

CHAPTER 128

CONSUMER AND COMMERCIAL TRANSACTIONS

SENATE BILL 00-144

BY SENATOR Owen;
also REPRESENTATIVES Spradley and Young.

AN ACT

CONCERNING THE REGULATION OF DEFERRED DEPOSIT LOANS.

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

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

ARTICLE 3.1
Deferred Deposit Loan Act

5-3.1-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "DEFERRED DEPOSIT LOAN ACT".

5-3.1-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADMINISTRATOR" MEANS THE ADMINISTRATOR OF THE "UNIFORM CONSUMER CREDIT CODE".

(2) "CONSUMER" MEANS A PERSON OTHER THAN AN ORGANIZATION WHO IS THE BUYER, LESSEE, OR DEBTOR TO WHOM CREDIT IS GRANTED IN A CONSUMER CREDIT TRANSACTION.

(3) "DEFERRED DEPOSIT LOAN" MEANS A CONSUMER LOAN WHEREBY THE LENDER, FOR A FEE, FINANCE CHARGE, OR OTHER CONSIDERATION, DOES THE FOLLOWING:

- (a) ACCEPTS A DATED INSTRUMENT FROM THE CONSUMER;
- (b) AGREES TO HOLD THE INSTRUMENT FOR A PERIOD OF TIME PRIOR TO

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

NEGOTIATION OR DEPOSIT OF THE INSTRUMENT; AND

(c) PAYS TO THE CONSUMER, CREDITS TO THE CONSUMER'S ACCOUNT, OR PAYS TO ANOTHER PERSON ON THE CONSUMER'S BEHALF THE AMOUNT OF THE INSTRUMENT, LESS FINANCE CHARGES PERMITTED BY SECTION 5-3.1-105.

(4) "INSTRUMENT" MEANS A PERSONAL CHECK OR AUTHORIZATION TO TRANSFER OR WITHDRAW FUNDS FROM AN ACCOUNT SIGNED BY THE CONSUMER AND MADE PAYABLE TO A PERSON SUBJECT TO THIS ARTICLE.

(5) (a) "LENDER" MEANS ANY PERSON WHO OFFERS OR MAKES A DEFERRED DEPOSIT LOAN, WHO ARRANGES A DEFERRED DEPOSIT LOAN FOR A THIRD PARTY, OR WHO ACTS AS AN AGENT FOR A THIRD PARTY, REGARDLESS OF WHETHER THE THIRD PARTY IS EXEMPT FROM LICENSING UNDER THIS ARTICLE OR WHETHER APPROVAL, ACCEPTANCE, OR RATIFICATION BY THE THIRD PARTY IS NECESSARY TO CREATE A LEGAL OBLIGATION FOR THE THIRD PARTY.

(b) LENDER INCLUDES, BUT IS NOT LIMITED TO, A SUPERVISED FINANCIAL ORGANIZATION AS DEFINED IN SECTION 5-1-301 (17).

(c) NOTWITHSTANDING THAT A BANK, SAVING AND LOAN ASSOCIATION, CREDIT UNION, OR SUPERVISED LENDER MAY BE EXEMPTED BY FEDERAL LAW FROM THIS CODE'S INTEREST RATE, FINANCE CHARGES, AND LICENSURE PROVISIONS, ALL OTHER APPLICABLE PROVISIONS OF THIS CODE APPLY TO BOTH A DEFERRED DEPOSIT LOAN AND A DEFERRED DEPOSIT LENDER.

(6) "LOAN AMOUNT" MEANS THE AMOUNT FINANCED AS DEFINED IN REGULATION Z OF THE FEDERAL "TRUTH IN LENDING ACT", 12 C.F.R. 226.18 (b), AS AMENDED, OR AS SUPPLEMENTED BY THIS CODE, ARTICLES 1 TO 9 OF THIS TITLE.

5-3.1-103. Written agreement requirements. EACH DEFERRED DEPOSIT LOAN TRANSACTION AND RENEWAL SHALL BE DOCUMENTED BY A WRITTEN AGREEMENT SIGNED BY BOTH THE LENDER AND CONSUMER. THE WRITTEN AGREEMENT SHALL CONTAIN THE NAME OF THE CONSUMER, THE TRANSACTION DATE, THE AMOUNT OF THE INSTRUMENT, THE ANNUAL PERCENTAGE RATE CHARGED, AND A STATEMENT OF THE TOTAL AMOUNT OF FINANCE CHARGES CHARGED, EXPRESSED BOTH AS A DOLLAR AMOUNT AND AN ANNUAL PERCENTAGE RATE. IN ADDITION, THE WRITTEN AGREEMENT SHALL INCLUDE ALL DISCLOSURES REQUIRED BY SECTION 5-3-301 (2). THE WRITTEN AGREEMENT SHALL SET A DATE, NOT MORE THAN FORTY DAYS AFTER THE LOAN TRANSACTION DATE, UPON WHICH THE INSTRUMENT MAY BE DEPOSITED OR NEGOTIATED.

5-3.1-104. Notice to consumers. A LENDER SHALL PROVIDE THE FOLLOWING NOTICE IN A PROMINENT PLACE ON EACH LOAN AGREEMENT IN AT LEAST TEN-POINT TYPE:

"A DEFERRED DEPOSIT LOAN IS NOT INTENDED TO MEET LONG-TERM FINANCIAL NEEDS.

A DEFERRED DEPOSIT LOAN SHOULD BE USED ONLY TO MEET SHORT-TERM CASH NEEDS.

RENEWING THE DEFERRED DEPOSIT LOAN RATHER THAN PAYING THE DEBT IN FULL WILL REQUIRE ADDITIONAL FINANCE CHARGES."

5-3.1-105. Authorized finance charge. A LENDER MAY CHARGE A FINANCE CHARGE FOR EACH DEFERRED DEPOSIT LOAN THAT MAY NOT EXCEED TWENTY PERCENT OF THE FIRST THREE HUNDRED DOLLARS LOANED PLUS SEVEN AND ONE-HALF PERCENT OF ANY AMOUNT LOANED IN EXCESS OF THREE HUNDRED DOLLARS. SUCH CHARGE SHALL BE DEEMED FULLY EARNED AS OF THE DATE OF THE TRANSACTION. THE LENDER SHALL CHARGE ONLY THOSE CHARGES AUTHORIZED IN THIS ARTICLE IN CONNECTION WITH A DEFERRED DEPOSIT LOAN.

5-3.1-106. Maximum loan amount - right to rescind. (1) A LENDER SHALL NOT LEND AN AMOUNT GREATER THAN FIVE HUNDRED DOLLARS NOR SHALL THE AMOUNT FINANCED EXCEED FIVE HUNDRED DOLLARS AT ANY TIME TO A CONSUMER. NO INSTRUMENT HELD AS A RESULT OF A DEFERRED DEPOSIT LOAN SHALL EXCEED FIVE HUNDRED SEVENTY-FIVE DOLLARS.

(2) A CONSUMER SHALL HAVE THE RIGHT TO RESCIND THE DEFERRED DEPOSIT LOAN ON OR BEFORE 5 P.M. THE NEXT BUSINESS DAY FOLLOWING THE LOAN TRANSACTION.

5-3.1-107. Multiple outstanding transactions notice. A LENDER SHALL PROVIDE THE FOLLOWING NOTICE IN A PROMINENT PLACE ON EACH DEFERRED DEPOSIT LOAN AGREEMENT IN AT LEAST TEN-POINT TYPE:

"STATE LAW PROHIBITS DEFERRED DEPOSIT LOANS EXCEEDING FIVE HUNDRED DOLLARS (\$500) TOTAL DEBT FROM A DEFERRED DEPOSIT LENDER. EXCEEDING THIS AMOUNT MAY CREATE FINANCIAL HARDSHIPS FOR YOU AND YOUR FAMILY. YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION BY 5 P.M. THE NEXT BUSINESS DAY FOLLOWING THIS TRANSACTION."

5-3.1-108. Renewal. (1) A DEFERRED DEPOSIT LOAN SHALL NOT BE RENEWED MORE THAN ONCE. AFTER SUCH RENEWAL, THE CONSUMER SHALL PAY THE DEBT IN CASH OR ITS EQUIVALENT. IF THE CONSUMER DOES NOT PAY THE DEBT, THEN THE LENDER MAY DEPOSIT THE CONSUMER'S INSTRUMENT.

(2) UPON RENEWAL OF A DEFERRED DEPOSIT LOAN, THE LENDER MAY ASSESS ADDITIONAL FINANCE CHARGES NOT TO EXCEED TWENTY PERCENT OF THE FIRST THREE HUNDRED DOLLARS LOANED PLUS SEVEN AND ONE-HALF PERCENT OF ANY AMOUNT LOANED IN EXCESS OF THREE HUNDRED DOLLARS. IF THE DEFERRED DEPOSIT LOAN IS RENEWED PRIOR TO THE MATURITY DATE, THE LENDER SHALL REFUND TO THE CONSUMER A PRORATED PORTION OF THE FINANCE CHARGE BASED UPON THE RATIO OF TIME LEFT BEFORE MATURITY TO THE LOAN TERM.

(3) A TRANSACTION IS COMPLETED WHEN THE LENDER PRESENTS THE INSTRUMENT FOR PAYMENT OR THE CONSUMER REDEEMS THE INSTRUMENT BY PAYING THE FULL AMOUNT OF THE INSTRUMENT TO THE HOLDER. ONCE THE CONSUMER HAS COMPLETED THE DEFERRED DEPOSIT TRANSACTION, THE CONSUMER MAY ENTER INTO A NEW DEFERRED DEPOSIT AGREEMENT WITH THE LENDER.

(4) NOTHING IN THIS SECTION PROHIBITS A LENDER FROM REFINANCING A DEFERRED DEPOSIT LOAN AS A SUPERVISED LOAN SUBJECT TO THE PROVISION OF THIS CODE, ARTICLES 1 TO 9 OF THIS TITLE.

5-3.1-109. Form of loan proceeds. A LENDER MAY PAY THE PROCEEDS FROM A DEFERRED DEPOSIT LOAN TO THE CONSUMER IN THE FORM OF A BUSINESS INSTRUMENT, MONEY ORDER, OR CASH. THE CONSUMER SHALL NOT BE CHARGED AN ADDITIONAL FINANCE CHARGE OR FEE FOR CASHING THE LENDER'S BUSINESS INSTRUMENT.

5-3.1-110. Endorsement of instrument. A LENDER SHALL NOT NEGOTIATE OR PRESENT AN INSTRUMENT FOR PAYMENT UNLESS THE INSTRUMENT IS ENDORSED WITH THE ACTUAL BUSINESS NAME OF THE LENDER.

5-3.1-111. Redemption of instrument. PRIOR TO THE LENDER NEGOTIATING OR PRESENTING THE INSTRUMENT, THE CONSUMER SHALL HAVE THE RIGHT TO REDEEM ANY INSTRUMENT HELD BY A LENDER AS A RESULT OF A DEFERRED DEPOSIT LOAN IF THE CONSUMER PAYS THE FULL AMOUNT OF THE INSTRUMENT TO THE LENDER.

5-3.1-112. Authorized dishonored instrument charge. IF AN INSTRUMENT HELD BY A LENDER AS A RESULT OF A DEFERRED DEPOSIT LOAN IS RETURNED TO THE LENDER FROM A PAYOR FINANCIAL INSTITUTION DUE TO INSUFFICIENT FUNDS, A CLOSED ACCOUNT, OR A STOP-PAYMENT ORDER, THE LENDER SHALL HAVE THE RIGHT TO EXERCISE ALL CIVIL MEANS AUTHORIZED BY LAW TO COLLECT THE FACE VALUE OF THE INSTRUMENT; EXCEPT THAT THE PROVISIONS AND REMEDIES OF SECTION 13-21-109, C.R.S., ARE NOT APPLICABLE TO ANY DEFERRED DEPOSIT LOAN. IN ADDITION, THE LENDER MAY CONTRACT FOR AND COLLECT A RETURNED INSTRUMENT CHARGE, NOT TO EXCEED TWENTY-FIVE DOLLARS, PLUS COURT COSTS AND REASONABLE ATTORNEY FEES AS AWARDED BY A COURT AND INCURRED AS A RESULT OF THE DEFAULT. HOWEVER, SUCH ATTORNEY FEES SHALL NOT EXCEED THE LOAN AMOUNT. THE LENDER SHALL NOT COLLECT ANY OTHER FEES AS A RESULT OF DEFAULT. A RETURNED INSTRUMENT CHARGE SHALL NOT BE ALLOWED IF THE LOAN PROCEEDS INSTRUMENT IS DISHONORED BY THE FINANCIAL INSTITUTION OR THE CONSUMER PLACES A STOP-PAYMENT ORDER DUE TO FORGERY OR THEFT.

5-3.1-113. Posting of charges. ANY LENDER OFFERING A DEFERRED DEPOSIT LOAN SHALL POST AT ANY PLACE OF BUSINESS WHERE DEFERRED DEPOSIT LOANS ARE MADE A NOTICE OF THE CHARGES IMPOSED FOR SUCH DEFERRED DEPOSIT LOANS.

5-3.1-114. Notice on assignment or sale of instruments. PRIOR TO SALE OR ASSIGNMENT OF INSTRUMENTS HELD BY THE LENDER AS A RESULT OF A DEFERRED DEPOSIT LOAN, THE LENDER SHALL PLACE A NOTICE ON THE INSTRUMENT IN AT LEAST TEN-POINT TYPE TO READ:

"THIS IS A DEFERRED DEPOSIT LOAN INSTRUMENT."

5-3.1-115. Records and annual reports. A LENDER SHALL MAINTAIN RECORDS AND FILE AN ANNUAL REPORT IN ACCORDANCE WITH SECTION 5-3-505.

5-3.1-116. License requirement. IN ACCORDANCE WITH SECTION 5-3-502, NO PERSON SHALL ENGAGE IN THE BUSINESS OF DEFERRED DEPOSIT LOANS WITHOUT

HAVING FIRST OBTAINED A SUPERVISED LENDER'S LICENSE PURSUANT TO SECTION 5-3-503. A SEPARATE LICENSE SHALL BE REQUIRED FOR EACH LOCATION WHERE SUCH BUSINESS IS CONDUCTED.

5-3.1-117. Examination and investigation. A LENDER MAY BE EXAMINED AND INVESTIGATED IN ACCORDANCE WITH SECTION 5-3-506.

5-3.1-118. Denial of license - discipline. (1) THE ADMINISTRATOR MAY DENY A LICENSE OR DISCIPLINE A LENDER IN ACCORDANCE WITH SECTIONS 5-3-503, 5-3-504, AND 5-3-507.

(2) (a) IF THE ADMINISTRATOR FINDS THAT A LENDER HAS VIOLATED THE CODE, ARTICLES 1 TO 9 OF THIS TITLE, THE ADMINISTRATOR SHALL NOTIFY THE LENDER OF SUCH VIOLATIONS AND THE ACTIONS THE LENDER MUST TAKE TO CURE THE VIOLATIONS. THE ADMINISTRATOR SHALL ALLOW THE LENDER THIRTY DAYS TO CURE THE VIOLATIONS BEFORE TAKING DISCIPLINARY ACTION IN ACCORDANCE WITH SUBSECTION (1) OF THIS SECTION. IF THE ADMINISTRATOR DETERMINES THAT SUCH LENDER HAS PERFORMED SUCH ACTIONS CONTAINED IN SUCH NOTICE, THE LENDER SHALL NOT BE LIABLE FOR THE VIOLATIONS THAT HAVE BEEN CURED.

(b) THIS SUBSECTION (2) SHALL NOT APPLY IF THE LENDER KNOWINGLY VIOLATED THE CODE, ARTICLES 1 TO 9 OF THIS TITLE.

5-3.1-119. Applicability of other provisions of this article. THE PROVISIONS OF THE CODE, ARTICLES 1 TO 9 OF THIS TITLE, APPLY TO A LENDER UNLESS SUCH PROVISIONS ARE INCONSISTENT WITH THIS ARTICLE.

5-3.1-120. Criminal culpability. A CONSUMER SHALL NOT BE SUBJECT TO ANY CRIMINAL PENALTY FOR ENTERING INTO A DEFERRED DEPOSIT LOAN AGREEMENT. A CONSUMER SHALL NOT BE SUBJECT TO ANY CRIMINAL PENALTY IN THE EVENT THE INSTRUMENT IS DISHONORED, UNLESS THE CONSUMER'S ACCOUNT ON WHICH THE INSTRUMENT WAS WRITTEN WAS CLOSED BEFORE THE AGREED UPON DATE OF NEGOTIATION, SUBJECT TO THE PROVISIONS OF SECTION 18-5-205, C.R.S.

5-3.1-121. Unfair or deceptive practices. NO PERSON SHALL ENGAGE IN UNFAIR OR DECEPTIVE ACTS, PRACTICES, OR ADVERTISING IN CONNECTION WITH A DEFERRED DEPOSIT LOAN.

SECTION 2. 5-1-301 (17), Colorado Revised Statutes, is amended to read:

5-1-301. General definitions. In addition to definitions appearing in subsequent articles, in this code:

(17) "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business,

(a) Organized, chartered, or holding an authorization certificate under the laws of ~~this~~ ANY state or of the United States which authorize the person to make loans and to receive deposits, including a savings, share, certificate, or deposit account, and

(b) Subject to supervision by an official or agency of ~~this~~ ANY state or of the

United States.

SECTION 3. Effective date. This act shall take effect July 1, 2000, and shall apply to acts occurring on or after said date.

SECTION 4. 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: April 18, 2000