN
22 INJUNCTION, A FURTHER INJUNCTION AGAINST CONTINUING TO
23 PARTICIPATE IN THE BUSINESS OF ORIGINATING MORTGAGE LOANS FOR UP
24 TO TWO YEARS.

25 SECTION 5. **Safety clause.** The general assembly hereby finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, and safety.