

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 10-0284.02 Kristen Forrestal

HOUSE BILL 10-1351

HOUSE SPONSORSHIP

Ferrandino, Apuan, Curry, Gagliardi, Hullinghorst, Kerr A., McCann, Merrifield, Miklosi, Pace, Pommer, Ryden, Scanlan, Solano, Tyler, Vigil

SENATE SPONSORSHIP

Romer, Carroll M., Foster, Keller, Morse

House Committees
Judiciary

Senate Committees
Finance

SENATE
Am ended 3rd Reading
April 30, 2010

A BILL FOR AN ACT

101 **CONCERNING THE MAXIMUM AUTHORIZED INTEREST RATE FOR A**
102 **PAYDAY LOAN.**

SENATE
Am ended 2nd Reading
April 29, 2010

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

HOUSE
3rd Reading Unam ended
April 19, 2010

The bill limits the charge a lender may charge a consumer for a payday loan to 36% per year. The question of the allowable rate of interest will be referred to the electors of Colorado at the next general election.

HOUSE
Am ended 2nd Reading
April 15, 2010

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.

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

2 **SECTION 1. Legislative declaration.** The general assembly
3 finds and declares that payday lenders are charging more than an average
4 of three hundred percent interest annually and that excessive interest rates
5 can lead Colorado families into a debt trap of repeat borrowing. == ==

6 == Therefore, it is the intent of the general assembly to limit the
7 maximum authorized interest rate for a payday loan charged to a
8 consumer by a lender to a maximum rate of forty-five percent per year.

9 **SECTION 2.** The introductory portion to 5-3.1-102 (3) and
10 5-3.1-102 (5) (a), Colorado Revised Statutes, are amended, and the said
11 5-3.1-102 is further amended BY THE ADDITION OF A NEW
12 SUBSECTION, to read:

13 **5-3.1-102. Definitions.** As used in this article, unless the context
14 otherwise requires:

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

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

23 (5) (a) "Lender" means any person who offers, or makes a
24 deferred deposit loan, who arranges a deferred deposit loan for a third
25 party, or who acts as an agent for a third party, regardless of whether the
26 third party is exempt from licensing under this article or whether

1 approval, acceptance, or ratification by the third party is necessary to
2 create a legal obligation for the third party, THROUGH ANY METHOD
3 INCLUDING MAIL, TELEPHONE, INTERNET, OR ANY ELECTRONIC MEANS.

4 SECTION 3. 5-3.1-103, Colorado Revised Statutes, is amended
5 to read:

6 5-3.1-103. Written agreement requirements. Each deferred
7 deposit loan transaction and renewal shall be documented by a written
8 agreement signed by both the lender and consumer. The written
9 agreement shall contain the name of the consumer; the transaction date;
10 the amount of the instrument; the annual percentage rate charged; a
11 statement of the total amount of finance charges charged, expressed both
12 as a dollar amount and an annual percentage rate; and the name, address,
13 and telephone number of any agent or arranger involved in the
14 transaction. In addition, the written agreement shall include all
15 disclosures required by section 5-3-101 (2). The written agreement shall
16 set a date upon which the instrument may be deposited or negotiated.
17 There shall be no ~~minimum~~ MAXIMUM loan term or minimum finance
18 charge. The maximum loan term shall not be more than forty days after
19 the loan transaction date, and the maximum finance charge shall not
20 exceed the finance charge set forth in section 5-3.1-105. The due date
21 shall be set on or after the consumer's next payday or the date the
22 consumer is scheduled to receive benefits, a commission, or any other
23 payment; or after an income event for the consumer unless the consumer
24 voluntarily requests a shorter loan term, the consumer's request is
25 documented in a written statement signed and dated by the consumer and
26 is separate from the loan agreement, the written statement is retained by
27 the lender, and the loan cannot be renewed and shall be paid in cash or its

1 equivalent. THE MINIMUM LOAN TERM SHALL BE SIX MONTHS FROM THE
2 LOAN TRANSACTION DATE. THE LENDER SHALL ACCEPT PREPAYMENT
3 FROM A CONSUMER PRIOR TO THE LOAN DUE DATE AND SHALL NOT
4 CHARGE THE CONSUMER A PENALTY IF THE CONSUMER OPTS TO PREPAY
5 THE LOAN. A lender may hold an instrument and delay completion of the
6 transaction beyond the loan due date without any additional written
7 agreement or new disclosure, but the lender may not charge any
8 additional fees for holding the instrument or delaying the completion of
9 the transaction.

10 **SECTION 4.** 5-3.1-105, Colorado Revised Statutes, is amended
11 to read:

12 **5-3.1-105. Authorized interest rate.** A lender may charge a
13 finance charge for each deferred deposit loan OR PAYDAY LOAN that may
14 not exceed twenty percent of the first three hundred dollars loaned plus
15 seven and one-half percent of any amount loaned in excess of three
16 hundred dollars. Such charge shall be deemed fully earned as of the date
17 of the transaction. THE LENDER MAY ALSO CHARGE AN INTEREST RATE OF
18 FORTY-FIVE PERCENT PER ANNUM FOR EACH DEFERRED DEPOSIT LOAN OR
19 PAYDAY LOAN. IF THE LOAN IS PREPAID PRIOR TO THE MATURITY OF THE
20 LOAN TERM, THE LENDER SHALL REFUND TO THE CONSUMER A PRORATED
21 PORTION OF THE ANNUAL PERCENTAGE RATE BASED UPON THE RATIO OF
22 TIME LEFT BEFORE MATURITY TO THE LOAN TERM. IN ADDITION, THE
23 LENDER MAY CHARGE A MONTHLY MAINTENANCE FEE FOR EACH
24 OUTSTANDING DEFERRED DEPOSIT LOAN, NOT TO EXCEED SEVEN DOLLARS
25 AND FIFTY CENTS PER ONE HUNDRED DOLLARS LOANED, UP TO THIRTY
26 DOLLARS PER MONTH. THE MONTHLY MAINTENANCE FEE MAY BE
27 CHARGED FOR EACH MONTH THE LOAN IS OUTSTANDING THIRTY DAYS

1 AFTER THE DATE OF THE ORIGINAL LOAN TRANSACTION. The lender shall
2 charge only those charges authorized in this article in connection with a
3 deferred deposit loan.

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

6 **5-3.1-106. Maximum loan amount - right to rescind.** (1) A
7 lender shall not lend an amount greater than five hundred dollars nor shall
8 the amount financed exceed five hundred dollars by any one lender at any
9 time to a consumer. No instrument held as a result of a deferred deposit
10 loan shall exceed five hundred seventy-five dollars. NOTHING IN THIS
11 SUBSECTION (1) SHALL PRECLUDE A LENDER FROM MAKING MORE THAN
12 ONE LOAN TO A CONSUMER SO LONG AS THE TOTAL AMOUNT FINANCED
13 DOES NOT EXCEED FIVE HUNDRED DOLLARS AT ANY ONE TIME AND THERE
14 IS AT LEAST A THIRTY-DAY WAITING PERIOD BETWEEN LOANS.

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

17 **5-3.1-108. Renewal - new loan - consecutive loans - payment**
18 **plan - definitions.** (2) Upon renewal of a deferred deposit loan, the
19 lender may assess AN additional finance charges CHARGE not to exceed
20 twenty AN ANNUAL PERCENTAGE RATE OF FORTY-FIVE percent. of the first
21 three hundred dollars loaned plus seven and one-half percent of any
22 amount loaned in excess of three hundred dollars. If the deferred deposit
23 loan is renewed prior to the maturity date, the lender shall refund to the
24 consumer a prorated portion of the finance charge based upon the ratio of
25 time left before maturity to the loan term.

26 == ==
27 (5) (a) At the time of origination of a fourth consecutive deferred

1 deposit loan made to a consumer by a lender or an affiliate of the lender,
2 and at the time of origination of any subsequent consecutive deferred
3 deposit loans, the lender shall offer the consumer in writing the option to
4 participate in a voluntary payment plan.

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

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

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

22 (e) The lender may require the consumer to provide a post-dated
23 check or electronic authorization for funds transferred for each payment
24 due under the payment plan. If any check or electronic authorization
25 accepted by the lender is dishonored, the lender may not charge the
26 consumer a fee for the dishonored instrument.

27 (f) If the consumer fails to make payments in accordance with a

1 payment plan under paragraph (a) of this subsection (5), the lender is
2 entitled to take action as allowed under this article to collect the
3 remaining funds due and may charge the consumer a one-time default fee
4 of twenty-five dollars.

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

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

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

12 (i) "Lender's point of sale location" means:

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

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

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

17 (j) "Person related to" shall have the same meaning as in section
18 5-1-301 (34) (b).

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

21 **5-3.1-121. Unfair or deceptive practices.** (1) No person shall
22 engage in unfair or deceptive acts, practices, or advertising in connection
23 with a deferred deposit loan.

24 (2) A PERSON VIOLATES THE REQUIREMENTS OF THIS ARTICLE BY
25 ENGAGING IN ANY ACT THAT LIMITS OR RESTRICTS THE APPLICATION OF
26 THIS ARTICLE, INCLUDING MAKING LOANS DISGUISED AS PERSONAL
27 PROPERTY, PERSONAL SALES, AND LEASEBACK TRANSACTIONS OR BY

1 DISGUIISING LOAN PROCEEDS AS CASH REBATES FOR THE PRETEXTUAL
2 INSTALLMENT SALE OF GOODS AND SERVICES.

3 **SECTION 8. Act subject to petition - effective date -**
4 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
5 following the expiration of the ninety-day period after final adjournment
6 of the general assembly (August 11, 2010, if adjournment sine die is on
7 May 12, 2010); except that, if a referendum petition is filed pursuant to
8 section 1 (3) of article V of the state constitution against this act or an
9 item, section, or part of this act within such period, then the act, item,
10 section, or part shall not take effect unless approved by the people at the
11 general election to be held in November 2010 and shall take effect on the
12 date of the official declaration of the vote thereon by the governor.

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