

CHAPTER 350

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 04-1441

BY REPRESENTATIVE(S) Rhodes, Butcher, Frangas, Hall, Marshall, McFadyen, Merrifield, Romano ff, and Schulteis;
also SENATOR(S) McElhany, Evans, Grossman, and Veiga.

AN ACT

CONCERNING CONSUMER PROTECTIONS REGARDING FINANCIAL MATTERS, AND, IN CONNECTION THEREWITH, LIMITING THE USE OF LENDER INFORMATION IN SOLICITATIONS AND EXPANDING THE DEFINITION OF SECURITY ACCOUNTS FOR THE PURPOSES OF NONPROBATE TRANSFERS UPON DEATH.

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

SECTION 1. Article 1 of title 6, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 10
RESTRICTIONS ON USE OF LOAN INFORMATION -
SOLICITATIONS**

6-1-1001. Restrictions on use of loan information for solicitations. (1) A PERSON SHALL NOT REFERENCE THE TRADE NAME OR TRADEMARK OF A LENDER OR A TRADE NAME OR TRADEMARK CONFUSINGLY SIMILAR TO THAT OF A LENDER IN A SOLICITATION FOR THE OFFERING OF SERVICES OR PRODUCTS WITHOUT THE CONSENT OF THE LENDER UNLESS THE SOLICITATION CLEARLY AND CONSPICUOUSLY STATES IN BOLD-FACED TYPE ON THE FRONT PAGE OF THE CORRESPONDENCE CONTAINING THE SOLICITATION:

(a) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE PERSON MAKING THE SOLICITATION;

(b) THAT THE PERSON MAKING THE SOLICITATION IS NOT AFFILIATED WITH THE LENDER;

(c) THAT THE SOLICITATION IS NOT AUTHORIZED OR SPONSORED BY THE LENDER;
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.

(d) THAT THE LOAN INFORMATION REFERENCED WAS NOT PROVIDED BY THE LENDER.

(2) A PERSON SHALL NOT REFERENCE A LOAN NUMBER, LOAN AMOUNT, OR OTHER SPECIFIC LOAN INFORMATION THAT IS NOT PUBLICLY AVAILABLE IN A SOLICITATION FOR THE PURCHASE OF SERVICES OR PRODUCTS; EXCEPT THAT THIS PROHIBITION SHALL NOT APPLY TO COMMUNICATIONS BY A LENDER OR ITS AFFILIATES WITH A CURRENT CUSTOMER OF THE LENDER OR WITH A PERSON WHO WAS A CUSTOMER OF THE LENDER.

(3) (a) A PERSON SHALL NOT REFERENCE A LOAN NUMBER, LOAN AMOUNT, OR OTHER SPECIFIC LOAN INFORMATION THAT IS PUBLICLY AVAILABLE IN A SOLICITATION FOR THE PURCHASE OF SERVICES OR PRODUCTS UNLESS THE COMMUNICATION CLEARLY AND CONSPICUOUSLY STATES IN BOLD-FACED TYPE ON THE FRONT PAGE OF THE CORRESPONDENCE CONTAINING THE SOLICITATION:

(I) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE PERSON MAKING THE SOLICITATION;

(II) THAT THE PERSON MAKING THE SOLICITATION IS NOT AFFILIATED WITH THE LENDER;

(III) THAT THE SOLICITATION IS NOT AUTHORIZED OR SPONSORED BY THE LENDER; AND

(IV) THAT THE LOAN INFORMATION REFERENCED WAS NOT PROVIDED BY THE LENDER.

(b) THE PROHIBITION IN PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL NOT APPLY TO COMMUNICATIONS BY A LENDER OR ITS AFFILIATES WITH A CURRENT CUSTOMER OF THE LENDER OR WITH A PERSON WHO WAS A CUSTOMER OF THE LENDER.

(4) ANY REFERENCE TO AN EXISTING LENDER WITHOUT THE CONSENT OF THE LENDER, AND ANY REFERENCE TO A LOAN NUMBER, LOAN AMOUNT, OR OTHER SPECIFIC LOAN INFORMATION, APPEARING ON THE OUTSIDE OF AN ENVELOPE, VISIBLE THROUGH THE ENVELOPE WINDOW, OR ON A POSTCARD, IN CONNECTION WITH ANY WRITTEN COMMUNICATION THAT INCLUDES OR CONTAINS A SOLICITATION FOR GOODS OR SERVICES IS PROHIBITED.

(5) IT IS NOT A VIOLATION OF THIS SECTION FOR A PERSON TO USE THE TRADE NAME OF ANOTHER LENDER IN AN ADVERTISEMENT FOR SERVICES OR PRODUCTS TO COMPARE THE SERVICES OR PRODUCTS OFFERED BY THE OTHER LENDER.

(6) A LENDER OR OWNER OF A TRADE NAME OR TRADEMARK MAY SEEK AN INJUNCTION AGAINST A PERSON WHO VIOLATES THIS SECTION TO STOP THE UNLAWFUL USE OF THE TRADE NAME, TRADEMARK, OR LOAN INFORMATION. THE PERSON SEEKING THE INJUNCTION SHALL NOT HAVE TO PROVE ACTUAL DAMAGE AS A RESULT OF THE VIOLATION. IRREPARABLE HARM AND INTERIM HARM TO THE LENDER OR OWNER SHALL BE PRESUMED. THE LENDER OR OWNER SEEKING THE INJUNCTION MAY SEEK TO RECOVER ACTUAL DAMAGES AND ANY PROFITS THE DEFENDANT HAS ACCRUED AS

A RESULT OF THE VIOLATION. THE PREVAILING PARTY IN ANY ACTION BROUGHT PURSUANT TO THIS SECTION IS ENTITLED TO RECOVER COSTS ASSOCIATED WITH THE ACTION AND REASONABLE ATTORNEY FEES FROM THE OTHER PARTY.

(7) FOR THE PURPOSES OF THIS SECTION, "LENDER" MEANS A BANK, INDUSTRIAL BANK, SAVINGS AND LOAN ASSOCIATION, SAVINGS BANK, CREDIT UNION, FINANCE COMPANY, MORTGAGE BANK, MORTGAGE BROKER, LOAN ORIGINATOR OR HOLDER OF THE LOAN, OR OTHER PERSON WHO MAKES LOANS IN THIS STATE, AND ANY AFFILIATE THEREOF, OR ANY THIRD PARTY OPERATING WITH THE CONSENT OF THE LENDER. FOR THE PURPOSES OF THIS SECTION, A PERSON SHALL NOT BE CONSIDERED A LENDER BASED ON THE PERSON'S FORMER EMPLOYMENT WITH A LENDER.

(8) NOTHING IN THIS SECTION SHALL APPLY TO TITLE INSURANCE.

SECTION 2. 15-15-301 (5), Colorado Revised Statutes, is amended to read:

15-15-301. Definitions. In this part 3:

(5) "Security account" means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, CASH EQUIVALENTS, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; ~~or~~ (ii) AN INVESTMENT MANAGEMENT OR CUSTODY ACCOUNT WITH A TRUST COMPANY OR A TRUST DIVISION OF A BANK WITH TRUST POWERS, INCLUDING THE SECURITIES IN THE ACCOUNT, A CASH BALANCE IN THE ACCOUNT, AND CASH, CASH EQUIVALENTS, INTEREST, EARNINGS, OR DIVIDENDS EARNED OR DECLARED ON A SECURITY IN THE ACCOUNT, WHETHER OR NOT CREDITED TO THE ACCOUNT BEFORE THE OWNER'S DEATH; OR ~~(ii)~~ (iii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

SECTION 3. 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 (August 4, 2004, if adjournment sine die is on May 5, 2004); 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 acts committed on or after the applicable effective date of this act.

Approved: May 28, 2004