

CHAPTER 267

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 10-1351

BY REPRESENTATIVE(S) Ferrandino, Apuan, Curry, Gagliardi, Hullinghorst, Kerr A., McCann, Merrifield, Miklosi, Pace, Pommer, Ryden, Scanlan, Solano, Tyler, Vigil, Frangas, Carroll T.;
also SENATOR(S) Romer, Carroll M., Foster, Keller, Morse, Heath.

AN ACT**CONCERNING THE MAXIMUM AUTHORIZED INTEREST RATE FOR A PAYDAY LOAN.**

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

SECTION 1. Legislative declaration. The general assembly finds and declares that payday lenders are charging more than an average of three hundred percent interest annually and that excessive interest rates can lead Colorado families into a debt trap of repeat borrowing. Therefore, it is the intent of the general assembly to limit the maximum authorized interest rate for a payday loan charged to a consumer by a lender to a maximum rate of forty-five percent per year.

SECTION 2. The introductory portion to 5-3.1-102 (3) and 5-3.1-102 (5) (a), Colorado Revised Statutes, are 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:

(1.5) "ANNUAL PERCENTAGE RATE" MEANS AN ANNUAL PERCENTAGE RATE AS DETERMINED PURSUANT TO SECTION 107 OF THE FEDERAL "TRUTH IN LENDING ACT", 15 U.S.C. SEC. 1601 ET SEQ. ALL FINANCE CHARGES SHALL BE INCLUDED IN THE CALCULATION OF THE ANNUAL PERCENTAGE RATE.

(3) "Deferred deposit loan" OR "PAYDAY LOAN" means a consumer loan whereby the lender, for a fee, finance charge, or other consideration, does the following:

(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

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

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, THROUGH ANY METHOD INCLUDING MAIL, TELEPHONE, INTERNET, OR ANY ELECTRONIC MEANS.

SECTION 3. 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 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 upon which the instrument may be deposited or negotiated. There shall be no ~~minimum~~ MAXIMUM 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.~~ THE MINIMUM LOAN TERM SHALL BE SIX MONTHS FROM THE LOAN TRANSACTION DATE. THE LENDER SHALL ACCEPT PREPAYMENT FROM A CONSUMER PRIOR TO THE LOAN DUE DATE AND SHALL NOT CHARGE THE CONSUMER A PENALTY IF THE CONSUMER OPTS TO PREPAY THE LOAN. 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 4. 5-3.1-105, Colorado Revised Statutes, is amended to read:

5-3.1-105. Authorized interest rate. A lender may charge a finance charge for each deferred deposit loan OR PAYDAY 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 MAY ALSO CHARGE AN INTEREST RATE OF FORTY-FIVE PERCENT PER ANNUM FOR EACH DEFERRED DEPOSIT LOAN OR PAYDAY LOAN. IF THE LOAN IS PREPAID PRIOR TO THE MATURITY OF THE LOAN TERM, THE LENDER SHALL REFUND TO THE CONSUMER A PRORATED PORTION OF THE ANNUAL PERCENTAGE RATE BASED UPON THE RATIO OF TIME LEFT BEFORE MATURITY TO THE LOAN TERM. IN ADDITION, THE LENDER MAY CHARGE A MONTHLY MAINTENANCE FEE FOR EACH OUTSTANDING DEFERRED DEPOSIT LOAN, NOT TO EXCEED SEVEN DOLLARS AND FIFTY CENTS PER ONE HUNDRED DOLLARS LOANED, UP TO THIRTY DOLLARS PER MONTH. THE MONTHLY MAINTENANCE FEE MAY BE CHARGED FOR EACH MONTH THE LOAN IS OUTSTANDING THIRTY DAYS AFTER THE DATE OF THE ORIGINAL LOAN TRANSACTION. The lender shall charge only those charges

authorized in this article in connection with a deferred deposit loan.

SECTION 5. 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.~~ NOTHING IN THIS SUBSECTION (1) SHALL PRECLUDE A LENDER FROM MAKING MORE THAN ONE LOAN TO A CONSUMER SO LONG AS THE TOTAL AMOUNT FINANCED DOES NOT EXCEED FIVE HUNDRED DOLLARS AT ANY ONE TIME AND THERE IS AT LEAST A THIRTY-DAY WAITING PERIOD BETWEEN LOANS.

SECTION 6. 5-3.1-108 (2) and (5), Colorado Revised Statutes, are amended to read:

5-3.1-108. Renewal - new loan - consecutive loans - payment plan - definitions. (2) Upon renewal of a deferred deposit loan, the lender may assess AN additional finance ~~charges~~ CHARGE not to exceed ~~twenty~~ AN ANNUAL PERCENTAGE RATE OF FORTY-FIVE 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.

~~(5) (a) At the time of origination of a fourth consecutive deferred deposit loan made to a consumer by a lender or an affiliate of the lender, and at the time of origination of any subsequent consecutive deferred deposit loans, the lender shall offer the consumer in writing the option to participate in a voluntary payment plan.~~

~~(b) To convert a deferred deposit loan into a payment plan, the consumer shall return to the lender's point of sale location and request a payment plan prior to the close of business on the business day prior to the maturity date of the loan.~~

~~(c) The payment plan shall provide the consumer with the option to pay off the existing debt, both the principal and the fee, in at least six equal payments that coincide with the consumer's periodic pay dates or the date the consumer is scheduled to receive benefits. The payments made pursuant to the voluntary payment plan shall be applied directly to the existing debt, and the lender shall not charge the consumer any additional fee for participation in the payment plan.~~

~~(d) The lender shall provide a written copy of the payment plan agreement to the consumer. The lender shall be prohibited from engaging in collection activities while the consumer continues to make payments in accordance with the payment plan. The lender or affiliate of the lender is prohibited from making any additional deferred deposit loans to the consumer prior to the consumer's completion of the payment plan.~~

~~(e) The lender may require the consumer to provide a post-dated check or electronic authorization for funds transferred for each payment due under the payment plan. If any check or electronic authorization accepted by the lender is~~

dishonored, the lender may not charge the consumer a fee for the dishonored instrument.

~~(f) If the consumer fails to make payments in accordance with a payment plan under paragraph (a) of this subsection (5), the lender is entitled to take action as allowed under this article to collect the remaining funds due and may charge the consumer a one-time default fee of twenty-five dollars.~~

~~(g) For the purposes of this subsection (5):~~

~~(I) "Affiliate" means any entity owned by a lender, an entity that owns the lender, an entity that is under common ownership with the lender, or an entity that is a person related to the lender.~~

~~(II) "Consecutive deferred deposit loan" means a deferred deposit loan made by a lender within five calendar days after the repayment of a previous deferred deposit loan by renewal or otherwise.~~

~~(III) "Lender's point of sale location" means:~~

~~(A) The lender's store where the consumer originated the loan;~~

~~(B) Another store operated by the lender in this state; or~~

~~(C) A web site, telephone number, or other remote location where the consumer originated the loan.~~

~~(IV) "Person related to" shall have the same meaning as in section 5-1-301 (34) (b).~~

SECTION 7. 5-3.1-121, Colorado Revised Statutes, is amended to read:

5-3.1-121. Unfair or deceptive practices. (1) No person shall engage in unfair or deceptive acts, practices, or advertising in connection with a deferred deposit loan.

(2) A PERSON VIOLATES THE REQUIREMENTS OF THIS ARTICLE BY ENGAGING IN ANY ACT THAT LIMITS OR RESTRICTS THE APPLICATION OF THIS ARTICLE, INCLUDING MAKING LOANS DISGUISED AS PERSONAL PROPERTY, PERSONAL SALES, AND LEASEBACK TRANSACTIONS OR BY DISGUIISING LOAN PROCEEDS AS CASH REBATES FOR THE PRETEXTUAL INSTALLMENT SALE OF GOODS AND SERVICES.

SECTION 8. Act subject to petition - 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 (August 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act shall apply to loans made or renewed on or after the applicable effective date of this act.

Approved: May 25, 2010