

## CHAPTER 95

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**CONSUMER AND COMMERCIAL TRANSACTIONS**

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**HOUSE BILL 04-1069**

BY REPRESENTATIVE(S) White, Brophy, May M., Schultheis, Spradley, Stengel, and Williams T.;  
also SENATOR(S) Lamborn and Andrews.

**AN ACT****CONCERNING DEFERRED DEPOSIT LOANS.**

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

**SECTION 1.** 5-3.1-102 (3) (a), Colorado Revised Statutes, is amended, and the said 5-3.1-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**5-3.1-102. Definitions.** As used in this article, unless the context otherwise requires:

(2.5) "DEFAULT" MEANS A CONSUMER'S FAILURE TO REPAY A DEFERRED DEPOSIT LOAN IN COMPLIANCE WITH THE TERMS CONTAINED IN A DEFERRED DEPOSIT LOAN AGREEMENT.

(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 AS SOLE SECURITY FOR THE LOAN AND NO OTHER COLLATERAL;

**SECTION 2.** 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; 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

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

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. THERE SHALL BE NO MINIMUM LOAN TERM OR MINIMUM FINANCE CHARGE. THE MAXIMUM LOAN TERM SHALL NOT BE MORE THAN FORTY DAYS AFTER THE LOAN TRANSACTION DATE, AND THE MAXIMUM FINANCE CHARGE SHALL NOT EXCEED THE FINANCE CHARGE SET FORTH IN SECTION 5-3.1-105. THE DUE DATE SHALL BE SET ON OR AFTER THE CONSUMER'S NEXT PAYDAY OR THE DATE THE CONSUMER IS SCHEDULED TO RECEIVE BENEFITS, A COMMISSION, OR ANY OTHER PAYMENT; OR AFTER AN INCOME EVENT FOR THE CONSUMER UNLESS THE CONSUMER VOLUNTARILY REQUESTS A SHORTER LOAN TERM, THE CONSUMER'S REQUEST IS DOCUMENTED IN A WRITTEN STATEMENT SIGNED AND DATED BY THE CONSUMER AND IS SEPARATE FROM THE LOAN AGREEMENT, THE WRITTEN STATEMENT IS RETAINED BY THE LENDER, AND THE LOAN CANNOT BE RENEWED AND SHALL BE PAID IN CASH OR ITS EQUIVALENT. A LENDER MAY HOLD AN INSTRUMENT AND DELAY COMPLETION OF THE TRANSACTION BEYOND THE LOAN DUE DATE WITHOUT ANY ADDITIONAL WRITTEN AGREEMENT OR NEW DISCLOSURE, BUT THE LENDER MAY NOT CHARGE ANY ADDITIONAL FEES FOR HOLDING THE INSTRUMENT OR DELAYING THE COMPLETION OF THE TRANSACTION.

**SECTION 3.** 5-3.1-106 (1), Colorado Revised Statutes, is amended to read:

**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 BY ANY ONE LENDER at any time to a consumer. No instrument held as a result of a deferred deposit loan shall exceed five hundred seventy-five dollars.

**SECTION 4.** 5-3.1-108 (3), Colorado Revised Statutes, is amended to read:

**5-3.1-108. Renewal.** (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. IF THE CONSUMER'S INSTRUMENT IS DISHONORED BY THE PAYOR FINANCIAL INSTITUTION AFTER THE TRANSACTION IS COMPLETE AND, BEFORE THE LENDER RECEIVES A NOTICE OF DISHONOR, THE LENDER MAKES A NEW LOAN THAT DOES NOT EXCEED THE MAXIMUM ALLOWABLE LOAN, THE LENDER SHALL NOT BE IN VIOLATION OF THE MAXIMUM LOAN AMOUNT PROVISIONS IN SECTION 5-3.1-106.

**SECTION 5.** 5-3.1-109, Colorado Revised Statutes, is amended to read:

**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, STORED VALUE CARD, INTERNET TRANSFER, OR AUTHORIZED AUTOMATED CLEARINGHOUSE TRANSACTION. The consumer shall not be charged an additional finance charge or fee for cashing the lender's business instrument OR FOR NEGOTIATING FORMS OF LOAN PROCEEDS OTHER THAN CASH.

**SECTION 6.** 5-3.1-112, Colorado Revised Statutes, is amended to read:

**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 UNPAID to the lender from a payor financial institution due to insufficient funds, a closed account, or a stop-payment order, OR ANY OTHER REASON, NOT INCLUDING A BANK ERROR, 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 ONE returned instrument charge FOR EACH DEFERRED DEPOSIT LOAN, 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.

**SECTION 7.** 5-3.1-118 (2), Colorado Revised Statutes, is amended, and the said 5-3.1-118 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**5-3.1-118. Denial of license - discipline.** (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 IN WRITING of such violations and the actions the lender must take to cure the violations. The administrator shall allow the lender thirty days AFTER THE POSTMARK DATE OF THE NOTICE, OR THE DATE OF DELIVERY IF NOT MAILED, 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, IN A REPEATED OR WILLFUL MANNER.

(c) IF AN ALLEGED VIOLATION OF THE CODE, ARTICLES 1 TO 9 OF THIS TITLE, IS THE RESULT OF A BONA FIDE CLERICAL OVERSIGHT OR COMPUTER-BASED ERROR AND NOT THE PRODUCT OF THE LENDER'S ESTABLISHED LENDING PRACTICES, AND THE ALLEGED VIOLATION CAN BE CORRECTED WITHOUT MATERIAL CHANGE TO THE TERMS AND CONDITIONS OF A CONSUMER'S LOAN, THE LENDER SHALL HAVE THIRTY DAYS AFTER THE POSTMARK DATE OF THE NOTICE, OR THE DATE OF DELIVERY IF NOT MAILED, TO CURE THE ALLEGED VIOLATION WITHOUT INCURRING ANY FINE OR PENALTY OR ANY REQUIRED REFUND OF ANY FINANCE CHARGES ASSOCIATED WITH THE ALLEGED VIOLATION. NOTHING IN THIS SUBSECTION (2) SHALL EXEMPT A LENDER FROM MAKING REQUIRED REFUNDS IF THE VIOLATION RESULTED IN AN OVERCHARGE OR EXCESS CHARGE TO THE CONSUMER.

(3) A LENDER SHALL HAVE NINETY DAYS TO COMPLY WITH ANY RULE, INTERPRETATION, OR OPINION OF THE ADMINISTRATOR THAT REQUIRES A LENDER TO IMPLEMENT NEW POLICIES OR PROCEDURES THAT INVOLVE THE REPRINTING OF THE LENDER'S FORMS TO INCLUDE NEW DISCLOSURES, OR THAT REQUIRES THE LENDER TO REVISE EXISTING COMPUTER PROGRAMS OR ADD NEW COMPUTER PROGRAMS TO COMPLY WITH THE RULE, INTERPRETATION, OR OPINION. DURING THE NINETY-DAY PERIOD, THE ADMINISTRATOR SHALL NOT DEEM THE LENDER TO BE IN VIOLATION OF

ARTICLES 1 TO 9 OF THIS TITLE FOR NONCOMPLIANCE WITH THE NEW RULE, INTERPRETATION, OR OPINION.

**SECTION 8.** Article 3.1 of title 5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**5-3.1-122. Unconscionability.** (1) IN APPLYING THE PROVISIONS OF SECTIONS 5-5-109 AND 5-6-112 TO THE ACTIONS OF A LENDER, CONSIDERATION SHALL BE GIVEN TO THE FOLLOWING, AMONG OTHER FACTORS:

(a) THE FINANCIAL BENEFITS OF THE LOAN TO THE CONSUMER AND THE LEVEL OF RISK INCURRED BY THE LENDER IN EXTENDING CREDIT;

(b) THE ABSENCE OF COLLATERAL OTHER THAN THE INSTRUMENT EXECUTED BY THE CONSUMER PAYABLE TO THE LENDER;

(c) THE RELATION BETWEEN THE AMOUNT AND TERMS OF CREDIT GRANTED AND THE COST OF MAKING THE LOAN.

(2) A LENDER SHALL REQUIRE A CONSUMER TO FILL OUT A LOAN APPLICATION AT LEAST ONCE IN EACH TWELVE-MONTH PERIOD OF TIME AND SHALL MAINTAIN THIS APPLICATION ON FILE. THE APPLICATION SHALL BE SIGNED AND DATED BY THE CONSUMER.

(3) (a) A LENDER SHALL REQUIRE THE CONSUMER TO PROVIDE A PAY STUB OR OTHER EVIDENCE OF INCOME AT LEAST ONCE EACH TWELVE-MONTH PERIOD. SUCH EVIDENCE SHALL NOT BE OVER FORTY-FIVE DAYS OLD WHEN PRESENTED. IF A LENDER REQUIRES A CONSUMER TO PRESENT A BANK STATEMENT TO SECURE A LOAN, THE LENDER SHALL ALLOW THE CONSUMER TO DELETE FROM THE STATEMENT THE INFORMATION REGARDING TO WHOM THE DEBITS LISTED ON THE STATEMENT WERE PAYABLE.

(b) IF THE AMOUNT BORROWED IS NOT MORE THAN TWENTY-FIVE PERCENT OF THE CONSUMER'S MONTHLY GROSS INCOME AND BENEFITS, AS EVIDENCED BY A PAYCHECK STUB OR OTHERWISE SUBSTANTIATED, A LENDER SHALL NOT BE OBLIGATED TO INVESTIGATE THE CONSUMER'S CONTINUED DEBT POSITION, AND THE CONSUMER'S ABILITY TO REPAY THE LOAN NEED NOT BE FURTHER DEMONSTRATED.

(4) IF A LENDER COMPLIES WITH THE REQUIREMENTS OF SUBSECTIONS (2) AND (3) OF THIS SECTION, AND THE DEFERRED DEPOSIT LOAN OTHERWISE COMPLIES WITH THIS ARTICLE AND OTHER APPLICABLE LAW, NEITHER THE CONSUMER'S INABILITY TO REPAY THE LOAN NOR THE LENDER'S DECISION TO OBTAIN OR NOT OBTAIN ADDITIONAL INFORMATION CONCERNING THE CONSUMER'S CREDITWORTHINESS SHALL BE CAUSE TO DETERMINE THAT A LOAN IS UNCONSCIONABLE.

**SECTION 9.** Article 3.1 of title 5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**5-3.1-123. Use of multiple agreements for deferred deposit loans.** IF A CONSUMER OBTAINS A DEFERRED DEPOSIT LOAN VOLUNTARILY AND SEPARATELY FROM HIS OR HER SPOUSE AND THE CONSUMER'S ACTION IS DOCUMENTED IN WRITING,

SIGNED BY THE CONSUMER, AND RETAINED BY THE LENDER, THE TRANSACTION SHALL NOT BE CONSIDERED A VIOLATION OF SECTION 5-3-205.

**SECTION 10. Effective date - applicability.** This act shall take effect July 1, 2004, and shall apply to loans made and violations of the "Deferred Deposit Loan Act" on or after said date.

**SECTION 11. 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 7, 2004