

CHAPTER 203

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 03-1298

BY REPRESENTATIVE(S) Harvey, Johnson R., and Schultheis;
also SENATOR(S) Lamborn.**AN ACT****CONCERNING INCREASED LIMITATIONS ON CLAIMS ASSERTING THAT A MORTGAGE IS UNCONSCIONABLE.***Be it enacted by the General Assembly of the State of Colorado:*

SECTION 1. 38-40-105 (2) (a) and (2) (c), Colorado Revised Statutes, are amended, and the said 38-40-105 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

38-40-105. Prohibited acts by originators of certain mortgage loans.

(2) (a) EXCEPT AS PROVIDED IN SUBSECTION (5) OF THIS SECTION, if a court, as a matter of law, finds a mortgage contract or any clause of the contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(c) In order to support a finding of unconscionability, there must be evidence of some BAD FAITH overreaching on the part of the mortgage broker or mortgage originator such as that which results from an UNREASONABLE inequality of bargaining power or under other circumstances in which there is an absence of meaningful choice on the part of one of the parties, together with contract terms that are, UNDER STANDARD INDUSTRY PRACTICES, unreasonably favorable to the mortgage broker, mortgage originator, or lender.

(5) NORIGHT OR CLAIM ARISING UNDER THIS SECTION MAY BE RAISED OR ASSERTED IN ANY PROCEEDING AGAINST A BONA FIDE PURCHASER OF SUCH MORTGAGE CONTRACT OR IN ANY PROCEEDING TO OBTAIN AN ORDER AUTHORIZING SALE OF PROPERTY BY A PUBLIC TRUSTEE AS REQUIRED BY SECTION 38-38-105.

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

SECTION 2. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to actions to enforce mortgages that are filed on or after the applicable effective date of this act.

Approved: April 29, 2003