A BILL FOR AN ACT

CONCERNING A LIMITATION ON A LENDER'S ABILITY TO COLLECT AGAINST A DEBTOR'S PERSONAL LIABILITY WHEN THE LOAN IS SECURED BY COLLATERAL.

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.)

The bill prohibits a creditor of a consumer loan and a credit union, savings and loan association, state bank, industrial bank, or mortgage lender from attempting to collect its debt from a debtor's personal liability under a secured loan that is in default unless the lender has first attempted...
to collect its debt from the collateral and the proceeds from the collateral are insufficient to fully repay the sum of the outstanding loan balance and the lender's allowable costs of collection, if any.

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

SECTION 1. Part 2 of article 3 of title 5, Colorado Revised Statutes, is amended by the addition of a new section to read:

5-3-211. Limitation on secured lending. (1) Unless a loan entered into prior to the effective date of this section explicitly provides otherwise, if a loan is secured by collateral and is in default, the creditor shall not attempt to collect its debt from the debtor's personal liability unless:

(a) The creditor has first attempted to collect its debt by taking lawful possession of, or foreclosing upon, the collateral; and

(b) The proceeds from the collateral are insufficient to fully repay the sum of the outstanding loan balance and the creditor's allowable costs of collection, if any.

SECTION 2. 11-30-116, Colorado Revised Statutes, is amended to read:

11-30-116. Loans. (1) A credit union may make loans to members subject to the provisions of this article and the bylaws of the credit union. A borrower may repay a loan in whole or in part any day the office of the credit union is open for business. A credit union may make loans to its own directors, credit officers, or members of its own supervisory committee or credit committee, but no such loan or aggregate of loans to any one director, credit officer, or committee member that
exceeds twenty thousand dollars plus pledged shares may be made unless approved by the board of directors.

(2) UNLESS A LOAN ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION (2) EXPLICITLY PROVIDES OTHERWISE, IF A LOAN MADE BY A CREDIT UNION IS SECURED BY COLLATERAL AND IS IN DEFAULT, THE CREDIT UNION SHALL NOT ATTEMPT TO COLLECT ITS DEBT FROM THE DEBTOR'S PERSONAL LIABILITY UNLESS:

(a) THE CREDIT UNION HAS FIRST ATTEMPTED TO COLLECT ITS DEBT BY TAKING LAWFUL POSSESSION OF, OR FORECLOSING UPON, THE COLLATERAL; AND

(b) THE PROCEEDS FROM THE COLLATERAL ARE INSUFFICIENT TO FULLY REPAY THE SUM OF THE OUTSTANDING LOAN BALANCE AND THE CREDIT UNION'S ALLOWABLE COSTS OF COLLECTION, IF ANY.

SECTION 3. 11-41-119, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-41-119. Loans to members and other loans. (14) UNLESS A LOAN ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION (14) EXPLICITLY PROVIDES OTHERWISE, IF A LOAN MADE BY AN ASSOCIATION IS SECURED BY COLLATERAL AND IS IN DEFAULT, THE ASSOCIATION SHALL NOT ATTEMPT TO COLLECT ITS DEBT FROM THE DEBTOR'S PERSONAL LIABILITY UNLESS:

(a) THE ASSOCIATION HAS FIRST ATTEMPTED TO COLLECT ITS DEBT BY TAKING LAWFUL POSSESSION OF, OR FORECLOSING UPON, THE COLLATERAL; AND

(b) THE PROCEEDS FROM THE COLLATERAL ARE INSUFFICIENT TO FULLY REPAY THE SUM OF THE OUTSTANDING LOAN BALANCE AND THE ASSOCIATION'S ALLOWABLE COSTS OF COLLECTION, IF ANY.
SECTION 4. 11-105-302, Colorado Revised Statutes, is amended to read:

11-105-302. Loans, acceptances, investments, and letters of credit. (1) A state bank may make such loans, secured or unsecured, accept such drafts, make such investments, and issue such letters of credit as shall be permissible pursuant to rules promulgated by the banking board or otherwise permitted by this code. In promulgating such rules, the banking board shall consider all relevant factors, including without limitation the policies set forth in section 11-101-102.

(2) UNLESS A LOAN ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION (2) EXPLICITLY PROVIDES OTHERWISE, IF A LOAN MADE BY A STATE BANK IS SECURED BY COLLATERAL AND IS IN DEFAULT, THE STATE BANK SHALL NOT ATTEMPT TO COLLECT ITS DEBT FROM THE DEBTOR'S PERSONAL LIABILITY UNLESS:

(a) THE STATE BANK HAS FIRST ATTEMPTED TO COLLECT ITS DEBT BY TAKING LAWFUL POSSESSION OF, OR FORECLOSING UPON, THE COLLATERAL; AND

(b) THE PROCEEDS FROM THE COLLATERAL ARE INSUFFICIENT TO FULLY REPAY THE SUM OF THE OUTSTANDING LOAN BALANCE AND THE STATE BANK’S ALLOWABLE COSTS OF COLLECTION, IF ANY.

SECTION 5. Part 7 of article 108 of title 11, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

11-108-702.5. Limitation on secured lending. (1) UNLESS A LOAN ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THIS SECTION EXPLICITLY PROVIDES OTHERWISE, IF A LOAN MADE BY AN INDUSTRIAL BANK IS SECURED BY COLLATERAL AND IS IN DEFAULT, THE INDUSTRIAL
BANK SHALL NOT ATTEMPT TO COLLECT ITS DEBT FROM THE DEBTOR'S PERSONAL LIABILITY UNLESS:

(a) THE INDUSTRIAL BANK HAS FIRST ATTEMPTED TO COLLECT ITS DEBT BY TAKING LAWFUL POSSESSION OF, OR FORECLOSING UPON, THE COLLATERAL; AND

(b) THE PROCEEDS FROM THE COLLATERAL ARE INSUFFICIENT TO FULLY REPAY THE SUM OF THE OUTSTANDING LOAN BALANCE AND THE INDUSTRIAL BANK'S ALLOWABLE COSTS OF COLLECTION, IF ANY.

SECTION 6. Part 9 of article 61 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

12-61-905.3. Limitation on secured lending. (1) UNLESS A RESIDENTIAL MORTGAGE LOAN ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THIS SECTION EXPLICITLY PROVIDES OTHERWISE, IF A RESIDENTIAL MORTGAGE LOAN MADE BY A MORTGAGE LENDER IS IN DEFAULT, THE MORTGAGE LENDER SHALL NOT ATTEMPT TO COLLECT ITS DEBT FROM THE DEBTOR'S PERSONAL LIABILITY UNLESS:

(a) THE MORTGAGE LENDER HAS FIRST ATTEMPTED TO COLLECT ITS DEBT BY TAKING LAWFUL POSSESSION OF, OR FORECLOSING UPON, THE DWELLING OR RESIDENTIAL REAL ESTATE; AND

(b) THE PROCEEDS FROM THE DWELLING OR RESIDENTIAL REAL ESTATE ARE INSUFFICIENT TO FULLY REPAY THE SUM OF THE OUTSTANDING LOAN BALANCE AND THE MORTGAGE LENDER'S ALLOWABLE COSTS OF COLLECTION, IF ANY.

SECTION 7. 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 10, 2011, if adjournment sine die is on
May 11, 2011); 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 2012 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 loan collection efforts
occurring on or after the applicable effective date of this act.