

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 06-1141

BY REPRESENTATIVE(S) Hall, Massey, Berens, Knoedler, Marshall, Rose, and Stengel;
also SENATOR(S) Grossman, and May R.

CONCERNING THE AUTHORIZATION OF AFFILIATED BUSINESS ARRANGEMENTS RELATING TO TITLE INSURANCE.

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

SECTION 1. 10-11-102 (1), Colorado Revised Statutes, is amended, and the said 10-11-102 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

10-11-102. Definitions. As used in this article, unless the context otherwise requires:

(1) ~~"Alien title insurance company" means any title insurance company incorporated or organized under the laws of any foreign nation, or of any province or territory thereof, not included under the definition of foreign title insurance company.~~ "AFFILIATED BUSINESS ARRANGEMENT" MEANS AN ARRANGEMENT IN WHICH:

(a) (I) A SETTLEMENT PRODUCER OR AN ASSOCIATE OF SUCH

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

PRODUCER HAS EITHER AN AFFILIATE RELATIONSHIP WITH, OR A DIRECT BENEFICIAL OWNERSHIP INTEREST OF MORE THAN ONE PERCENT IN, A TITLE INSURANCE COMPANY OR TITLE INSURANCE AGENT; OR

(II) A TITLE INSURANCE COMPANY OR A TITLE INSURANCE AGENT WHO HAS EITHER AN AFFILIATE RELATIONSHIP WITH, OR A DIRECT BENEFICIAL OWNERSHIP INTEREST OF MORE THAN ONE PERCENT IN A SETTLEMENT PRODUCER; AND

(b) (I) EITHER THE SETTLEMENT PRODUCER OR THE AGENT OF THE SETTLEMENT PRODUCER DIRECTLY OR INDIRECTLY REFERS SETTLEMENT SERVICE BUSINESS TO THAT TITLE INSURANCE COMPANY OR TITLE INSURANCE AGENT OR AFFIRMATIVELY INFLUENCES THE SELECTION OF THAT TITLE INSURANCE COMPANY OR TITLE INSURANCE AGENT; OR

(II) EITHER THE TITLE INSURANCE COMPANY OR THE TITLE INSURANCE AGENT DIRECTLY OR INDIRECTLY REFERS SETTLEMENT SERVICES BUSINESS TO A SETTLEMENT PRODUCER OR ASSOCIATE OR AFFIRMATIVELY INFLUENCES THE SELECTION OF THE SETTLEMENT PRODUCER OR ASSOCIATE.

(1.5) "ALIEN TITLE INSURANCE COMPANY" MEANS A TITLE INSURANCE COMPANY INCORPORATED OR ORGANIZED UNDER THE LAWS OF A FOREIGN NATION, OR OF ANY PROVINCE OR TERRITORY THEREOF, NOT INCLUDED UNDER THE DEFINITION OF A FOREIGN TITLE INSURANCE COMPANY.

(2.5) "ASSOCIATE" MEANS A PERSON WHO HAS ONE OR MORE OF THE FOLLOWING RELATIONSHIPS WITH A PERSON IN A POSITION TO REFER SETTLEMENT SERVICE BUSINESS:

(a) A SPOUSE, PARENT, OR CHILD OF SUCH PERSON;

(b) A CORPORATION OR BUSINESS ENTITY THAT CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH SUCH PERSON;

(c) AN EMPLOYER, OFFICER, DIRECTOR, PARTNER, FRANCHISER, OR FRANCHISEE OF SUCH PERSON; OR

(d) ANYONE WHO HAS AN AGREEMENT, ARRANGEMENT, OR UNDERSTANDING WITH SUCH PERSON, THE PURPOSE OR SUBSTANTIAL EFFECT

OF WHICH IS TO ENABLE THE PERSON IN A POSITION TO REFER SETTLEMENT SERVICE BUSINESS TO BENEFIT FINANCIALLY FROM REFERRALS OF SUCH BUSINESS.

(6.5) (a) "SETTLEMENT PRODUCER" MEANS A PERSON WHO IS IN A POSITION TO REFER BUSINESS THAT IS INCIDENT TO OR A PART OF A SETTLEMENT SERVICE. "SETTLEMENT PRODUCER" INCLUDES, BUT IS NOT LIMITED TO, A PERSON WHO:

(I) BUYS OR SELLS AN INTEREST IN REAL PROPERTY;

(II) LENDS OR BORROWS MONEYS WITH AN INTEREST IN REAL PROPERTY AS SECURITY;

(III) ACTS AS AN AGENT, REPRESENTATIVE, ATTORNEY, OR EMPLOYEE OF A PERSON WHO:

(A) BUYS OR SELLS AN INTEREST IN REAL PROPERTY; OR

(B) LENDS OR BORROWS MONEYS WITH AN INTEREST IN REAL ESTATE AS SECURITY;

(IV) IS AN ASSOCIATE OF A PERSON DESCRIBED IN THIS SUBSECTION (6.5).

(b) NOTHING IN THIS SUBSECTION (6.5) SHALL BE CONSTRUED TO INCLUDE A TITLE INSURANCE COMPANY OR A TITLE INSURANCE AGENT.

(6.7) "SETTLEMENT SERVICE" MEANS ANY SERVICE PROVIDED IN CONNECTION WITH A REAL ESTATE SETTLEMENT. "SETTLEMENT SERVICES" INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:

(a) TITLE SEARCHES;

(b) TITLE EXAMINATIONS;

(c) THE PROVISION OF TITLE CERTIFICATES;

(d) TITLE INSURANCE;

- (e) SERVICES RENDERED BY AN ATTORNEY;
- (f) THE PREPARATION OF TITLE DOCUMENTS;
- (g) PROPERTY SURVEYS;
- (h) THE RENDERING OF CREDIT REPORTS OR APPRAISALS;
- (i) PEST AND FUNGUS INSPECTIONS;
- (j) SERVICES RENDERED BY A REAL ESTATE BROKER;
- (k) SERVICES RENDERED BY A REAL ESTATE APPRAISER;
- (l) HOME INSPECTION SERVICES;
- (m) THE ORIGINATION OF A LOAN;
- (n) THE TAKING OF A LOAN APPLICATION;
- (o) PROCESSING OF A LOAN;
- (p) UNDERWRITING AND FUNDING OF A LOAN;
- (q) ESCROW HANDLING SERVICES;
- (r) THE HANDLING OF THE PROCESSING; AND
- (s) CLOSING OF SETTLEMENT.

SECTION 2. Article 11 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

10-11-124. Affiliated business arrangements - rules - investigative information shared with the division of real estate.

(1) (a) AN AFFILIATED BUSINESS ARRANGEMENT IS PERMITTED WHERE THE PERSON REFERRING BUSINESS TO THE AFFILIATED BUSINESS ARRANGEMENT RECEIVES PAYMENT ONLY IN THE FORM OF A RETURN ON AN INVESTMENT AND WHERE IT DOES NOT VIOLATE THE PROVISIONS OF SECTION 10-11-108

(1).

(b) A TITLE INSURANCE COMPANY OR A TITLE INSURANCE AGENT MAKING A REFERRAL AS PART OF AN AFFILIATED BUSINESS ARRANGEMENT SHALL DISCLOSE THE AFFILIATION IN ACCORDANCE WITH THE FEDERAL "REAL ESTATE SETTLEMENT PROCEDURES ACT", 12 U.S.C. SEC. 2601 ET SEQ.

(c) NEITHER A TITLE INSURANCE COMPANY NOR A TITLE INSURANCE AGENT SHALL REQUIRE THE USE OF AN AFFILIATED BUSINESS ARRANGEMENT OR A PARTICULAR SETTLEMENT PRODUCER AS A CONDITION OF OBTAINING TITLE INSURANCE SERVICES FROM THE COMPANY OR AGENT. FOR THE PURPOSES OF THIS PARAGRAPH (c), "REQUIRE THE USE" SHALL HAVE THE SAME MEANING AS "REQUIRED USE" IN 24 CFR 3500.2 (b).

(2) THE COMMISSIONER MAY PROMULGATE RULES CONCERNING THE CREATION AND CONDUCT OF AN AFFILIATED BUSINESS ARRANGEMENT, INCLUDING, BUT NOT LIMITED TO, RULES DEFINING WHAT CONSTITUTES A SHAM AFFILIATED BUSINESS ARRANGEMENT. NOTHING IN THIS SUBSECTION (2) SHALL BE CONSTRUED TO INCREASE A FEE OR CREATE A LICENSURE PROGRAM FOR AFFILIATED BUSINESS ARRANGEMENTS. THE COMMISSIONER SHALL ADOPT THE RULES, POLICIES, OR GUIDELINES ISSUED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT CONCERNING THE FEDERAL "REAL ESTATE SETTLEMENT PROCEDURES ACT", 12 U.S.C. SEC. 2601 ET SEQ. RULES ADOPTED BY THE COMMISSIONER SHALL BE AT LEAST AS STRINGENT AS THE FEDERAL RULES AND SHALL ENSURE THAT CONSUMERS ARE ADEQUATELY INFORMED ABOUT AFFILIATED BUSINESS ARRANGEMENTS. THE COMMISSIONER SHALL CONSULT WITH THE REAL ESTATE COMMISSION PURSUANT TO SECTION 12-61-113.2 (5), C.R.S., CONCERNING RULES THE REAL ESTATE COMMISSION MAY PROMULGATE CONCERNING AFFILIATED BUSINESS ARRANGEMENTS. NEITHER THE RULES PROMULGATED BY THE COMMISSIONER NOR THE REAL ESTATE COMMISSION MAY CREATE A CONFLICTING REGULATORY BURDEN ON AN AFFILIATED BUSINESS ARRANGEMENT.

(3) THE DIVISION MAY SHARE INFORMATION GATHERED DURING AN INVESTIGATION OF AN AFFILIATED BUSINESS ARRANGEMENT WITH THE DIVISION OF REAL ESTATE.

10-11-125. Fees, salaries, compensation, or other payments.

(1) NOTHING IN SECTION 10-11-124 OR 10-11-126 SHALL BE CONSTRUED TO PROHIBIT PAYMENT OF A FEE TO:

(a) AN ATTORNEY FOR SERVICES ACTUALLY RENDERED;

(b) A TITLE INSURANCE COMPANY TO ITS DULY APPOINTED AGENT FOR SERVICES ACTUALLY PERFORMED IN THE ISSUANCE OF A POLICY OF TITLE INSURANCE; OR

(c) A LENDER TO ITS DULY APPOINTED AGENT FOR SERVICES ACTUALLY PERFORMED IN THE MAKING OF A LOAN.

(2) NOTHING IN SECTION 10-11-124 OR 10-11-126 SHALL BE CONSTRUED TO PROHIBIT PAYMENT TO ANY PERSON OF:

(a) A BONA FIDE SALARY OR COMPENSATION OR OTHER PAYMENT FOR GOODS OR FACILITIES ACTUALLY FURNISHED OR FOR SERVICES ACTUALLY PERFORMED; OR

(b) A FEE PURSUANT TO COOPERATIVE BROKERAGE AND REFERRAL ARRANGEMENTS OR AGREEMENTS BETWEEN REAL ESTATE BROKERS.

(3) IT SHALL NOT BE A VIOLATION OF SECTION 10-11-124:

(a) FOR AN AFFILIATED BUSINESS ARRANGEMENT TO REQUIRE A BUYER, BORROWER, OR SELLER TO PAY FOR THE SERVICES OF ANY ATTORNEY, CREDIT REPORTING AGENCY, OR REAL ESTATE APPRAISER CHOSEN BY THE LENDER TO REPRESENT THE LENDER'S INTEREST IN A REAL ESTATE TRANSACTION; OR

(b) FOR AN AFFILIATED BUSINESS ARRANGEMENT WHERE AN ATTORNEY OR LAW FIRM REPRESENTS A CLIENT IN A REAL ESTATE TRANSACTION AND ISSUES OR ARRANGES FOR THE ISSUANCE OF A POLICY OF TITLE INSURANCE IN THE TRANSACTION DIRECTLY AS AGENT OR THROUGH A SEPARATE CORPORATE TITLE INSURANCE AGENCY THAT MAY BE ESTABLISHED BY THAT ATTORNEY OR LAW FIRM AND OPERATED AS AN ADJUNCT TO HIS OR HER LAW PRACTICE.

10-11-126. Affiliated business arrangements - enforcement - penalties. (1) THE COMMISSIONER SHALL HAVE THE SAME REMEDIES

AVAILABLE TO HIM OR HER AS THOSE AVAILABLE TO THE ADMINISTRATOR OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT IN THE FEDERAL "REAL ESTATE SETTLEMENT PROCEDURES ACT", 12 U.S.C. SEC. 2607.

(2) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE TO THE COMMISSIONER PURSUANT TO THIS TITLE, AFTER NOTICE AND A HEARING PURSUANT TO SECTION 24-4-105, C.R.S., THE COMMISSIONER MAY ASSESS A PENALTY FOR A VIOLATION OF THIS ARTICLE OR A RULE PROMULGATED UNDER THIS ARTICLE. THE PENALTY SHALL BE THE AMOUNT OF REMUNERATION IMPROPERLY PAID AND SHALL BE PAID TO THE PERSON AGGRIEVED BY THE VIOLATION OR APPORTIONED AMONG MULTIPLE AGGRIEVED PERSONS AS DETERMINED BY THE COMMISSIONER.

(3) NO PERSON SHALL BE LIABLE FOR A VIOLATION OF SECTION 10-11-124 IF SUCH PERSON PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT SUCH VIOLATION WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR NOTWITHSTANDING MAINTENANCE OF PROCEDURES THAT ARE REASONABLY ADOPTED TO AVOID SUCH ERROR.

SECTION 3. 10-2-401, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-2-401. License required. (6) A TITLE INSURANCE AGENT AND A TITLE INSURANCE COMPANY, AS DEFINED IN SECTION 10-11-102 (9) AND (10), SHALL DISCLOSE THE NAMES OF ALL AFFILIATED BUSINESS ARRANGEMENTS TO WHICH THE COMPANY OR AGENT IS A PARTY AT THE TIME OF APPLICATION FOR A NEW LICENSE, ON THE CONTINUATION DUE DATE OF AN EXISTING LICENSE, AND UPON A CHANGE TO ANY IDENTIFYING INFORMATION, IN A FORM AND MANNER ACCEPTABLE TO THE COMMISSIONER. THE DISCLOSURE SHALL INCLUDE THE PHYSICAL LOCATION OF THE AFFILIATED BUSINESSES, IDENTIFY THE SETTLEMENT PRODUCER WITH WHOM THE COMPANY OR AGENT IS ASSOCIATED, AND IDENTIFY THE UNDERWRITER OF THE TITLE INSURANCE BUSINESS.

SECTION 4. 10-3-1104 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

10-3-1104. Unfair methods of competition and unfair or deceptive acts or practices. (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the

business of insurance:

(ee) WILLFULLY OR REPEATEDLY VIOLATING SECTION 10-11-108(1) (c) OR (1) (d), INCLUDING A WILLFUL OR REPEATED VIOLATION THROUGH THE CREATION OR OPERATION OF AN IMPROPER AFFILIATED BUSINESS ARRANGEMENT.

SECTION 5. 12-61-113.2, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

12-61-113.2. Affiliated business arrangements - definitions - disclosures - enforcement and penalties - reporting - rules - investigation information shared with the division of insurance. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "AFFILIATED BUSINESS ARRANGEMENT" MEANS AN ARRANGEMENT IN WHICH:

(I) A PROVIDER OF SETTLEMENT SERVICES OR AN ASSOCIATE OF A PROVIDER OF SETTLEMENT SERVICES HAS EITHER AN AFFILIATE RELATIONSHIP WITH OR A DIRECT BENEFICIAL OWNERSHIP INTEREST OF MORE THAN ONE PERCENT IN ANOTHER PROVIDER OF SETTLEMENT SERVICES; AND

(II) A PROVIDER OF SETTLEMENT SERVICES OR THE ASSOCIATE OF A PROVIDER DIRECTLY OR INDIRECTLY REFERS SETTLEMENT SERVICE BUSINESS TO ANOTHER PROVIDER OF SETTLEMENT SERVICES OR AFFIRMATIVELY INFLUENCES THE SELECTION OF ANOTHER PROVIDER OF SETTLEMENT SERVICES.

(b) "ASSOCIATE" MEANS A PERSON WHO HAS ONE OR MORE OF THE FOLLOWING RELATIONSHIPS WITH A PERSON IN A POSITION TO REFER SETTLEMENT SERVICE BUSINESS:

(I) A SPOUSE, PARENT, OR CHILD OF SUCH PERSON;

(II) A CORPORATION OR BUSINESS ENTITY THAT CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH SUCH PERSON;

(III) AN EMPLOYER, OFFICER, DIRECTOR, PARTNER, FRANCHISER, OR FRANCHISEE OF SUCH PERSON, INCLUDING A BROKER ACTING AS AN

INDEPENDENT CONTRACTOR; OR

(IV) ANYONE WHO HAS AN AGREEMENT, ARRANGEMENT, OR UNDERSTANDING WITH SUCH PERSON, THE PURPOSE OR SUBSTANTIAL EFFECT OF WHICH IS TO ENABLE THE PERSON IN A POSITION TO REFER SETTLEMENT SERVICE BUSINESS TO BENEFIT FINANCIALLY FROM REFERRALS OF SUCH BUSINESS.

(c) "SETTLEMENT SERVICE" MEANS ANY SERVICE PROVIDED IN CONNECTION WITH A REAL ESTATE SETTLEMENT INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

- (I) TITLE SEARCHES;
- (II) TITLE EXAMINATIONS;
- (III) THE PROVISION OF TITLE CERTIFICATES;
- (IV) TITLE INSURANCE;
- (V) SERVICES RENDERED BY AN ATTORNEY;
- (VI) THE PREPARATION OF TITLE DOCUMENTS;
- (VII) PROPERTY SURVEYS;
- (VIII) THE RENDERING OF CREDIT REPORTS OR APPRAISALS;
- (IX) REAL ESTATE APPRAISAL SERVICES;
- (X) HOME INSPECTION SERVICES;
- (XI) SERVICES RENDERED BY A REAL ESTATE BROKER;
- (XII) PEST AND FUNGUS INSPECTIONS;
- (XIII) THE ORIGINATION OF A LOAN;
- (XIV) THE TAKING OF A LOAN APPLICATION;

- (XV) THE PROCESSING OF A LOAN;
- (XVI) UNDERWRITING AND FUNDING OF A LOAN;
- (XVII) ESCROW HANDLING SERVICES;
- (XVIII) THE HANDLING OF THE PROCESSING; AND
- (XIX) CLOSING OF SETTLEMENT.

(2) (a) AN AFFILIATED BUSINESS ARRANGEMENT IS PERMITTED WHERE THE PERSON REFERRING BUSINESS TO THE AFFILIATED BUSINESS ARRANGEMENT RECEIVES PAYMENT ONLY IN THE FORM OF A RETURN ON AN INVESTMENT AND WHERE IT DOES NOT VIOLATE THE PROVISIONS OF SECTION 12-61-113.

(b) IF A LICENSEE OR THE EMPLOYING BROKER OF A LICENSEE IS PART OF AN AFFILIATED BUSINESS ARRANGEMENT WHEN AN OFFER TO PURCHASE REAL PROPERTY IS FULLY EXECUTED, THE LICENSEE SHALL DISCLOSE TO ALL PARTIES TO THE REAL ESTATE TRANSACTION THE EXISTENCE OF THE ARRANGEMENT. THE DISCLOSURE SHALL BE WRITTEN, SHALL BE SIGNED BY ALL PARTIES TO THE REAL ESTATE TRANSACTION, AND SHALL COMPLY WITH THE FEDERAL "REAL ESTATE SETTLEMENT PROCEDURES ACT", 12 U.S.C. SEC. 2601 ET SEQ.

(c) A LICENSEE SHALL NOT REQUIRE THE USE OF AN AFFILIATED BUSINESS ARRANGEMENT OR A PARTICULAR PROVIDER OF SETTLEMENT SERVICES AS A CONDITION OF OBTAINING SERVICES FROM THAT LICENSEE FOR ANY SETTLEMENT SERVICE. FOR THE PURPOSES OF THIS PARAGRAPH (c), "REQUIRE THE USE" SHALL HAVE THE SAME MEANING AS "REQUIRED USE" IN 24 CFR 3500.2 (b).

(d) NO LICENSEE SHALL GIVE OR ACCEPT ANY FEE, KICKBACK, OR OTHER THING OF VALUE PURSUANT TO ANY AGREEMENT OR UNDERSTANDING, ORAL OR OTHERWISE, THAT BUSINESS INCIDENT TO OR PART OF A SETTLEMENT SERVICE INVOLVING AN AFFILIATED BUSINESS ARRANGEMENT SHALL BE REFERRED TO ANY PROVIDER OF SETTLEMENT SERVICES.

(e) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT

PAYMENT OF A FEE TO:

(I) AN ATTORNEY FOR SERVICES ACTUALLY RENDERED;

(II) A TITLE INSURANCE COMPANY TO ITS DULY APPOINTED AGENT FOR SERVICES ACTUALLY PERFORMED IN THE ISSUANCE OF A POLICY OF TITLE INSURANCE;

(III) A LENDER TO ITS DULY APPOINTED AGENT FOR SERVICES ACTUALLY PERFORMED IN THE MAKING OF A LOAN.

(f) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT PAYMENT TO ANY PERSON OF:

(I) A BONA FIDE SALARY OR COMPENSATION OR OTHER PAYMENT FOR GOODS OR FACILITIES ACTUALLY FURNISHED OR FOR SERVICES ACTUALLY PERFORMED;

(II) A FEE PURSUANT TO COOPERATIVE BROKERAGE AND REFERRAL ARRANGEMENTS OR AGREEMENTS BETWEEN REAL ESTATE BROKERS.

(g) IT SHALL NOT BE A VIOLATION OF THIS SECTION FOR AN AFFILIATED BUSINESS ARRANGEMENT:

(I) TO REQUIRE A BUYER, BORROWER, OR SELLER TO PAY FOR THE SERVICES OF ANY ATTORNEY, CREDIT REPORTING AGENCY, OR REAL ESTATE APPRAISER CHOSEN BY THE LENDER TO REPRESENT THE LENDER'S INTEREST IN A REAL ESTATE TRANSACTION; OR

(II) IF AN ATTORNEY OR LAW FIRM REPRESENTS A CLIENT IN A REAL ESTATE TRANSACTION AND ISSUES OR ARRANGES FOR THE ISSUANCE OF A POLICY OF TITLE INSURANCE IN THE TRANSACTION DIRECTLY AS AGENT OR THROUGH A SEPARATE CORPORATE TITLE INSURANCE AGENCY THAT MAY BE ESTABLISHED BY THAT ATTORNEY OR LAW FIRM AND OPERATED AS AN ADJUNCT TO HIS OR HER LAW PRACTICE.

(h) NO PERSON SHALL BE LIABLE FOR A VIOLATION OF THIS SECTION IF SUCH PERSON PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT SUCH VIOLATION WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR NOTWITHSTANDING MAINTENANCE OF PROCEDURES THAT ARE REASONABLY

ADOPTED TO AVOID SUCH ERROR.

(3) ON AND AFTER JULY 1, 2006, A LICENSEE SHALL DISCLOSE AT THE TIME THE LICENSEE ENTERS INTO OR CHANGES AN AFFILIATED BUSINESS ARRANGEMENT, IN A FORM AND MANNER ACCEPTABLE TO THE COMMISSION, THE NAMES OF ALL AFFILIATED BUSINESS ARRANGEMENTS TO WHICH THE LICENSEE IS A PARTY. THE DISCLOSURE SHALL INCLUDE THE PHYSICAL LOCATION OF THE AFFILIATED BUSINESSES.

(4) ON AND AFTER JULY 1, 2006, AN EMPLOYING BROKER, IN A FORM AND MANNER ACCEPTABLE TO THE COMMISSION, SHALL AT LEAST ANNUALLY DISCLOSE THE NAMES OF ALL AFFILIATED BUSINESS ARRANGEMENTS TO WHICH THE EMPLOYING BROKER IS A PARTY. THE DISCLOSURE SHALL INCLUDE THE PHYSICAL LOCATION OF THE AFFILIATED BUSINESSES.

(5) THE COMMISSION MAY PROMULGATE RULES CONCERNING THE CREATION AND CONDUCT OF AN AFFILIATED BUSINESS ARRANGEMENT, INCLUDING, BUT NOT LIMITED TO, RULES DEFINING WHAT CONSTITUTES A SHAM AFFILIATED BUSINESS ARRANGEMENT. THE COMMISSION SHALL ADOPT THE RULES, POLICIES, OR GUIDELINES ISSUED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT CONCERNING THE FEDERAL "REAL ESTATE SETTLEMENT PROCEDURES ACT", 12 U.S.C. SEC. 2601 ET SEQ. RULES ADOPTED BY THE COMMISSION SHALL BE AT LEAST AS STRINGENT AS THE FEDERAL RULES AND SHALL ENSURE THAT CONSUMERS ARE ADEQUATELY INFORMED ABOUT AFFILIATED BUSINESS ARRANGEMENTS. THE COMMISSION SHALL CONSULT WITH THE INSURANCE COMMISSIONER PURSUANT TO SECTION 10-11-124(2), C.R.S., CONCERNING RULES, POLICIES, OR GUIDELINES THE INSURANCE COMMISSIONER ADOPTS CONCERNING AFFILIATED BUSINESS ARRANGEMENTS. NEITHER THE RULES PROMULGATED BY THE COMMISSIONER NOR THE REAL ESTATE COMMISSION MAY CREATE A CONFLICTING REGULATORY BURDEN ON AN AFFILIATED BUSINESS ARRANGEMENT.

(6) THE DIVISION MAY SHARE INFORMATION GATHERED DURING AN INVESTIGATION OF AN AFFILIATED BUSINESS ARRANGEMENT WITH THE DIVISION OF INSURANCE.

SECTION 6. 12-61-113 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

12-61-113. Investigation - revocation - actions against licensee - repeal. (1) The commission, upon its own motion, may, and, upon the complaint in writing of any person, shall, investigate the activities of any licensee or any person who assumes to act in such capacity within the state, and the commission, after the holding of a hearing pursuant to section 12-61-114, has the power to impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense and to censure a licensee, to place the licensee on probation and to set the terms of probation, or to temporarily suspend or permanently revoke a license when the licensee has performed, is performing, or is attempting to perform any of the following acts and is guilty of:

(x) (I) VIOLATING ANY PROVISION OF SECTION 12-61-113.2.

(II) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE TO THE COMMISSION PURSUANT TO THIS TITLE, AFTER NOTICE AND A HEARING PURSUANT TO SECTION 24-4-105, C.R.S., THE COMMISSION MAY ASSESS A PENALTY FOR A VIOLATION OF SECTION 12-61-113.2 OR OF ANY RULE PROMULGATED PURSUANT TO SECTION 12-61-113.2. THE PENALTY SHALL BE THE AMOUNT OF REMUNERATION IMPROPERLY PAID AND SHALL BE TRANSMITTED TO THE STATE TREASURER AND CREDITED TO THE GENERAL FUND.

SECTION 7. Effective date - applicability. This act shall take effect July 1, 2006, and shall apply to acts occurring on or after said date.

SECTION 8. 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