

CHAPTER 295

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 03-1237

BY REPRESENTATIVE(S) Judd, Boyd, Coleman, Frangas, and Weddig;
also SENATOR(S) Lamborn and Evans.**AN ACT****CONCERNING TECHNICAL MODIFICATIONS TO THE STATUTES ENFORCED BY THE ADMINISTRATOR OF THE "UNIFORM CONSUMER CREDIT CODE", AND, IN CONNECTION THEREWITH, AMENDING OR REPEALING OBSOLETE, INCONSISTENT, AND CONFLICTING PROVISIONS OF LAW.***Be it enacted by the General Assembly of the State of Colorado:***SECTION 1.** 5-1-301, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:**5-1-301. General definitions.** In addition to definitions appearing in subsequent articles, as used in this code, unless the context otherwise requires:

(16.5) "CREDIT CARD" MEANS A LENDER CREDIT CARD OR A SELLER CREDIT CARD, EXCEPT AS OTHERWISE PROVIDED IN THIS CODE.

SECTION 2. 5-2-201 (7), Colorado Revised Statutes, is amended to read:**5-2-201. Finance charge for consumer credit transactions.** (7) Notwithstanding the provisions of subsections (1), (2), and (3) of this section, the creditor, in connection with a consumer credit transaction other than A DEFERRED DEPOSIT LOAN AS DEFINED IN SECTION 5-3.1-102 (3) OR one pursuant to a revolving credit account, may contract for and receive a minimum loan finance charge of not more than twenty-five dollars.**SECTION 3.** 5-2-303 (4), Colorado Revised Statutes, is amended to read:**5-2-303. Denial and discipline of license.** (4) Any person holding a license to make supervised loans may relinquish the license by notifying the administrator in writing of its relinquishment. ~~but this~~ THE REVOCATION, SUSPENSION, EXPIRATION, OR

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

relinquishment OF A LICENSE shall not affect the licensee's liability for acts previously committed nor impair the administrator's ability to issue a final agency order or impose discipline against the licensee.

SECTION 4. 5-2-304 (2) and (3), Colorado Revised Statutes, are amended to read:

5-2-304. Records - annual reports - proof of financial responsibility. (2) On or before June 1 of each year, every licensee shall file with the administrator an annual report in the form prescribed by the administrator relating to all supervised loans made by the licensee, ~~and~~ WHICH REPORT SHALL ALSO DEMONSTRATE SATISFACTORY PROOF OF THE LICENSEE'S FINANCIAL RESPONSIBILITY. AT ALL OTHER TIMES, THE LICENSEE SHALL MAINTAIN satisfactory proof of financial responsibility. The administrator shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. Information contained in annual reports shall be confidential and may be published only in composite form. The administrator may, by rule, determine the types and amounts of financial responsibility deemed to be satisfactory.

(3) If a licensee fails to file the annual report or proof of financial responsibility by July 1, the administrator may impose a penalty of five dollars per day from July 2 to the date the filing is postmarked. However, if a licensee fails to file and pay the appropriate penalty by July 15, OR, AT ALL OTHER TIMES, FAILS TO PROVIDE SATISFACTORY PROOF OF FINANCIAL RESPONSIBILITY WITHIN THIRTY DAYS AFTER RECEIVING NOTICE FROM THE ADMINISTRATOR, its license shall automatically expire.

SECTION 5. 5-3-106 (1), Colorado Revised Statutes, as it will become effective July 1, 2003, is amended to read:

5-3-106. Disclosures for real estate secured consumer credit transactions - definition. (1) With respect to a real estate secured consumer credit transaction PAYABLE IN INSTALLMENTS, other than one pursuant to a revolving credit account, if the creditor credits payments made after the due date as of the date of receipt rather than the date payment was due, the creditor must clearly and conspicuously disclose to the consumer at or before the time that credit is extended the effect of untimely payments using language in substantially the following form:

"The dollar amount of the finance charge disclosed to you for this credit transaction is based upon your payments being received by the creditor on the date payments are due. If your payments are received after the due date, even if received before the date a late fee applies, you may owe additional and substantial money at the end of the credit transaction and there may be little or no reduction of principal. This is due to the accrual of daily interest until a payment is received."

SECTION 6. 5-3.1-103, Colorado Revised Statutes, is amended to read:

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; AND THE NAME, ADDRESS, AND TELEPHONE NUMBER OF ANY AGENT OR ARRANGER INVOLVED IN THE TRANSACTION. In addition, the written agreement shall include all disclosures required by section 5-3-101 (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.

SECTION 7. 5-3.1-113, Colorado Revised Statutes, is amended to read:

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 FINANCE charges imposed for such deferred deposit loans.

SECTION 8. 5-3.5-101 (2), Colorado Revised Statutes, is amended to read:

5-3.5-101. Definitions. As used in this article, unless the context otherwise requires:

(2) "Covered loan" means a consumer credit ~~mortgage loan~~ transaction ~~involving~~ SECURED BY property located within this state that is considered a mortgage under section 152 of the federal "Home Ownership and Equity Protection Act of 1994", 15 U.S.C. sec. 1602 (aa), as amended, and regulations adopted pursuant thereto by the federal reserve board, including, without limitation, 12 CFR 226.32, as amended; except that if the total points and fees ~~on a loan~~ paid by the obligor at or before closing exceed six percent of the total loan amount, such loan shall be deemed to be a covered loan if the ~~loan~~ TRANSACTION otherwise meets the requirements of this subsection (2).

SECTION 9. 5-3.5-102 (1) (a), Colorado Revised Statutes, is amended to read:

5-3.5-102. Protection of obligors. (1) A covered loan is subject to the following limitations:

(a) **Limitation on balloon payment.** No covered loan may contain a provision for a scheduled payment that is more than twice as large as the average of earlier REGULARLY scheduled ~~monthly~~ payments, unless such balloon payment becomes due and payable not less than one hundred twenty months after the date of execution of the loan. This prohibition does not apply when the payment schedule is adjusted to account for the seasonal or irregular income of the obligor or if the purpose of the loan is a bridge loan connected with, or related to, the acquisition or construction of a dwelling intended to become the obligor's principal dwelling.

SECTION 10. 5-3.5-103 (1) (c), Colorado Revised Statutes, is amended to read:

5-3.5-103. Restricted acts and practices. (1) The following acts and practices are prohibited in the making of a covered loan:

(c) **Refinancing within a one-year period.** Within one year after having extended credit subject to ~~12 CFR 226.32~~ THIS ARTICLE 3.5, no lender shall refinance any COVERED loan ~~subject to 12 CFR 226.32~~ to the same obligor into another

COVERED loan ~~subject to 12 CFR 226.32~~ unless the refinancing is in the obligor's interest. An assignee holding or servicing an extension of mortgage credit subject to ~~12 CFR 226.32~~ THIS ARTICLE 3.5 shall not, for the remainder of the one-year period following the date of origination of the credit, refinance any COVERED loan ~~subject to 12 CFR 226.32~~ to the same obligor into another COVERED loan ~~subject to 12 CFR 226.32~~ unless the refinancing is in the obligor's interest. A creditor or assignee shall not engage in acts or practices to evade this paragraph (c), including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors, or modifying a loan agreement, regardless of whether the existing loan is satisfied and replaced by the new loan, and charging a fee.

SECTION 11. 5-4-112 (1), Colorado Revised Statutes, is amended to read:

5-4-112. Administrative action of commissioner of insurance. (1) To the extent that the commissioner's responsibility under this article requires, the commissioner of insurance shall promulgate rules in accordance with article 4 of title 24, C.R.S., with respect to insurers, and with respect to refunds described in section 5-4-108, ~~forms, schedules of premium rates and charges described in section 5-4-203,~~ and the commissioner's approval or disapproval thereof and, in case of violation, may make an order for compliance.

SECTION 12. 5-4-203, Colorado Revised Statutes, is amended to read:

5-4-203. Filing and approval of rates and forms. (1) A creditor may not use a form or a schedule of premium rates or charges, the filing of which is required by this section, ~~if the commissioner of insurance has disapproved the form or schedule and has notified the insurer of the commissioner's disapproval. A creditor may not use a form or schedule unless:~~

(a) ~~The form or schedule has been on file with the commissioner of insurance for thirty days or has earlier been approved by the commissioner; and~~

(b) ~~The insurer has complied with this section with respect to the insurance CHARGE IN CONNECTION WITH CREDIT INSURANCE THAT DOES NOT COMPLY WITH SECTION 10-10-109, C.R.S.~~

(2) ~~Except as provided in subsection (3) of this section, all policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders relating to consumer credit insurance delivered or issued for delivery in this state, and the schedules of premium rates or charges pertaining thereto, shall be filed by the insurer with the commissioner of insurance. Within thirty days after the filing of any form or schedule, the commissioner shall disapprove it if the premium rates or charges are unreasonable in relation to the benefits provided under the form or if the form contains provisions that are unjust, unfair, inequitable, or deceptive or encourage misrepresentation of the coverage or are contrary to any provision of title 10, C.R.S., or of any rule or regulation promulgated thereunder. A premium rate or schedule of premium rates shall be deemed reasonable for all purposes under this code if the rate or schedule produces or reasonably may be expected to produce a ratio of incurred claims to earned premium of not less than forty percent for those insurers under section 10-10-109 (2.5) (b), or for those insurers under section 10-10-109 (2.5) (c), the premium rate or schedule of premium rates is reasonable in~~

~~relation to the benefits provided and is not excessive, inadequate, or unfairly discriminatory.~~

~~(3) If a group policy has been delivered in another state, the forms to be filed by the insurer with the commissioner of insurance are the group certificates and notices of proposed insurance. The commissioner shall approve them if:~~

~~(a) They provide the information that would be required if the group policy were delivered in this state; and~~

~~(b) The applicable premium rates or charges do not exceed those established by the commissioner's rules or regulations.~~

SECTION 13. 5-5-103 (3), Colorado Revised Statutes, is amended to read:

5-5-103. Restrictions on deficiency judgments in consumer credit sales.

(3) If the creditor repossesses, with or without the aid of judicial process, or voluntarily accepts surrender of goods that were not the subject of the sale but in which the creditor has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the cash price of the sale was ~~two thousand one hundred~~ THREE THOUSAND dollars or less, the parties obligated are not personally liable to the creditor for the unpaid balance of the debt arising from the sale, and the creditor's duty to dispose of the collateral is governed by the provisions on disposition of collateral of the "Uniform Commercial Code" contained in part 6 of article 9 of title 4, C.R.S.

SECTION 14. 5-6-104 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

5-6-104. Powers of administrator - harmony with federal regulations - reliance on rules. (1) In addition to other powers granted by this code, the administrator, within the limitations provided by law, may:

(j) EXCHANGE INFORMATION WITH ANOTHER GOVERNMENTAL AGENCY OR OFFICIAL THAT HAS REGULATORY AUTHORITY COMPARABLE TO THAT OF THE ADMINISTRATOR, SUBJECT TO AN APPROPRIATE CONFIDENTIALITY AGREEMENT BETWEEN THE ADMINISTRATOR AND THE OTHER AGENCY OR OFFICIAL OR AS OTHERWISE PERMITTED BY LAW. THIS PARAGRAPH (j) SHALL NOT BE CONSTRUED TO ALLOW THE EXCHANGE OF INFORMATION WITH LENDERS OR CREDITORS.

SECTION 15. Repeal. 12-14.5-103 (5), Colorado Revised Statutes, is repealed as follows:

12-14.5-103. Definitions. As used in this article, unless the context otherwise requires:

(5) ~~"Surety bond" means a bond issued by a company qualified to issue surety bonds pursuant to title 10, C.R.S.~~

SECTION 16. 12-14.5-104 (1) (a), Colorado Revised Statutes, is amended to read:

12-14.5-104. Prohibited acts. (1) A credit services organization, its salespersons, agents, and representatives, and independent contractors who sell or attempt to sell the services of a credit services organization shall not:

(a) Charge or receive any money or other valuable consideration prior to full and complete performance of the services the credit services organization has agreed to perform for the buyer; ~~unless the credit services organization has obtained a surety bond of ten thousand dollars issued by a surety company authorized to do business in this state and is in compliance with the requirements of section 12-14.5-105;~~

SECTION 17. Repeal. 12-14.5-105, Colorado Revised Statutes, is repealed as follows:

12-14.5-105. Surety bond. ~~(1) If a credit services organization elects, pursuant to section 12-14.5-104 (1) (a), to obtain a surety bond, the following requirements shall be met:~~

~~(a) Such surety bond shall be payable to the state of Colorado.~~

~~(b) A copy of a current surety bond shall be on file with the office of the secretary of state at all times during which such credit services organization is doing business in this state. Fees shall be established by the secretary of state in accordance with the provisions of section 24-21-104, C.R.S.~~

~~(c) If such credit services organization later terminates doing business in this state, it shall file a notice of termination with the secretary of state and maintain a current surety bond for at least six months after the filing of such notice.~~

SECTION 18. 12-14.5-107 (1) (a), (1) (c), and (1) (d), Colorado Revised Statutes, are amended to read:

12-14.5-107. Content of written disclosure. (1) The information statement required pursuant to section 12-14.5-106 shall be printed in at least ten-point type and shall include:

(a) The following statements concerning consumer credit reports and consumer credit agencies:

"RIGHTS UNDER COLORADO AND FEDERAL LAW

You have a right to obtain a copy of your credit report from a credit bureau for a small fee. You have a right to dispute inaccurate information by contacting the credit bureau directly. However, you have no right to have accurate information removed from your credit bureau report. Under the federal "Fair Credit Reporting Act", the credit bureau must remove accurate negative information from your report only if it is over 7 years old. Bankruptcy can be reported for 10 years. Even when a debt has been completely repaid, your report can show that it was paid late if that is accurate. You have a right to sue a credit repair company that violates the "Colorado Credit Services Organization Act". This law prohibits deceptive practices by repair companies. The "Colorado Credit Services Organization Act" also gives you a right to cancel your contract for any reason within 5 working days from the date you sign

it.

The Federal Trade Commission enforces the federal "Fair Credit Reporting Act". For more information, call or write ~~the Denver regional office~~ of the Federal Trade Commission. The administrator of the uniform consumer credit code enforces the "Colorado Credit Services Organization Act". For more information, call or write the Colorado attorney general's office."

~~(c) A statement of the buyer's right to proceed against the bond required under section 12-14.5-104 (1) (a) in the event of any violation of this article; and~~

~~(d) The name and address of the surety company that issued the bond.~~

SECTION 19. Repeal. 12-14.5-111 (3), Colorado Revised Statutes, is repealed as follows:

~~**12-14.5-111. Damages.** (3) Any person who is entitled to recover damages, costs, or attorney fees from a credit services organization may petition the secretary of state for relief under any surety bond established pursuant to section 12-14.5-104 (1) (a).~~

SECTION 20. Effective date. This act shall take effect July 1, 2003.

SECTION 21. 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 22, 2003