

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 08-0687.01 Kristen Forrestal

HOUSE BILL 08-1310

HOUSE SPONSORSHIP

Ferrandino, Pommer, Carroll T., Butcher, Solano, Kerr A., and McGihon

SENATE SPONSORSHIP

Groff, Tapia, and Morse

House Committees

Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING DEFERRED DEPOSIT LOAN TRANSACTIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Changes the allowable finance charges for an initial deferred deposit loan in a 12-month period to \$10 for each \$100 loaned, up to a maximum charge of \$30. Limits the allowable rate of interest to 36% per annum.

Prohibits a lender from making a deferred deposit loan to a consumer who has an outstanding loan with the lender or any other lender. Requires a lender to verify that a consumer does not have an outstanding loan prior to initiating a new loan by accessing a common database.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Requires the administrator of the "Uniform Consumer Credit Code" (administrator) to contract with an outside vendor to implement a common database with real-time access through an internet connection for lenders. Requires lenders to submit data prior to entering into a loan agreement. Requires lenders to pay a fee to cover the cost of the database. Authorizes the administrator to impose a civil penalty for failure to use the database as required.

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

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

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

7 (1.5) "AFFILIATE" MEANS AN ENTITY OWNED BY A LENDER, AN
8 ENTITY THAT OWNS A LENDER, AN ENTITY THAT IS UNDER COMMON
9 OWNERSHIP WITH A LENDER, OR A PERSON RELATED TO A LENDER.

10 (5) (a) "Lender" means ~~any~~ AN AFFILIATE OF A LENDER OR A
11 person who offers or makes a deferred deposit loan, who arranges a
12 deferred deposit loan for a third party, or who acts as an agent for a third
13 party, regardless of whether the third party is exempt from licensing under
14 this article or whether approval, acceptance, or ratification by the third
15 party is necessary to create a legal obligation for the third party.

16 (7) "PERSON RELATED TO" HAS THE MEANING SET FORTH IN
17 SECTION 5-1-301.

18 **SECTION 2.** 5-3.1-103, Colorado Revised Statutes, is amended
19 to read:

20 **5-3.1-103. Written agreement requirements.** Each deferred
21 deposit loan transaction and renewal shall be documented by a written
22 agreement signed by both the lender and consumer. The written

1 agreement shall contain the name of the consumer; the transaction date;
2 the amount of the instrument; the annual percentage rate charged; a
3 statement of the total amount of finance charges charged, expressed both
4 as a dollar amount and an annual percentage rate; and the name, address,
5 and telephone number of any agent or arranger involved in the
6 transaction. In addition, the written agreement shall include all
7 disclosures required by section 5-3-101 (2). The written agreement shall
8 set a date upon which the instrument may be deposited or negotiated.
9 ~~There shall be no minimum loan term or minimum finance charge.~~ The
10 maximum loan term shall not be more than forty days after the loan
11 transaction date, and the maximum finance charge shall not exceed the
12 finance ~~charge~~ CHARGES set forth in section 5-3.1-105. The due date
13 shall be ~~set on or~~ NO LESS THAN THIRTY DAYS AFTER THE LOAN
14 TRANSACTION AND after the consumer's next payday or the date the
15 consumer is scheduled to receive benefits, a commission, or any other
16 payment, or after an income event for the consumer. ~~unless the consumer~~
17 ~~voluntarily requests a shorter loan term, the consumer's request is~~
18 ~~documented in a written statement signed and dated by the consumer and~~
19 ~~is separate from the loan agreement, the written statement is retained by~~
20 ~~the lender, and the loan cannot be renewed and shall be paid in cash or its~~
21 ~~equivalent.~~ A lender may hold an instrument and delay completion of the
22 transaction beyond the loan due date without any additional written
23 agreement or new disclosure, but the lender may not charge any
24 additional fees for holding the instrument or delaying the completion of
25 the transaction.

26 **SECTION 3.** 5-3.1-105, Colorado Revised Statutes, is
27 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

1 **5-3.1-105. Authorized finance charges - interest rate.** (1) A
2 LENDER MAY CHARGE THE FOLLOWING FINANCE CHARGES ON A DEFERRED
3 DEPOSIT LOAN OR RENEWAL OF A DEFERRED DEPOSIT LOAN:

4 (a) FOR THE INITIAL LOAN IN A TWELVE-MONTH PERIOD, NOT MORE
5 THAN TEN DOLLARS FOR EACH ONE HUNDRED DOLLARS LOANED, UP TO A
6 MAXIMUM OF THIRTY DOLLARS; AND

7 (b) ON EACH LOAN, A RATE OF INTEREST NOT TO EXCEED
8 THIRTY-SIX PERCENT PER ANNUM.

9 **SECTION 4.** 5-3.1-106 (1), Colorado Revised Statutes, is
10 amended to read:

11 **5-3.1-106. Maximum loan amount - right to rescind.** (1) A
12 lender shall not lend an amount greater than five hundred dollars nor shall
13 ~~the amount financed exceed five hundred dollars by any one lender at any~~
14 ~~time to a consumer. No instrument held as a result of a deferred deposit~~
15 ~~loan shall exceed five hundred seventy-five dollars~~ A LENDER MAKE A
16 DEFERRED DEPOSIT LOAN TO A CONSUMER WHO HAS AN OUTSTANDING
17 DEFERRED DEPOSIT LOAN WITH THE LENDER OR ANY OTHER LENDER. THE
18 LENDER SHALL VERIFY THAT THE CONSUMER HAS NO OTHER OUTSTANDING
19 LOANS PURSUANT TO SECTION 5-3.1-107.5.

20 **SECTION 5.** 5-3.1-107, Colorado Revised Statutes, is amended
21 to read:

22 **5-3.1-107. Multiple outstanding transactions notice.** A lender
23 shall provide the following notice in a prominent place on each deferred
24 deposit loan agreement in at least ten-point type:

25 "STATE LAW PROHIBITS DEFERRED
26 DEPOSIT LOANS EXCEEDING FIVE HUNDRED
27 DOLLARS (\$500) TOTAL DEBT PLUS APPLICABLE

1 FINANCE CHARGES PERMITTED BY LAW ~~FROM A~~
2 ~~DEFERRED DEPOSIT LENDER~~ AT ANY ONE TIME.
3 EXCEEDING THIS AMOUNT MAY CREATE
4 FINANCIAL HARDSHIPS FOR YOU AND YOUR
5 FAMILY. YOU HAVE THE RIGHT TO RESCIND THIS
6 TRANSACTION BY 5 P.M. THE NEXT BUSINESS
7 DAY FOLLOWING THIS TRANSACTION."

8 **SECTION 6.** Article 3.1 of title 5, Colorado Revised Statutes, is
9 amended BY THE ADDITION OF A NEW SECTION to read:

10 **5-3.1-107.5. Common database - contract vendor - rules -**
11 **penalty.** (1) PRIOR TO MAKING A DEFERRED DEPOSIT LOAN, A LENDER
12 SHALL VERIFY THAT A CONSUMER DOES NOT HAVE AN OUTSTANDING
13 DEFERRED DEPOSIT LOAN AS PROHIBITED BY SECTION 5-3.1-106 (1) BY
14 ACCESSING THE COMMON DATABASE ESTABLISHED IN SUBSECTION (2) OF
15 THIS SECTION.

16 (2) THE ADMINISTRATOR SHALL CONTRACT WITH AN OUTSIDE
17 VENDOR TO IMPLEMENT A COMMON DATABASE WITH REAL-TIME ACCESS
18 THROUGH AN INTERNET CONNECTION FOR LENDERS. THE DATABASE
19 SHALL BE ACCESSIBLE TO THE ADMINISTRATOR AND ALL LENDERS TO
20 VERIFY WHETHER DEFERRED DEPOSIT LOANS ARE OUTSTANDING FOR A
21 PARTICULAR CONSUMER. LENDERS SHALL SUBMIT DATA BEFORE
22 ENTERING INTO EACH DEFERRED DEPOSIT LOAN AGREEMENT IN A FORMAT
23 AS THE ADMINISTRATOR SHALL REQUIRE BY RULE, THAT SHALL INCLUDE
24 THE CONSUMER'S NAME, SOCIAL SECURITY NUMBER OR EMPLOYMENT
25 AUTHORIZATION ALIEN NUMBER, ADDRESS, DRIVER'S LICENSE NUMBER, IF
26 APPLICABLE, AMOUNT OF THE TRANSACTION, DATE OF THE TRANSACTION,
27 DATE THE TRANSACTION IS CLOSED, AND ANY ADDITIONAL INFORMATION

1 REQUIRED BY THE ADMINISTRATOR. THE ADMINISTRATOR MAY REQUIRE
2 A FEE THAT SHALL NOT EXCEED ONE DOLLAR PER TRANSACTION TO BE
3 PAID BY THE LENDER DIRECTLY TO THE VENDOR TO IMPLEMENT AND
4 MAINTAIN THE DATABASE. THE LENDER SHALL PAY THE FEE TO THE
5 VENDOR FROM THE FEES AND CHARGES AUTHORIZED IN SECTION 5-3.1-105
6 PAID BY THE CONSUMER TO THE LENDER. THE ADMINISTRATOR MAY
7 DECREASE THE FEE OR INCREASE THE FEE TO COVER THE COSTS OF THE
8 DATABASE. A LENDER MAY RELY ON THE INFORMATION CONTAINED IN
9 THE DATABASE AS ACCURATE AND IS NOT SUBJECT TO ANY
10 ADMINISTRATIVE PENALTY OR CIVIL LIABILITY AS A RESULT OF RELYING
11 ON INACCURATE INFORMATION CONTAINED IN THE DATABASE. THE
12 ADMINISTRATOR MAY ADOPT RULES TO ADMINISTER AND ENFORCE THIS
13 SECTION AND TO ASSURE THAT THE DATABASE IS USED BY LENDERS IN
14 ACCORDANCE WITH THIS SECTION. FOR THE PURPOSES OF THIS SECTION,
15 A LOAN IS CLOSED WHEN IT IS PAID IN FULL BY THE CONSUMER TO THE
16 LENDER.

17 (3) INFORMATION THAT IDENTIFIES A CONSUMER OR A LENDER
18 CONTAINED IN THE COMMON DATABASE IS CONFIDENTIAL AND SHALL NOT
19 BE USED FOR A PURPOSE OTHER THAN AS AUTHORIZED BY THIS SECTION.
20 A LENDER MAY ACCESS INFORMATION THAT IT HAS ENTERED INTO THE
21 DATABASE AND MAY OBTAIN AN ELIGIBILITY DETERMINATION FOR A
22 PARTICULAR CONSUMER BASED ON INFORMATION IN THE DATABASE.

23 (4) IN ADDITION TO ANY OTHER PENALTIES AUTHORIZED BY LAW,
24 THE ADMINISTRATOR MAY IMPOSE A CIVIL PENALTY FOR EACH VIOLATION
25 OF THIS SECTION OR ANY RULE PROMULGATED BY THE ADMINISTRATOR TO
26 IMPLEMENT THIS SECTION. THE PROVISIONS OF SECTION 5-3.1-118 (2) (c)
27 SHALL NOT APPLY TO THIS SECTION.

1 **SECTION 7. Repeal.** 5-3.1-108 (2), (5) (g) (I), and (5) (g) (IV),
2 Colorado Revised Statutes, are repealed as follows:

3 **5-3.1-108. Renewal - new loan - consecutive loans - payment**
4 **plan - definitions.** (2) ~~Upon renewal of a deferred deposit loan, the~~
5 ~~lender may assess additional finance charges not to exceed twenty percent~~
6 ~~of the first three hundred dollars loaned plus seven and one-half percent~~
7 ~~of any amount loaned in excess of three hundred dollars. If the deferred~~
8 ~~deposit loan is renewed prior to the maturity date, the lender shall refund~~
9 ~~to the consumer a prorated portion of the finance charge based upon the~~
10 ~~ratio of time left before maturity to the loan term.~~

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

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

15 (IV) ~~"Person related to" shall have the same meaning as in section~~
16 ~~5-1-301 (34) (b).~~

17 **SECTION 8.** 5-3.1-108 (3), Colorado Revised Statutes, is
18 amended to read:

19 **5-3.1-108. Renewal - new loan - consecutive loans - payment**
20 **plan - definitions.** (3) A transaction is completed when the lender
21 presents the instrument for payment or the consumer redeems the
22 instrument by paying the full amount of the instrument to the holder.
23 ~~Once the consumer has completed the deferred deposit transaction, the~~
24 ~~consumer may enter into a new deferred deposit agreement with the~~
25 ~~lender. If the consumer's instrument is dishonored by the payor financial~~
26 ~~institution after the transaction is complete and, before the lender receives~~
27 ~~a notice of dishonor, the lender makes a new loan that does not exceed the~~

1 maximum allowable loan, the lender shall not be in violation of the
2 maximum loan amount provisions in section 5-3.1-106.

3 **SECTION 9. Effective date - applicability.** (1) Section 6 of
4 this act shall take effect January 1, 2009.

5 (2) The remainder of this act shall take effect at 12:01 a.m. on the
6 day following the expiration of the ninety-day period after final
7 adjournment of the general assembly that is allowed for submitting a
8 referendum petition pursuant to article V, section 1 (3) of the state
9 constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008);
10 except that, if a referendum petition is filed against this act or an item,
11 section, or part of this act within such period, then the act, item, section,
12 or part, if approved by the people, shall take effect on the date of the
13 official declaration of the vote thereon by proclamation of the governor.

14 (3) Section 3 of this act applies to loans made on or after the
15 applicable effective date of this act.