

CHAPTER 272

CONSUMER AND COMMERCIAL TRANSACTIONS

SENATE BILL 94-176

BY SENATOR Ament;
also REPRESENTATIVES Dyer, Chlouber, Jerke, Martin, May, Moellenberg, and Piffner.

AN ACT**CONCERNING REGULATION OF PERSONS ISSUING CONSUMER CREDIT.***Be it enacted by the General Assembly of the State of Colorado:*

SECTION 1. 5-2-202 (1), Colorado Revised Statutes, 1992 Repl. Vol., is amended, and the said 5-2-202 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

5-2-202. Additional charges. (1) In addition to the credit service charge permitted by this part 2, a seller may contract for and receive the following additional charges in connection with a consumer credit sale:

- (a) Official fees and taxes;
- (b) Charges for insurance as described in subsection (2) of this section; ~~and~~
- (c) Charges for other benefits, including insurance, conferred on the buyer, if the benefits are of value to ~~him~~ THE BUYER and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the credit service charge by rule adopted by the administrator;
- (d) ANNUAL CHARGES, PAYABLE IN ADVANCE, FOR THE PRIVILEGE OF USING A SELLER CREDIT CARD OR SIMILAR ARRANGEMENT; AND
- (e) THE FOLLOWING CHARGES IF AGREED TO BY THE PARTIES:
 - (I) A CHARGE, NOT TO EXCEED THE GREATER OF TWO DOLLARS OR TWO AND

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

ONE-HALF PERCENT OF THE AMOUNT ADVANCED, FOR EACH CASH ADVANCE TRANSACTION MADE PURSUANT TO A SELLER CREDIT CARD; AND

(II) A FEE, NOT TO EXCEED TWENTY DOLLARS, ASSESSED UPON RETURN OR DISHONOR OF A CHECK OR OTHER INSTRUMENT TENDERED AS PAYMENT.

(1.5) NO CREDIT SERVICE CHARGE MAY BE ASSESSED ON ANY CHARGE LISTED IN PARAGRAPH (e) OF SUBSECTION (1) OF THIS SECTION.

SECTION 2. 5-2-207 (4), Colorado Revised Statutes, 1992 Repl. Vol., is amended to read:

5-2-207. Credit service charge for revolving charge accounts.

(4) Notwithstanding subsection (3) of this section, if there is an unpaid balance on the date as of which the credit service charge is applied, the seller may contract for and receive a MINIMUM CREDIT SERVICE charge not exceeding fifty cents. ~~if the billing cycle is monthly or longer, or the pro rata part of fifty cents which bears the same relation to fifty cents as the number of days in the billing cycle bears to thirty, if the billing cycle is shorter than monthly.~~

SECTION 3. Part 3 of article 2 of title 5, Colorado Revised Statutes, 1992 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

5-2-302.5. Disclosure requirements in connection with solicitation or application.

(1) NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE CONTRARY, A SELLER SHALL DISCLOSE IN A CLEAR AND CONSPICUOUS MANNER THE FOLLOWING INFORMATION IN ANY APPLICATION TO OPEN A REVOLVING CHARGE ACCOUNT FOR ANY PERSON AND IN ANY SOLICITATION TO OPEN SUCH AN ACCOUNT WITHOUT REQUIRING AN APPLICATION:

(a) EACH ANNUAL PERCENTAGE RATE APPLICABLE TO EXTENSIONS OF CREDIT UNDER THE ACCOUNT;

(b) WHERE AN EXTENSION OF CREDIT UNDER THE ACCOUNT IS SUBJECT TO A VARIABLE RATE, THE FACT THAT THE RATE IS VARIABLE, THE ANNUAL PERCENTAGE RATE IN EFFECT AT THE TIME OF DELIVERY TO THE PROSPECTIVE BUYER, AND HOW THE RATE IS DETERMINED;

(c) WHERE MORE THAN ONE RATE APPLIES, THE RANGE OF BALANCE TO WHICH EACH RATE APPLIES; AND

(d) ANY ANNUAL CHARGE IMPOSED FOR THE ISSUANCE OR AVAILABILITY OF SUCH ACCOUNT, INCLUDING ANY ACCOUNT MAINTENANCE FEE OR OTHER CHARGE IMPOSED BASED ON ACTIVITY OR INACTIVITY DURING THE BILLING CYCLE.

SECTION 4. 5-2-416 (2), Colorado Revised Statutes, 1992 Repl. Vol., is amended to read:

5-2-416. Change in terms of revolving charge accounts. (2) ~~A seller may change the terms of a revolving charge account established prior to July 1, 1983, whether or not the change is authorized by agreement. A seller may change the terms~~

of a revolving charge account established on or after July 1, 1983, only if the seller discloses clearly and conspicuously in writing at the time the account is established that the terms of the revolving charge account may be changed, whether or not authorized by agreement, in accordance with this code and other applicable law. Except as provided in subsection (3) of this section, a seller may change the terms of a revolving charge account only if:

~~(a) (I) Written notice is given to the buyer that clearly and conspicuously describes such change and the indebtedness to which it applies and states that the incurrence by the buyer, or another person authorized by him, of any further indebtedness under the plan to which the agreement relates on or after the effective date of the change specified in such notice shall constitute acceptance of the change; and~~

~~(II) Such notice is given at least one billing cycle prior to the effective date of such change; and~~

~~(III) The buyer, or another person authorized by him, incurs such further indebtedness on or after the effective date of the change stated in such notice; or~~

~~(b) Written disclosure has been made to the buyer that clearly and conspicuously states that the terms may be changed, the buyer has consented thereto either in the agreement governing the account or by the incurrence of further indebtedness subsequent to the disclosure, and the seller gives the buyer clear and conspicuous written notice of any specific change in terms at least two times prior to the change with the first notice at least three months before the effective date of the change. Such clear and conspicuous written notice shall be in type no smaller than the largest type appearing elsewhere in the agreement, except for the type used for identifying the seller, and preceded by the word "Warning" in boldface.~~

(a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OR (c) OF THIS SUBSECTION (2), WHENEVER ANY TERM OF A REVOLVING CHARGE ACCOUNT IS CHANGED OR THE REQUIRED MINIMUM PERIODIC PAYMENT THEREON IS INCREASED, THE SELLER SHALL MAIL OR DELIVER WRITTEN NOTICE OF THE CHANGE, AT LEAST ONE BILLING CYCLE BEFORE THE EFFECTIVE DATE OF THE CHANGE, TO EACH BUYER WHO MAY BE AFFECTED BY THE CHANGE.

(b) THE NOTICE REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL BE GIVEN IN ADVANCE, BUT NEED NOT BE GIVEN ONE BILLING CYCLE IN ADVANCE, IF THE CHANGE HAS BEEN AGREED TO BY THE BUYER OR IF THE CHANGE IS AN INCREASE IN A CREDIT SERVICE CHARGE, PERIODIC RATE, OR OTHER CHARGE PERMITTED UNDER SECTION 5-2-202 AS A RESULT OF THE BUYER'S DELINQUENCY OR DEFAULT.

(c) THE NOTICE OTHERWISE REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (2) IS NOT REQUIRED IF THE CHANGE:

(I) RESULTS FROM THE BUYER'S DELINQUENCY OR DEFAULT, BUT IS NOT OF A KIND LISTED IN PARAGRAPH (b) OF THIS SUBSECTION (2);

(II) RESULTS FROM AN AGREEMENT RELATED TO A COURT PROCEEDING OR ARBITRATION;

(III) IS A REDUCTION OF ANY CHARGE OR COMPONENT THEREOF; OR

(IV) IS A SUSPENSION OF FUTURE CREDIT PRIVILEGES OR TERMINATION OF A REVOLVING CHARGE ACCOUNT.

SECTION 5. Part 4 of article 2 of title 5, Colorado Revised Statutes, 1992 Repl. Vol., is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS, to read:

5-2-417. Use of account - constructive assent to terms. THE USE OF A REVOLVING CHARGE ACCOUNT BY A BUYER, OR BY ANY PERSON AUTHORIZED BY THE BUYER, CONSTITUTES THE BUYER'S ACCEPTANCE OF THE SELLER'S OFFER OF CREDIT AND CREATES A BINDING CONTRACT ON THE SELLER'S TERMS THEN IN EFFECT. SUCH TERMS MAY BE MODIFIED IN THE FUTURE AS AGREED BY THE PARTIES AND SUBJECT TO THE REQUIREMENTS OF THIS ARTICLE, INCLUDING, BUT NOT LIMITED TO, THE NOTICE REQUIREMENTS OF SECTION 5-2-416 (2).

5-2-418. Advance payment to reserve lodging and motor vehicle rental services - notice to buyer required. IF A DEPOSIT, RESERVATION FEE, OR OTHER ADVANCE PAYMENT IS TO BE CHARGED TO A REVOLVING CHARGE ACCOUNT OR REVOLVING LOAN ACCOUNT FOR LODGING OR MOTOR VEHICLE RENTAL SERVICES TO BE PROVIDED IN THE FUTURE IN THIS STATE, THE SELLER SHALL NOT CHARGE SUCH ADVANCE PAYMENT TO THE BUYER'S ACCOUNT WITHOUT FIRST NOTIFYING THE BUYER, EITHER ORALLY OR IN WRITING, AND GIVING THE BUYER THE OPPORTUNITY TO REJECT THE SERVICES.

SECTION 6. 5-3-201 (4) (c), Colorado Revised Statutes, 1992 Repl. Vol., is amended to read:

5-3-201. Loan finance charge for consumer loans other than supervised loans. (4) With respect to a consumer loan made pursuant to a revolving loan account:

(c) Notwithstanding subsection (1) of this section, if there is an unpaid balance on the date as of which the loan finance charge is applied, the lender may contract for and receive a MINIMUM FINANCE charge not exceeding fifty cents. ~~if the billing cycle is monthly or longer, or the pro rata part of fifty cents which bears the same relation to fifty cents as the number of days in the billing cycle bears to thirty, if the billing cycle is shorter than monthly, but no charge may be made pursuant to this paragraph (c) if the lender has made an annual charge for the same period as permitted by the provisions on additional charges (paragraph (c) of subsection (1) of section 5-3-202).~~

SECTION 7. 5-3-202 (1), Colorado Revised Statutes, 1992 Repl. Vol., is amended, and the said 5-3-202 is further amended BY THE ADDITION OF A NEW SUBSECTION to read:

5-3-202. Additional charges. (1) In addition to the loan finance charge permitted by this part 2, a lender may contract for and receive the following additional charges in connection with a consumer loan:

(a) Official fees and taxes;

(b) Charges for insurance as described in subsection (2) of this section;

(c) Annual charges, payable in advance, for the privilege of using a lender credit card or similar arrangement which entitles the user to purchase goods or services from at least one hundred persons not related to the issuer of the lender credit card or similar arrangement, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer; ~~and~~

(d) Charges for other benefits, including insurance, conferred on the debtor, if the benefits are of value to ~~him~~ THE DEBTOR and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the loan finance charge by rule adopted by the administrator;

(e) Repealed, L. 75, p. 256, § 51, effective October 28, 1975.

(f) THE FOLLOWING CHARGES IF AGREED TO BY THE PARTIES:

(I) A CHARGE, NOT TO EXCEED THE GREATER OF TWO DOLLARS OR TWO AND ONE-HALF PERCENT OF THE AMOUNT ADVANCED, FOR EACH CASH ADVANCE TRANSACTION MADE PURSUANT TO A LENDER CREDIT CARD; AND

(II) A FEE, NOT TO EXCEED TWENTY DOLLARS, ASSESSED UPON RETURN OR DISHONOR OF A CHECK OR OTHER INSTRUMENT TENDERED AS PAYMENT.

(1.5) NO FINANCE CHARGE MAY BE ASSESSED ON ANY CHARGE LISTED IN PARAGRAPH (f) OF SUBSECTION (1) OF THIS SECTION.

SECTION 8. Part 3 of article 3 of title 5, Colorado Revised Statutes, 1992 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

5-3-302.5. Disclosure requirements in connection with solicitation or application. (1) NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE CONTRARY, A LENDER SHALL DISCLOSE IN A CLEAR AND CONSPICUOUS MANNER THE FOLLOWING INFORMATION IN ANY APPLICATION TO OPEN A REVOLVING LOAN ACCOUNT FOR ANY PERSON AND IN ANY SOLICITATION TO OPEN SUCH AN ACCOUNT WITHOUT REQUIRING AN APPLICATION:

(a) EACH ANNUAL PERCENTAGE RATE APPLICABLE TO EXTENSIONS OF CREDIT UNDER THE ACCOUNT;

(b) WHERE AN EXTENSION OF CREDIT UNDER THE ACCOUNT IS SUBJECT TO A VARIABLE RATE, THE FACT THAT THE RATE IS VARIABLE, THE ANNUAL PERCENTAGE RATE IN EFFECT AT THE TIME OF DELIVERY TO THE PROSPECTIVE DEBTOR, AND HOW THE RATE IS DETERMINED;

(c) WHERE MORE THAN ONE RATE APPLIES, THE RANGE OF BALANCE TO WHICH EACH RATE APPLIES; AND

(d) ANY ANNUAL CHARGE IMPOSED FOR THE ISSUANCE OR AVAILABILITY OF SUCH ACCOUNT, INCLUDING ANY ACCOUNT MAINTENANCE FEE OR OTHER CHARGE IMPOSED BASED ON ACTIVITY OR INACTIVITY DURING THE BILLING CYCLE.

SECTION 9. 5-3-408 (2), Colorado Revised Statutes, 1992 Repl. Vol., is amended to read:

5-3-408. Change in terms of revolving loan accounts. (2) ~~A lender may change the terms of a revolving loan account established prior to July 1, 1983, whether or not the change is authorized by agreement. A lender may change the terms of a revolving loan account established on or after July 1, 1983, only if the lender discloses clearly and conspicuously in writing at the time the account is established that the terms of the revolving loan account may be changed, whether or not authorized by agreement, in accordance with this code and other applicable law. Except as provided in subsection (3) of this section, a lender may change the terms of a revolving loan account only if:~~

~~(a) (I) Written notice is given to the debtor that clearly and conspicuously describes such change and the indebtedness to which it applies and states that the incurrence by the debtor, or another person authorized by him, of any further indebtedness under the plan to which the agreement relates on or after the effective date of the change specified in such notice shall constitute acceptance of the change; and~~

~~(II) Such notice is given at least one billing cycle prior to the effective date of such change; and~~

~~(III) The debtor, or another person authorized by him, incurs such further indebtedness on or after the effective date of the change stated in such notice; or~~

~~(b) Written disclosure has been made to the debtor that clearly and conspicuously states that the terms may be changed, the debtor has consented thereto either in the agreement governing the account or by the incurrence of further indebtedness subsequent to the disclosure, and the lender gives the debtor clear and conspicuous written notice of any specific change in terms at least two times prior to the change with the first notice at least three months before the effective date of the change. Such clear and conspicuous written notice shall be in type no smaller than the largest type appearing elsewhere in the agreement, except for the type used for identifying the lender, and preceded by the word "Warning" in boldface.~~

(a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OR (c) OF THIS SUBSECTION (2), WHENEVER ANY TERM OF A REVOLVING LOAN ACCOUNT IS CHANGED OR THE REQUIRED MINIMUM PERIODIC PAYMENT THEREON IS INCREASED, THE LENDER SHALL MAIL OR DELIVER WRITTEN NOTICE OF THE CHANGE, AT LEAST ONE BILLING CYCLE BEFORE THE EFFECTIVE DATE OF THE CHANGE, TO EACH DEBTOR WHO MAY BE AFFECTED BY THE CHANGE.

(b) THE NOTICE REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL BE GIVEN IN ADVANCE, BUT NEED NOT BE GIVEN ONE BILLING CYCLE IN ADVANCE, IF THE CHANGE HAS BEEN AGREED TO BY THE DEBTOR OR IF THE CHANGE IS AN INCREASE IN A LOAN FINANCE CHARGE, PERIODIC RATE, OR OTHER CHARGE PERMITTED UNDER SECTION 5-3-202 AS A RESULT OF THE DEBTOR'S DELINQUENCY OR DEFAULT.

(c) THE NOTICE OTHERWISE REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (2) IS NOT REQUIRED IF THE CHANGE:

(I) RESULTS FROM THE DEBTOR'S DELINQUENCY OR DEFAULT, BUT IS NOT OF A KIND LISTED IN PARAGRAPH (b) OF THIS SUBSECTION (2);

(II) RESULTS FROM AN AGREEMENT RELATED TO A COURT PROCEEDING OR ARBITRATION;

(III) IS A REDUCTION OF ANY CHARGE OR COMPONENT THEREOF; OR

(IV) IS A SUSPENSION OF FUTURE CREDIT PRIVILEGES OR TERMINATION OF A CONSUMER LOAN.

SECTION 10. Part 4 of article 3 of title 5, Colorado Revised Statutes, 1992 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

5-3-411. Use of account - constructive assent to terms. THE USE OF A REVOLVING LOAN ACCOUNT BY A DEBTOR, OR BY ANY PERSON AUTHORIZED BY THE DEBTOR, CONSTITUTES THE DEBTOR'S ACCEPTANCE OF THE LENDER'S OFFER OF CREDIT AND CREATES A BINDING CONTRACT ON THE LENDER'S TERMS THEN IN EFFECT. SUCH TERMS MAY BE MODIFIED IN THE FUTURE AS AGREED BY THE PARTIES AND SUBJECT TO THE REQUIREMENTS OF THIS ARTICLE, INCLUDING, BUT NOT LIMITED TO, THE NOTICE REQUIREMENTS OF SECTION 5-3-408 (2).

SECTION 11. 5-3-508 (3), Colorado Revised Statutes, 1992 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

5-3-508. Loan finance charge for supervised loans. (3) (c) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (3), IF THERE IS AN UNPAID BALANCE ON THE DATE AS OF WHICH THE LOAN FINANCE CHARGE IS APPLIED, THE LENDER MAY CONTRACT FOR AND RECEIVE A MINIMUM FINANCE CHARGE NOT EXCEEDING FIFTY CENTS.

SECTION 12. 5-13-104, Colorado Revised Statutes, 1992 Repl. Vol., is repealed as follows:

~~**5-13-104. Other loans.** In accordance with section 525 of Public Law 96-221, it is declared that the state of Colorado does not want the amendments to the "Federal Deposit Insurance Act", the "National Housing Act", and the "Federal Credit Union Act" made by sections 521 to 523 of Public Law 96-221 prescribing interest rates and preempting state interest rates to apply in this state. The rates established in articles 1 to 9 of this title shall control consumer credit transactions in the state of Colorado.~~

SECTION 13. 5-13-105, Colorado Revised Statutes, 1992 Repl. Vol., is repealed as follows:

~~**5-13-105. General override.** It is declared that the state of Colorado does not want any provision of any federal law preempting a state usury law to apply in this state.~~

SECTION 14. 18-15-101 (6), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

18-15-101. Definitions. (6) (a) "Loan finance charge" means the sum of all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to or as a condition of the extension of credit, whether paid or payable by the debtor, the lender, or any other person on behalf of the debtor to the lender or to a third party, including, but not limited to, any of the following types of charges which are applicable:

(I) Interest or any amount payable under a point, discount, or other system of charges, however denominated;

(II) Premium or other charge for any guarantee of insurance protecting the lender against the debtor's default or other credit loss;

(III) Charges incurred for investigating the collateral or credit-worthiness of the debtor or for commissions or brokerage for obtaining the credit.

(b) The term does not include the charges as a result of additional charges as defined in section 5-2-202 OR 5-3-202, C.R.S., delinquency charges as defined in section 5-2-203 OR 5-3-203, C.R.S., ~~or~~ deferral charges as defined in section 5-2-204 OR 5-3-204, C.R.S., OR SIMILAR CHARGES SPECIFICALLY AUTHORIZED BY LAW.

SECTION 15. 18-15-104 (4) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-15-104. Engaging in criminal usury. (4) This section shall not apply to:

(a) Charges and fees permitted by articles 1 to 6 of title 5, C.R.S., OR CHARGES AND FEES THAT ARE SIMILAR TO SUCH CHARGES AND FEES AND ARE SPECIFICALLY AUTHORIZED BY LAW;

SECTION 16. Effective date - applicability. This act shall take effect July 1, 1994, and shall apply to purchases and extensions of credit on or after said date.

SECTION 17. 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 31, 1994