

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

INTRODUCED

LLS NO. 21-0508.02 Thomas Morris x4218

HOUSE BILL 21-1282

HOUSE SPONSORSHIP

Weissman,

SENATE SPONSORSHIP

(None),

House Committees
Business Affairs & Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING ADDITIONAL CONSUMER PROTECTIONS RESULTING FROM**
102 **THE REGULATION OF MORTGAGE SERVICERS.**

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 21 to title
3 5 as follows:

4 **ARTICLE 21**

5 **Colorado Nonbank Mortgage Servicers Act**

6 **5-21-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 21 IS THE
7 "COLORADO NONBANK MORTGAGE SERVICERS ACT".

8 **5-21-102. Scope of article.** UNLESS OTHERWISE PROVIDED IN THIS
9 ARTICLE 21, THIS ARTICLE 21 APPLIES TO ANY PERSON ENGAGED IN
10 SERVICING A RESIDENTIAL MORTGAGE LOAN SECURED BY A DWELLING OR
11 RESIDENTIAL REAL PROPERTY LOCATED IN THIS STATE.

12 **5-21-103. Definitions.** AS USED IN THIS ARTICLE 21, UNLESS THE
13 CONTEXT OTHERWISE REQUIRES:

14 (1) "ADMINISTRATOR" MEANS THE ADMINISTRATOR OF THE
15 "UNIFORM CONSUMER CREDIT CODE", ARTICLES 1 TO 9 OF THIS TITLE 5,
16 DESIGNATED PURSUANT TO SECTION 5-6-103.

17 (2) "BORROWER" MEANS AN INDIVIDUAL OBLIGATED TO REPAY A
18 RESIDENTIAL MORTGAGE LOAN.

19 (3) "MORTGAGE SERVICER" MEANS A PERSON, WHEREVER
20 LOCATED, THAT IS RESPONSIBLE FOR SERVICING A COLORADO RESIDENTIAL
21 MORTGAGE LOAN. A MORTGAGE SERVICER INCLUDES A PERSON THAT
22 MAKES PAYMENTS TO A BORROWER UNDER A REVERSE MORTGAGE AS
23 DEFINED IN SECTION 11-38-102 (4). A MORTGAGE SERVICER DOES NOT
24 INCLUDE:

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

27 (b) A MORTGAGE LOAN ORIGINATOR REGULATED BY THE DIVISION

1 OF REAL ESTATE OR AS DEFINED IN SECTION 12-10-702 (14)(a) OR A
2 MORTGAGE COMPANY REGULATED BY THE DIVISION OF REAL ESTATE OR
3 AS DEFINED IN SECTION 12-10-702 (12); EXCEPT THAT A MORTGAGE LOAN
4 ORIGINATOR WHO ALSO SERVICES A RESIDENTIAL MORTGAGE LOAN IS A
5 MORTGAGE SERVICER;

6 (c) A FEDERAL AGENCY OR DEPARTMENT;

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

15 (e) AN AGENCY, INSTRUMENTALITY, OR POLITICAL SUBDIVISION OF
16 THIS STATE;

17 (f) A SUPERVISED LENDER AS DEFINED IN SECTION 5-1-301 (46);
18 EXCEPT THAT A SUPERVISED LENDER THAT ALSO SERVICES RESIDENTIAL
19 MORTGAGE LOANS IS A MORTGAGE SERVICER;

20 (g) A SMALL SERVICER THAT SERVICES FEWER THAN FIVE
21 THOUSAND RESIDENTIAL MORTGAGE LOANS IN ANY CALENDAR YEAR AS
22 DETERMINED BY THE ADMINISTRATOR, WHO SHALL APPLY THE CRITERIA
23 IN 12 CFR 1026.41 (e)(4)(iii) OR ANY SUCCESSOR REGULATION;

24 (h) A PERSON THAT THE ADMINISTRATOR DESIGNATES BY RULE OR
25 ORDER AS EXEMPT, INCLUDING A NONPROFIT ORGANIZATION THAT
26 PROMOTES AFFORDABLE HOUSING OR FINANCING;

27 (i) AN ORIGINATOR OR SERVICER THAT UTILIZES A SUBSERVICER TO

1 CARRY OUT THE ADMINISTRATIVE FUNCTIONS OF SERVICING A MORTGAGE
2 UNLESS THE SUBSERVICER IS ACTING AT THE DIRECTION OF THE
3 ORIGINATOR OR SERVICER; AND

4 (j) A PERSON THAT SERVICES ONLY LOANS ORIGINATED AND HELD
5 FOR SALE FOR UP TO THREE HUNDRED SIXTY-FOUR DAYS AFTER THE LOANS'
6 ORIGINATION.

7 (4) "NOTIFIER" MEANS A PERSON REQUIRED TO NOTIFY THE
8 ADMINISTRATOR OF THE PERSON'S ACTIVITIES AS A MORTGAGE SERVICER
9 PURSUANT TO THIS ARTICLE 21.

10 (5) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
11 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER
12 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

13 (6) "RESIDENTIAL MORTGAGE LOAN" MEANS A LOAN THAT IS
14 PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD USE AND THAT IS
15 SECURED BY A MORTGAGE, DEED OF TRUST, OR OTHER EQUIVALENT,
16 CONSENSUAL SECURITY INTEREST ON A DWELLING OR RESIDENTIAL REAL
17 PROPERTY UPON WHICH IS CONSTRUCTED OR INTENDED TO BE
18 CONSTRUCTED A SINGLE-FAMILY DWELLING OR MULTIFAMILY DWELLING
19 OF FOUR OR FEWER UNITS.

20 (7) "SERVICING" MEANS RECEIVING ANY SCHEDULED PERIODIC
21 PAYMENTS FROM A BORROWER PURSUANT TO THE TERMS OF A
22 RESIDENTIAL MORTGAGE LOAN, INCLUDING AMOUNTS FOR ESCROW
23 ACCOUNTS, AND MAKING THE PAYMENTS TO THE OWNER OF THE LOAN OR
24 OTHER THIRD PARTIES OF PRINCIPAL AND INTEREST AND SUCH OTHER
25 PAYMENTS WITH RESPECT TO THE AMOUNTS RECEIVED FROM THE
26 BORROWER AS MAY BE REQUIRED PURSUANT TO THE TERMS OF THE
27 RESIDENTIAL MORTGAGE SERVICING LOAN DOCUMENTS OR SERVICING

1 CONTRACT. IN THE CASE OF A REVERSE MORTGAGE, SERVICING INCLUDES
2 MAKING PAYMENTS TO THE BORROWER.

3 **5-21-104. Notification required.** ON AND AFTER JANUARY 31,
4 2022, A PERSON SHALL NOT ACT AS A MORTGAGE SERVICER, DIRECTLY OR
5 INDIRECTLY, WITHOUT NOTIFYING THE ADMINISTRATOR PURSUANT TO
6 SECTION 5-21-105.

7 **5-21-105. Notification by mortgage servicers - rules.**

8 (1) **Notification.** (a) A PERSON ACTING AS A MORTGAGE SERVICER MUST
9 NOTIFY THE ADMINISTRATOR AND PAY THE FEE PRESCRIBED IN SECTION
10 5-21-106 WITHIN THIRTY DAYS AFTER COMMENCING SERVICING IN THE
11 STATE, AND, THEREAFTER, ON OR BEFORE JANUARY 31 OF EACH YEAR. THE
12 NOTIFICATION MUST STATE THE NOTIFIER'S LEGAL NAME AND ALL TRADE
13 NAMES USED, THE ADDRESS OF THE NOTIFIER'S PRINCIPAL OFFICE, WHICH
14 MAY BE OUTSIDE THIS STATE, AND SUCH OTHER INFORMATION AS THE
15 ADMINISTRATOR MAY REQUIRE.

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

23 (2) **Records retention - records request.** (a) A MORTGAGE
24 SERVICER SHALL MAINTAIN ADEQUATE RECORDS FOR NOT LESS THAN FOUR
25 YEARS FOLLOWING THE FINAL PAYMENT ON THE RESIDENTIAL MORTGAGE
26 LOAN, TRANSFER OF THE MORTGAGE SERVICING RIGHTS, OR THE
27 ASSIGNMENT OF THE LOAN, WHICHEVER OCCURS FIRST. UPON REQUEST BY

1 THE ADMINISTRATOR, A MORTGAGE SERVICER SHALL MAKE THE RECORDS
2 AVAILABLE OR SHALL SEND THE RECORDS TO THE ADMINISTRATOR BY
3 REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY ANY
4 EXPRESS DELIVERY CARRIER THAT PROVIDES A DATED DELIVERY RECEIPT,
5 NOT LATER THAN THIRTY BUSINESS DAYS AFTER REQUESTED BY THE
6 ADMINISTRATOR OR OTHER METHOD OF DELIVERY AS AGREED TO IN
7 WRITING BY THE ADMINISTRATOR, INCLUDING SECURE ELECTRONIC
8 TRANSMISSION. UPON A NOTIFIER'S REQUEST, THE ADMINISTRATOR MAY
9 GRANT THE NOTIFIER ADDITIONAL TIME TO MAKE THE RECORDS
10 AVAILABLE OR TO SEND THE RECORDS TO THE ADMINISTRATOR.

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

21 **5-21-106. Fees.** (1) A NOTIFIER SHALL PAY THE FOLLOWING
22 NONREFUNDABLE FEES ESTABLISHED BY THE ADMINISTRATOR PURSUANT
23 TO SUBSECTION (3) OF THIS SECTION:

24 (a) AN INITIAL NOTIFICATION FEE; AND

25 (b) AN ANNUAL NOTIFICATION FEE.

26 (2) THE ADMINISTRATOR SHALL TRANSMIT THE FEES TO THE STATE
27 TREASURER, WHO SHALL CREDIT THEM TO THE UNIFORM CONSUMER

1 CREDIT CODE CASH FUND CREATED IN SECTION 5-6-204 (1).

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

9 **5-21-107. Federal laws.** (1) A MORTGAGE SERVICER SHALL
10 COMPLY WITH ALL APPLICABLE FEDERAL LAWS AND REGULATIONS
11 RELATING TO RESIDENTIAL MORTGAGE LOAN SERVICING, INCLUDING:

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

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

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

20 **5-21-108. Powers and duties of the administrator - rules.**

21 (1) THE ADMINISTRATOR MAY CONDUCT INVESTIGATIONS AND
22 EXAMINATIONS AS FOLLOWS:

23 (a) FOR PURPOSES OF GENERAL OR SPECIFIC INQUIRY OR
24 INVESTIGATION TO DETERMINE COMPLIANCE WITH THIS ARTICLE 21, THE
25 ADMINISTRATOR MAY ACCESS, RECEIVE, AND USE ANY RECORDS OR
26 INFORMATION BELONGING TO A NOTIFIER, APPLICANT, OR PERSON UNDER
27 EXAMINATION, INCLUDING CRIMINAL, CIVIL, AND ADMINISTRATIVE

1 HISTORY INFORMATION; PERSONAL HISTORY AND EXPERIENCE
2 INFORMATION, INCLUDING INDEPENDENT CREDIT REPORTS OBTAINED FROM
3 A CONSUMER REPORTING AGENCY DESCRIBED IN SECTION 603 (p) OF THE
4 FEDERAL "FAIR CREDIT REPORTING ACT", 15 U.S.C. SEC. 1681a, AS
5 AMENDED; AND ANY OTHER RECORDS OR INFORMATION THE
6 ADMINISTRATOR CONSIDERS RELEVANT TO THE INQUIRY OR
7 INVESTIGATION REGARDLESS OF THE LOCATION, POSSESSION, CONTROL, OR
8 CUSTODY OF THE RECORDS OR INFORMATION.

9 (b) FOR THE PURPOSES OF INVESTIGATING A VIOLATION THAT
10 RESULTED IN CONSUMER HARM OR SUBSTANTIATED COMPLAINTS ARISING
11 UNDER THIS ARTICLE 21 OR FOR THE PURPOSES OF EXAMINING ISSUES
12 STEMMING FROM A COMPLAINT OR VIOLATION, THE ADMINISTRATOR MAY
13 REVIEW, INVESTIGATE, OR EXAMINE ANY NOTIFIER OR PERSON SUBJECT TO
14 THIS ARTICLE 21 AS OFTEN AS NECESSARY IN ORDER TO CARRY OUT THE
15 PURPOSES OF THIS ARTICLE 21. THE ADMINISTRATOR MAY DIRECT,
16 SUBPOENA, OR ORDER THE ATTENDANCE OF AND EXAMINE UNDER OATH
17 ANY PERSON WHOSE TESTIMONY MAY BE REQUIRED ABOUT THE
18 RESIDENTIAL MORTGAGE LOAN, RESIDENTIAL MORTGAGE LOAN SERVICING,
19 OR THE BUSINESS OR SUBJECT MATTER OF AN EXAMINATION OR
20 INVESTIGATION AND MAY DIRECT, SUBPOENA, OR ORDER THE PERSON TO
21 PRODUCE RECORDS THE ADMINISTRATOR CONSIDERS RELEVANT TO THE
22 INQUIRY. NOTHING LIMITS THE SCOPE OF THE ADMINISTRATOR'S
23 AUTHORITY TO REVIEW AND INVESTIGATE POTENTIAL VIOLATIONS OR
24 HARM DISCOVERED IN THE COURSE OF AN INVESTIGATION.

25 (c) (I) IN MAKING AN EXAMINATION OR INVESTIGATION
26 AUTHORIZED BY THIS SECTION, THE ADMINISTRATOR MAY CONTROL
27 ACCESS TO ANY RECORDS OF THE NOTIFIER OR PERSON UNDER

1 EXAMINATION OR INVESTIGATION. THE ADMINISTRATOR MAY TAKE
2 POSSESSION OF THE RECORDS OR PLACE A PERSON IN EXCLUSIVE CHARGE
3 OF THE RECORDS IN THE PLACE WHERE THEY ARE USUALLY KEPT.

4 (II) DURING THE PERIOD OF CONTROL, A PERSON MAY NOT REMOVE
5 OR ATTEMPT TO REMOVE ANY OF THE RECORDS EXCEPT PURSUANT TO A
6 COURT ORDER OR WITH THE WRITTEN CONSENT OF THE ADMINISTRATOR.
7 UNLESS THE ADMINISTRATOR HAS REASONABLE GROUNDS TO BELIEVE THE
8 RECORDS OF THE NOTIFIER OR PERSON HAVE BEEN, OR ARE AT RISK OF
9 BEING, ALTERED OR DESTROYED FOR PURPOSES OF CONCEALING A
10 VIOLATION OF THIS ARTICLE 21, THE NOTIFIER OR OWNER OF THE RECORDS
11 MAY HAVE ACCESS TO THE RECORDS AS NECESSARY TO CONDUCT ITS
12 ORDINARY BUSINESS AFFAIRS.

13 (2) IN ORDER TO CARRY OUT THE PURPOSES OF THIS SECTION, THE
14 ADMINISTRATOR MAY:

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

18 (b) ENTER INTO AGREEMENTS OR RELATIONSHIPS WITH OTHER
19 GOVERNMENT OFFICIALS OR REGULATORY ASSOCIATIONS IN ORDER TO
20 IMPROVE EFFICIENCIES AND REDUCE REGULATORY BURDEN BY SHARING
21 RESOURCES, STANDARDIZED OR UNIFORM METHODS OR PROCEDURES, AND
22 RECORDS OR INFORMATION OBTAINED UNDER THIS SECTION;

23 (c) USE, HIRE, CONTRACT FOR, OR EMPLOY PUBLICLY OR
24 PRIVATELY AVAILABLE ANALYTICAL SYSTEMS, METHODS, OR SOFTWARE
25 TO EXAMINE OR INVESTIGATE THE NOTIFIER OR PERSON SUBJECT TO THIS
26 ARTICLE 21;

27 (d) ACCEPT AND RELY ON EXAMINATION OR INVESTIGATION

1 REPORTS MADE BY OTHER GOVERNMENT OFFICIALS WITHIN OR OUTSIDE
2 THIS STATE; AND

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

9 (3) A PERSON SUBJECT TO INVESTIGATION OR EXAMINATION UNDER
10 THIS SECTION MAY NOT KNOWINGLY WITHHOLD, ABSTRACT, REMOVE,
11 MUTILATE, OR DESTROY ANY RECORDS OR OTHER INFORMATION RELATING
12 TO INFORMATION REGULATED UNDER THIS ARTICLE 21.

13 (4) WHENEVER IT APPEARS TO THE ADMINISTRATOR THAT A
14 PERSON HAS VIOLATED, IS VIOLATING, OR IS ABOUT TO VIOLATE THIS
15 SECTION OR A RULE ADOPTED PURSUANT TO THIS ARTICLE 21 OR THAT A
16 NOTIFIER OR AN OWNER, DIRECTOR, OFFICER, MEMBER, PARTNER,
17 SHAREHOLDER, TRUSTEE, EMPLOYEE, OR AGENT OF THE NOTIFIER HAS
18 COMMITTED FRAUD, ENGAGED IN DISHONEST ACTIVITIES, OR MADE A
19 MISREPRESENTATION, THE ADMINISTRATOR MAY TAKE ACTION AGAINST
20 THE PERSON OR NOTIFIER IN ACCORDANCE WITH THIS ARTICLE 21.

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

23 **5-21-109. Civil actions.** (1) A VIOLATION OF THIS ARTICLE 21 IS
24 A DECEPTIVE TRADE PRACTICE WITHIN THE MEANING OF SECTION 6-1-105.

25 (2) A MORTGAGE SERVICER WHO FAILS TO MAKE GOOD-FAITH
26 EFFORTS TO COMPLY WITH ANY REQUIREMENT IMPOSED UNDER THIS
27 ARTICLE 21 WITH RESPECT TO A BORROWER IS LIABLE IN AN AMOUNT

1 EQUAL TO THE SUM OF:

2 (a) ACTUAL DAMAGES SUSTAINED BY THE BORROWER AS A RESULT
3 OF THE FAILURE;

4 (b) A MONETARY AWARD EQUAL TO THREE TIMES THE TOTAL
5 AMOUNT THE MORTGAGE SERVICER COLLECTED FROM THE BORROWER IN
6 VIOLATION OF THIS ARTICLE 21;

7 (c) PUNITIVE DAMAGES AS THE COURT MAY ALLOW; AND

8 (d) IN THE CASE OF ANY SUCCESSFUL ACTION BY A BORROWER TO
9 ENFORCE THE LIABILITY SET OUT IN THIS SECTION, THE COSTS OF THE
10 ACTION AND REASONABLE ATTORNEY FEES AS DETERMINED BY THE
11 COURT.

12 (3) THE REMEDIES PROVIDED IN THIS SECTION ARE NOT THE
13 EXCLUSIVE REMEDIES AVAILABLE TO A BORROWER.

14 **5-21-110. Application of administrative procedures.** EXCEPT AS
15 OTHERWISE PROVIDED IN THIS ARTICLE 21, SECTIONS 24-4-102 TO
16 24-4-106 APPLY TO AND GOVERN ALL RULES PROMULGATED AND ALL
17 ADMINISTRATIVE ACTION TAKEN BY THE ADMINISTRATOR PURSUANT TO
18 THIS ARTICLE 21; EXCEPT THAT SECTION 24-4-104 (3) DOES NOT APPLY TO
19 ANY SUCH ACTION.

20 **5-21-111. Administrative enforcement orders.** (1) AFTER
21 NOTICE AND HEARING, THE ADMINISTRATOR MAY ORDER A MORTGAGE
22 SERVICER OR A PERSON ACTING IN THE MORTGAGE SERVICER'S BEHALF TO
23 CEASE AND DESIST FROM ENGAGING IN VIOLATIONS OF THIS ARTICLE 21 OR
24 ANY RULE OR ORDER LAWFULLY MADE PURSUANT TO THIS ARTICLE 21.
25 THE ORDER ISSUED BY THE ADMINISTRATOR MAY ALSO REQUIRE THE
26 MORTGAGE SERVICER OR PERSON TO MAKE REFUNDS TO INDIVIDUALS OF
27 UNLAWFUL CHARGES UNDER THIS ARTICLE 21 AND A CIVIL PENALTY OF UP

1 TO ONE THOUSAND FIVE HUNDRED DOLLARS PER VIOLATION, ALL OR PART
2 OF WHICH MAY BE SPECIFICALLY DESIGNATED FOR CONSUMER AND
3 CREDITOR EDUCATIONAL PURPOSES.

4 (2) A MORTGAGE SERVICER AGGRIEVED BY AN ORDER OF THE
5 ADMINISTRATOR MAY OBTAIN JUDICIAL REVIEW OF THE ORDER IN THE
6 COLORADO COURT OF APPEALS. THE ADMINISTRATOR MAY OBTAIN AN
7 ORDER OF THE COURT FOR ENFORCEMENT OF THE ADMINISTRATOR'S ORDER
8 IN THE DISTRICT COURT UNDER SECTION 24-4-106. ALL PROCEEDINGS
9 UNDER THIS SECTION ARE GOVERNED BY SECTIONS 24-4-105 AND
10 24-4-106.

11 **5-21-112. Assurance of discontinuance.** IF IT IS CLAIMED THAT
12 A PERSON HAS VIOLATED THIS ARTICLE 21, THE ADMINISTRATOR MAY
13 ACCEPT AN ASSURANCE IN WRITING THAT THE PERSON WILL NOT ENGAGE
14 IN THE CONDUCT IN THE FUTURE. THE ASSURANCE MAY ALSO REQUIRE THE
15 PERSON TO MAKE REFUNDS TO INDIVIDUALS OF UNLAWFUL CHARGES
16 UNDER THIS ARTICLE 21, PAY A PENALTY AUTHORIZED IN SECTION
17 5-21-111, ALL OR PART OF WHICH MAY BE SPECIFICALLY DESIGNATED FOR
18 CONSUMER AND CREDITOR EDUCATIONAL PURPOSES, AND REIMBURSE THE
19 ADMINISTRATOR FOR THE ADMINISTRATOR'S REASONABLE COSTS
20 INCURRED IN INVESTIGATING THE CONDUCT. IF A PERSON GIVING AN
21 ASSURANCE OF DISCONTINUANCE FAILS TO COMPLY WITH ITS TERMS, THE
22 ASSURANCE IS EVIDENCE THAT PRIOR TO THE ASSURANCE, THAT PERSON
23 ENGAGED IN THE CONDUCT DESCRIBED IN THE ASSURANCE.

24 **5-21-113. Injunctions.** THE ADMINISTRATOR MAY BRING A CIVIL
25 ACTION TO RESTRAIN A PERSON FROM VIOLATING THIS ARTICLE 21 OR
26 RULES PROMULGATED PURSUANT TO THIS ARTICLE 21 AND FOR OTHER
27 APPROPRIATE RELIEF, INCLUDING SUCH ORDERS OR JUDGMENTS AS MAY BE

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

8 **5-21-114. Civil actions by the administrator.** THE
9 ADMINISTRATOR MAY BRING A CIVIL ACTION AGAINST A MORTGAGE
10 SERVICER OR ANY OTHER PERSON FOR ANY VIOLATIONS OF THIS ARTICLE
11 21. AN ACTION MAY RELATE TO TRANSACTIONS WITH MORE THAN ONE
12 INDIVIDUAL. THE COURT MAY ORDER A MORTGAGE SERVICER TO REFUND
13 TO INDIVIDUALS ANY CHARGES COLLECTED IN VIOLATION OF THIS ARTICLE
14 21 AND MAY ALSO ASSESS CIVIL PENALTIES AGAINST THE MORTGAGE
15 SERVICER AS SET FORTH IN SECTION 5-21-111. IF THE ADMINISTRATOR
16 PREVAILS IN AN ACTION BROUGHT UNDER THIS SECTION, THE
17 ADMINISTRATOR MAY RECOVER REASONABLE COSTS IN INVESTIGATING
18 AND BRINGING THE ACTION AND MAY RECOVER REASONABLE ATTORNEY
19 FEES.

20 **5-21-115. Limitations.** NOTWITHSTANDING ARTICLE 80 OF TITLE
21 13, ALL ACTIONS BROUGHT UNDER THIS ARTICLE 21 MUST BE COMMENCED
22 WITHIN FOUR YEARS AFTER THE DATE ON WHICH ANY VIOLATION OF THIS
23 ARTICLE 21 OCCURRED OR THE DATE ON WHICH THE LAST IN A SERIES OF
24 THE ACTS OR PRACTICES OCCURRED OR WITHIN FOUR YEARS AFTER THE
25 PLAINTIFF DISCOVERED OR IN THE EXERCISE OF REASONABLE DILIGENCE
26 SHOULD HAVE DISCOVERED THE OCCURRENCE OF A VIOLATION OF THIS
27 ARTICLE 21; EXCEPT THAT THE PERIOD OF LIMITATION PROVIDED IN THIS

1 SECTION MAY BE EXTENDED FOR A PERIOD OF ONE YEAR IF THE PLAINTIFF
2 PROVES THAT FAILURE TO TIMELY COMMENCE THE ACTION WAS CAUSED
3 BY THE DEFENDANT ENGAGING IN CONDUCT CALCULATED TO INDUCE THE
4 PLAINTIFF TO REFRAIN FROM OR POSTPONE THE COMMENCEMENT OF THE
5 ACTION.

6 **5-21-116. Confidential information.** (1) THE ADMINISTRATOR
7 SHALL NOT MAKE PUBLIC THE NAME OR IDENTITY OF A PERSON WHOSE
8 ACTS OR CONDUCT THE ADMINISTRATOR INVESTIGATES OR EXAMINES
9 PURSUANT TO THIS ARTICLE 21 OR THE FACTS DISCLOSED IN THE
10 INVESTIGATION OR EXAMINATION.

11 (2) THE ADMINISTRATOR MAY DISCLOSE NOTIFICATION RECORDS
12 PROVIDED TO THE ADMINISTRATOR AND OTHER CONTENTS OF THE
13 RECORDS MAINTAINED PURSUANT TO THIS ARTICLE 21, BUT THE
14 ADMINISTRATOR SHALL NOT MAKE PUBLIC THE CONFIDENTIAL
15 INFORMATION CONTAINED IN THE RECORDS.

16 (3) THE RESTRICTIONS ON THE DISCLOSURE OF INFORMATION IN
17 SUBSECTIONS (1) AND (2) OF THIS SECTION DO NOT APPLY TO DISCLOSURES
18 BY THE ADMINISTRATOR IN ACTIONS OR ENFORCEMENT PROCEEDINGS
19 PURSUANT TO THIS ARTICLE 21.

20 **5-21-117. Reporting.** (1) THE DEPARTMENT OF LAW SHALL
21 INCLUDE IN ITS ANNUAL PRESENTATIONS HELD PURSUANT TO SECTION
22 2-7-203 UPDATES CONCERNING THE ADMINISTRATION OF THIS ARTICLE 21,
23 INCLUDING:

24 (a) COMPLAINTS DATA, ENFORCEMENT ACTIONS, AND OTHER
25 RELEVANT REGULATORY DATA; AND

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

1 **SECTION 2.** In Colorado Revised Statutes, 6-1-105, **add**
2 (1)(nnn) as follows:

3 **6-1-105. Unfair or deceptive trade practices.** (1) A person
4 engages in a deceptive trade practice when, in the course of the person's
5 business, vocation, or occupation, the person:

6 (nnn) VIOLATES ARTICLE 21 OF TITLE 5.

7 **SECTION 3.** In Colorado Revised Statutes, 13-4-102, **add**
8 (2)(nn) as follows:

9 **13-4-102. Jurisdiction.** (2) The court of appeals has initial
10 jurisdiction to:

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

13 **SECTION 4. Act subject to petition - effective date -**
14 **applicability.** (1) This act takes effect January 1, 2022; except that, if a
15 referendum petition is filed pursuant to section 1 (3) of article V of the
16 state constitution against this act or an item, section, or part of this act
17 within the ninety-day period after final adjournment of the general
18 assembly, then the act, item, section, or part will not take effect unless
19 approved by the people at the general election to be held in November
20 2022 and, in such case, will take effect on the date of the official
21 declaration of the vote thereon by the governor.

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