Colorado Revised Statutes 2017
TITLE 5

CONSUMER CREDIT CODE

Editor's note: When originally enacted in 1971, articles 1 through 3 and 4 through 6 were based upon the Uniform Consumer Credit Code promulgated by the National Conference of Commissioners on Uniform State Laws; however it has been substantially amended in subsequent years and was the subject of a major rewrite in the 2000 session based upon recommendations of the office of the attorney general.

ARTICLE 1

General Provisions and Definitions

Editor's note: This article was numbered as article 1 of chapter 73, C.R.S. 1963. This title was repealed and reenacted in 1971, and this article was subsequently repealed and reenacted in 2000, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

PART 1

SHORT TITLE, CONSTRUCTION,
GENERAL PROVISIONS

5-1-101. Short title. Articles 1 to 9 of this title shall be known and may be cited as the "Uniform Consumer Credit Code", referred to in said articles as the "code".

Source: L. 2000: Entire article R&RE, p. 1178, § 1, effective July 1.

Editor's note: This section is similar to former § 5-1-101, as it existed prior to 2000.

5-1-102. Purposes - rules of construction. (1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this code are:

(a) To simplify, clarify, and modernize the law governing retail installment sales, consumer credit, small loans, and usury;

(b) To provide rate ceilings to assure an adequate supply of credit to consumers;

(c) To further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;

(d) To protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;

(e) To permit and encourage the development of fair and economically sound consumer credit practices;

(f) To conform the regulation of consumer credit transactions to the policies of the federal "Truth in Lending Act" and the federal "Consumer Leasing Act"; and

(g) To make uniform the law, including administrative rules, among the various jurisdictions.

(3) A reference to a requirement imposed by this code includes reference to a related rule of the administrator adopted pursuant to this code.

Source: L. 2000: Entire article R&RE, p. 1178, § 1, effective July 1.

Editor's note: This section is similar to former § 5-1-102, as it existed prior to 2000.

Cross references: For the definitions and federal statutory cites of the "Truth in Lending Act" and the "Consumer Leasing Act", see § 5-1-302.

5-1-103. Supplementary general principles of law applicable. Unless displaced by the particular provisions of this code, the "Uniform Commercial Code" and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause, supplement the provisions of this code.

Source: L. 2000: Entire article R&RE, p. 1179, § 1, effective July 1.

Editor's note: This section is similar to former § 5-1-103, as it existed prior to 2000.

Cross references: For the "Uniform Commercial Code", see title 4.

5-1-104. Construction against implicit repeal. This code being a general act intended as a unified coverage of its subject matter, no part of it is deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Source: L. 2000: Entire article R&RE, p. 1179, § 1 effective July 1.

Editor's note: This section is similar to former § 5-1-104, as it existed prior to 2000.

5-1-105. Severability clause. If any provision of this code or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

Source: L. 2000: Entire article R&RE, p. 1179, § 1, effective July 1.

Editor's note: This section is similar to former § 5-1-105, as it existed prior to 2000.

5-1-106. Waiver - agreement to forego rights - settlement of claims. (1) Except as otherwise provided in this code, a consumer may not waive or agree to forego rights or benefits under this code.

(2) A claim by a consumer against a creditor for an excess charge, other violation of this code, or civil penalty, or a claim against a consumer for default or breach of a duty imposed by this code, if disputed in good faith, may be settled by agreement.

(3) A claim, whether or not disputed, against a consumer, may be settled for less value than the amount claimed.

(4) A settlement in which the consumer waives or agrees to forego rights or benefits under this code is invalid if the court as a matter of law finds the settlement to have been unconscionable at the time it was made. The competence of the consumer, any deception or coercion practiced upon the consumer, the nature and extent of the legal advice received by the consumer, and the value of the consideration are relevant to the issue of unconscionability.

Source: L. 2000: Entire article R&RE, p. 1179, § 1, effective July 1.

Editor's note: This section is similar to former § 5-1-107, as it existed prior to 2000.

5-1-107. Effect of code on powers of organizations. (1) This code prescribes maximum charges for all creditors extending consumer credit except lessors and those excluded in sections 5-1-202 and 5-2-213 (2)(b) and displaces existing limitations on the powers of those creditors based on maximum charges.

(2) With respect to sellers of goods or services, small loan companies, licensed lenders, consumer and sales finance companies, loan companies, and commercial banks and trust companies, this code displaces existing limitations on their powers based solely on amount or duration of credit.

(3) Except as provided in subsection (1) of this section, this code does not displace limitations on powers of credit unions, savings banks, savings and loan associations, or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

(4) Except as provided in subsections (1) and (2) of this section, this code does not displace:

(a) Limitations on powers of supervised financial organizations, as defined in section 5-1-301 (45), with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land, or other similar

restrictions designed to protect deposits; or

(b) Limitations on powers an organization is authorized to exercise under the laws of this state or the United States.

Source: L. 2000: Entire article R&RE, p. 1180, § 1, effective July 1. **L. 2013:** (2) amended, (SB 13-154), ch. 282, p. 1468, §19, effective July 1.

Editor's note: This section is similar to former § 5-1-108, as it existed prior to 2000.

PART 2

SCOPE AND JURISDICTION

5-1-201. Territorial application - definitions. (1) Except as otherwise provided in this section, this code applies to consumer credit transactions made in this state and to modifications, including refinancing, consolidations, and deferrals, made in this state, of consumer credit transactions, wherever made. For purposes of this code, a consumer credit transaction is made in this state if:

(a) A written agreement evidencing the obligation or offer of the consumer is received by the creditor in this state; or

(b) A consumer who is a resident of this state enters into the transaction with a creditor who has solicited or advertised in this state by any means, including but not limited to mail, brochure, telephone, print, radio, television, internet, or any other electronic means.

(2) Notwithstanding paragraph (b) of subsection (1) of this section, unless made subject to this code by agreement of the parties, a consumer credit transaction is not made in this state if a resident of this state enters into the transaction while physically present in another state.

(3) Part 1 of article 5 of this title and sections 5-3-104 and 5-3-105 apply to actions or other proceedings brought in this state to enforce rights arising out of a consumer credit transaction, or modification thereof, wherever made.

(4) If a consumer credit transaction, or modification thereof, is made in another state with a person who is a resident of this state when the consumer credit transaction or modification is made, the following provisions apply as though the transaction occurred in this state:

(a) A creditor, or assignee of the creditor's rights, may not collect charges through actions or other proceedings in excess of those permitted by this code; and

(b) A creditor, or assignee of the creditor's rights, may not enforce rights against the consumer that violate the provisions of this code on limitations on agreements and practices.

(5) Except as provided in subsection (3) of this section, a consumer credit transaction, or modification thereof, made in another state with a person who was not a resident of this state when the consumer credit transaction or modification was made is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

(6) For the purposes of this code, the "residence" of a consumer is the address given by the consumer as the consumer's residence in any writing provided by the consumer in connection

with a credit transaction. Until the consumer notifies the creditor of a new or different address, the given address is presumed to be unchanged.

(7) Notwithstanding other provisions of this section:

(a) Except as provided in subsection (3) of this section, this code does not apply if the consumer is not a resident of this state at the time of a credit transaction and the parties then agree that the law of the consumer's residence applies; and

(b) This code applies if the consumer is a resident of this state at the time of a credit transaction and the parties then agree that the law of this state applies.

(8) Except as provided in subsection (7) of this section, an agreement by a consumer is invalid with respect to consumer credit transactions, or modifications thereof, to which this code applies when such agreement provides that:

(a) The law of another state shall apply;

(b) The consumer consents to the jurisdiction of another state; or

(c) Venue is fixed.

(9) The following provisions of this code specify the applicable law governing certain cases:

(a) Section 5-6-102 on the powers and functions of the administrator; and

(b) Section 5-6-201 on notification and fees.

(10) For the purpose of subsection (1) of this section, "receive" means obtained as a result of physical delivery, transmission, or communication to one who has actual or apparent authority to act for the creditor in this state whether or not approval, acceptance, or ratification by any other agent or representative of such creditor in some other state is necessary to give legal consequence to the consumer credit transaction.

(11) Notwithstanding any other provision of this section, this code applies to any consumer insurance premium loan made to a resident of this state.

Source: L. 2000: Entire article R&RE, p. 1180, § 1, effective July 1.

Editor's note: This section is similar to former § 5-1-201, as it existed prior to 2000.

5-1-202. Exclusions. (1) This code does not apply to:

(a) Extensions of credit to government or governmental agencies or instrumentalities;

(b) Except as otherwise provided in article 4 of this title, the sale of insurance if there is no legal obligation to pay installments of the premium and the insurance may terminate or be canceled after nonpayment of an installment of the premium;

(c) Transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment;

(d) (I) With respect to contracts for purchase entered into by a pawnbroker, as the terms are defined in section 29-11.9-101, the rates and charges, and the disclosure of rates and charges, if the rates and charges do not exceed the fixed price permitted by section 29-11.9-101 (2). The exclusion in this subsection (1)(d)(I) applies to pawnbrokers who are:

(A) Licensed by a local licensing authority pursuant to section 29-11.9-102; or

(B) Regulated, with respect to rates and charges, by a local governing authority pursuant to section 29-11.9-102.

(II) The exclusion in subparagraph (I) of this paragraph (d) also applies to pawnbrokers authorized to make supervised loans under section 5-2-301 with respect to contracts for purchase; except that the exclusion does not apply to the disclosure of rates and charges of pawnbrokers authorized to make supervised loans.

(e) The disclosure of rates and charges in connection with transactions in securities and commodities accounts by a broker-dealer registered with the securities and exchange commission;

(f) Loans made, originated, disbursed, serviced, or guaranteed by an agency, instrumentality, or political subdivision of the state pursuant to article 3.1 of title 23, C.R.S.

Source: L. 2000: Entire article R&RE, p. 1182, § 1, effective July 1. **L. 2012:** IP(1) and (1)(d) amended, (HB 12-1328), ch. 218, p. 936, § 1, effective August 8. **L. 2017:** (1)(d)(I) amended, (SB 17-228), ch. 246, p. 1041, § 4, effective August 9.

Editor's note: This section is similar to former § 5-1-202, as it existed prior to 2000.

Cross references: For regulation of insurance agents, brokers, and representatives, see article 2 of title 10; for regulation of pawnbrokers, see article 56 of title 12; for regulation of securities brokers, see article 51 of title 11; for credit unions, see article 30 of title 11.

5-1-203. Jurisdiction and service of process. (1) The court of record of any judicial district in this state may exercise jurisdiction over any creditor with respect to any conduct in this state governed by this code or with respect to any claim arising from a transaction subject to this code. In addition to any other method provided by the Colorado rules of civil procedure or by statute, personal jurisdiction over a creditor may be acquired in a civil action or proceeding instituted in the court of record by the service of process in the manner provided by this section.

(2) If a creditor is not a resident of this state or is a corporation not authorized to do business in this state and engages in any conduct in this state governed by this code or engages in a transaction subject to this code, the creditor may designate an agent upon whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to do business in this state. The designation shall be in writing and filed with the secretary of state. If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the secretary of state, but service upon the secretary of state is not effective unless the plaintiff or petitioner forthwith mails a copy of the process and pleading by registered or certified mail to the defendant or respondent at his or her last reasonably ascertainable address. An affidavit of compliance with this section shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows.

Source: L. 2000: Entire article R&RE, p. 1183, § 1, effective July 1.

Editor's note: This section is similar to former § 5-1-203, as it existed prior to 2000.

PART 3

DEFINITIONS

5-1-301. General definitions. In addition to definitions appearing in subsequent articles, as used in this code, unless the context otherwise requires:

(1) "Actuarial method" means the method, defined by rules promulgated by the administrator in accordance with article 4 of title 24, C.R.S., of allocating payments made on a debt between the amount financed and finance charge pursuant to which a payment is applied first to the accumulated finance charge and the balance subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

(2) "Administrator" means the administrator designated in section 5-6-103.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

(4) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(5) "Amount financed" means the total of the following items to the extent that payment is deferred:

(a) In the case of a sale:

(I) The cash price of the goods, services, or interest in land, less the amount of any down payment whether made in cash or in property traded in; and

(II) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in;

(b) In the case of a loan:

(I) The net amount paid to, receivable by, or paid or payable for the account of the debtor; and

(II) The amount of any discount excluded from the finance charge described in paragraph (c) of subsection (20) of this section; and

(c) In the case of a sale or loan, to the extent that payment is deferred and the amount is not otherwise included in the cash price:

(I) Any applicable sales, use, excise, or documentary stamp taxes;

(II) Amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees; and

(III) Additional charges permitted by this code described in section 5-2-202.

(6) "Business day" means any calendar day except Sunday, New Year's day, the third Monday in January observed as the birthday of Dr. Martin Luther King, Jr., Washington-Lincoln

day, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving day, and Christmas day.

(7) (a) "Cash price" means, except as the administrator may otherwise prescribe by rule promulgated in accordance with article 4 of title 24, C.R.S., the price at which goods, services, or an interest in land is offered for sale by the seller to cash buyers in the ordinary course of business and may include the cash price of accessories or related services such as delivery, installation, servicing, repairs, alterations, modifications, and improvements and, if individually itemized, may also include:

(I) Applicable sales, use, and excise and documentary stamp taxes; and

(II) Amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees.

(b) The cash price stated by the seller to the buyer pursuant to the provisions on disclosure contained in section 5-3-101 is presumed to be the cash price.

(8) "Closing costs" with respect to a debt secured by an interest in land includes:

(a) Fees or premiums for title examination, title insurance, or similar purposes including surveys;

(b) Fees for preparation of a deed, settlement statement, or other documents;

(c) Escrows for future payments of taxes and insurance;

(d) Fees for notarizing deeds and other documents;

(e) Appraisal fees; and

(f) Credit reports.

(9) "Conspicuous" means a term or clause that is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court. A printed heading in capitals (as: WARRANTY) is conspicuous, and language in the body of the form is conspicuous if it is in larger or other contrasting type or color. In a telegram, any stated term is conspicuous.

(10) "Consumer" means a person other than an organization who is the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.

(11) (a) "Consumer credit sale" means, except as provided in paragraph (b) of this subsection (11), a sale of goods, services, a mobile home, or an interest in land in which:

(I) Credit is granted or arranged by a person who regularly engages as a seller in credit transactions of the same kind or pursuant to a seller credit card;

(II) The buyer is a person other than an organization;

(III) The goods, services, mobile home, or interest in land are purchased primarily for a personal, family, or household purpose;

(IV) Either the debt is by written agreement payable in installments or a finance charge is made; and

(V) With respect to a sale of goods or services, the amount financed does not exceed seventy-five thousand dollars.

(b) Unless the sale is made subject to this code by section 5-2-501, "consumer credit sale" does not include:

(I) A sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement;

(II) (A) Except as required by the federal "Truth in Lending Act" or the federal "Consumer Leasing Act" with respect to disclosure contained in section 5-3-101 and consumers' remedies for transactions secured by interests in land as contained in section 5-5-204, a sale of a mobile home or a sale of an interest in land if the finance charge does not exceed twelve percent per year calculated according to the actuarial method on the unpaid balances of the amount financed on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term or, notwithstanding the rate of the finance charge with respect to the sale of an interest in land, the sale is secured by a first mortgage or deed of trust lien against a dwelling to finance the acquisition of that dwelling.

(B) For the purposes of this subparagraph (II), "dwelling" means any improved real property or portion thereof that is used or intended to be used as a residence and contains not more than four dwelling units, and "first mortgage or deed of trust" means a mortgage or deed of trust having priority as a lien over the lien of any other mortgage or deed of trust on the same dwelling and subject to the lien of taxes levied on that dwelling.

(III) A sale for a business, investment, or commercial purpose; or

(IV) A sale primarily for an agricultural purpose.

(12) "Consumer credit transaction" means a consumer credit sale or consumer loan, or a refinancing or consolidation thereof, or a consumer lease.

(13) "Consumer insurance premium loan" means a consumer loan that:

(a) Is made for the sole purpose of financing the payment by or on behalf of an insured of the premium on one or more policies or contracts issued by or on behalf of an insurer;

(b) Is secured by an assignment by the insured to the lender of the unearned premium on the policy or contract; and

(c) Contains an authorization to cancel the policy or contract so financed.

(14) (a) "Consumer lease" means a lease of goods and includes any insurance incidental to the lease and any other services merely incidental to upkeep or repair of the goods:

(I) That a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, or household purpose;

(II) In which the amount payable under the lease does not exceed seventy-five thousand dollars; and

(III) That is for a term exceeding four months.

(b) "Consumer lease" does not include a lease made pursuant to a lender credit card or similar arrangement.

(15) (a) Except as provided in paragraph (b) of this subsection (15) and except with respect to a "loan primarily secured by an interest in land" as defined in subsection (26) of this section, "consumer loan" means a loan made or arranged by a person regularly engaged in the business of making loans in which:

(I) The consumer is a person other than an organization;

(II) The debt is incurred primarily for a personal, family, or household purpose;

(III) Either the debt is by written agreement payable in installments or a finance charge is made; and

(IV) Either the principal does not exceed seventy-five thousand dollars or the debt is

secured by an interest in land.

(b) Unless the loan is made subject to this code by an agreement described in section 5-2-501, "consumer loan" does not include:

(I) A loan for a business, investment, or commercial purpose;

(II) A loan primarily for an agricultural purpose; or

(III) A reverse mortgage as defined in section 11-38-102, C.R.S.

(c) Unless the loan is made subject to this code by an agreement described in section 5-2-501 and except as provided with respect to the disclosure described in section 5-3-101, consumers' remedies for transactions secured by interests in land as described in section 5-5-204, and powers and functions of the administrator under part 1 of article 6 of this title, "consumer loan" does not include a "loan primarily secured by an interest in land" as defined in subsection (26) of this section.

(16) "Credit" means the right granted by a creditor to a consumer to defer payment of debt or to incur debt and defer its payment.

(16.5) "Credit card" means a lender credit card or a seller credit card, except as otherwise provided in this code.

(17) "Creditor" means the seller, lessor, lender, or person who makes or arranges a consumer credit transaction and to whom the transaction is initially payable, or the assignee of a creditor's right to payment, but use of the term does not in itself impose on an assignee any obligation of his or her assignor. In case of credit granted pursuant to a credit card, "creditor" means the card issuer and not another person honoring the credit card.

(18) "Dwelling" means a residential structure or mobile home that contains one to four family housing units or individual units of condominiums or cooperatives.

(19) "Earnings" means compensation paid or payable to an individual or for the individual's account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, fees, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement, or disability program.

(20) "Finance charge" means:

(a) The sum of all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the consumer, the creditor, or any other person on behalf of the consumer to the creditor or to a third party, including any of the following types of charges that are applicable:

(I) Interest or any amount payable under a point, discount, or other system of charges, however denominated;

(II) Time-price differential, credit service, service, carrying, or other charge, however denominated;

(III) Premium, or other charge for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss; and

(IV) Charges incurred for investigating the collateral or credit-worthiness of the consumer or for commissions or brokerage for obtaining the credit.

(b) The term does not include charges as a result of default described in section 5-3-302, additional charges described in section

5-2-203, or deferral charges described in section 5-2-204.

(c) If a creditor makes a loan to a consumer by purchasing or satisfying obligations of the consumer pursuant to a credit card or similar arrangement and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the finance charge.

(21) "Goods" includes goods not in existence at the time the transaction is entered into and merchandise certificates but excludes money, chattel paper, documents of title, and instruments.

(22) "Investment purpose" means that the primary purpose of the credit sale or loan is for future financial gain rather than for a present personal, family, or household use.

(23) "Lender" includes an assignee of the lender's right to payment, unless otherwise provided in this code, but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(24) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a consumer the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

(a) By the lender's honoring a draft or similar order for the payment of money drawn or accepted by the consumer;

(b) By the lender's payment or agreement to pay the consumer's obligations; or

(c) By the lender's purchase from the obligee of the consumer's obligations.

(25) "Loan" includes:

(a) Except as otherwise provided in paragraph (b) of this subsection (25):

(I) The creation of debt by the lender's payment of or agreement to pay money to the consumer or to a third party for the account of the consumer;

(II) The creation of debt by a credit to an account with the lender upon which the consumer is entitled to draw immediately;

(III) The creation of debt pursuant to a lender credit card in any manner, including a cash advance or the card issuer's honoring a draft or similar order for the payment of money drawn or accepted by the consumer, paying or agreeing to pay the consumer's obligation, or purchasing or otherwise acquiring the consumer's obligation from the obligee or his or her assignees;

(IV) The forbearance of debt arising from a loan; and

(V) The creation of debt by a cash advance to a consumer pursuant to a seller credit card.

(b) "Loan" does not include:

(I) A card issuer's payment or agreement to pay money to a third person for the account of a consumer if the debt of the consumer arises from a sale or lease and results from use of a seller credit card; or

(II) The forbearance of debt arising from a sale or lease.

(26) (a) "Loan primarily secured by an interest in land" means a consumer loan secured by a mobile home or primarily secured by an interest in land if, at the time the loan is made the value of the collateral is substantial in relation to the amount of the loan, and:

(I) The rate of the finance charge does not exceed twelve percent per year calculated according to the actuarial method on the unpaid balances of the principal on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the

agreed term; or

(II) Notwithstanding the rate of the finance charge, and other than a precomputed loan as defined in subsection (35) of this section, the loan is secured by a first mortgage or deed of trust lien against a dwelling to:

(A) Finance the acquisition of that dwelling; or

(B) To refinance, by amendment, payoff, or otherwise, an existing loan made to finance the acquisition of that dwelling, including a refinance loan providing additional sums for any purpose whether or not related to acquisition or construction.

(b) As to any refinance loan in the form of a revolving loan account that is in whole or in part for purposes other than acquisition or construction, section 5-3-103 shall apply.

(c) With respect to loans secured by a first mortgage or deed of trust lien against a dwelling to refinance an existing loan to finance the acquisition of the dwelling and providing additional sums for any other purpose that are not subject to this code pursuant to paragraph (a) of this subsection (26), the lender shall disclose to the consumer that the refinance loan creates a lien against the dwelling or property and that the limits set forth in section 5-5-112 on the amount of attorney fees that a lender may charge the consumer are not applicable.

(d) For purposes of this subsection (26):

(I) A "loan secured by a first mortgage or deed of trust lien against a dwelling to finance the acquisition of the dwelling" includes a loan secured by a first mortgage or deed of trust lien against a dwelling to finance the original construction of such dwelling or to refinance any such construction loan;

(II) "Dwelling" means any improved real property, or portion thereof, that is used or intended to be used as a residence and contains not more than four dwelling units; and

(III) "First mortgage or deed of trust" means a mortgage or deed of trust having priority as a lien over the lien of any other mortgage or deed of trust on the same dwelling and subject to the lien of taxes levied on that dwelling.

(27) "Material disclosures" means the disclosure, as required by this code, of the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be financed, the total of payments, the number and amount of payments, and the due dates or periods of payments scheduled to repay the indebtedness.

(28) "Merchandise certificate" means a writing not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(29) "Mobile home" means a dwelling that is built on a chassis designed for long-term residential occupancy, that is capable of being installed in a permanent or semi-permanent location, with or without a permanent foundation, and with major appliances and plumbing, gas, and electrical systems installed but needing the appropriate connections to make them operable, and that may be occasionally drawn over the public highways, by special permit, as a unit or in sections to its permanent or semi-permanent location.

(30) "Official fees" means:

(a) Fees and charges prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit transaction; or

(b) Premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the consumer credit transaction if the premium does not exceed the fees and charges described in paragraph (a) of this subsection (30) that would otherwise be payable.

(31) "Organization" means a corporation, limited liability company, government or governmental subdivision or agency, trust, estate, partnership, limited liability partnership, cooperative, or association.

(32) "Payable in installments" means that payment is required or permitted by agreement to be made in more than four periodic payments, excluding a down payment. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit transaction is "payable in installments".

(33) "Person" includes a natural person or an individual and an organization.

(34) (a) "Person related to" means, with respect to an individual, the spouse of the individual; a brother, brother-in-law, sister, or sister-in-law of the individual; an ancestor or lineal descendant of the individual or the individual's spouse; and any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(b) "Person related to" means, with respect to an organization, a person directly or indirectly controlling, controlled by, or under common control with the organization; an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization; the spouse of a person related to the organization; and a relative by blood or marriage of a person related to the organization who shares the same home with such person.

(35) "Precomputed" means a consumer credit sale or consumer loan in which the debt is expressed as a sum comprising the amount financed and the amount of the finance charge computed in advance or in which any portion of the finance charge is prepaid and the amount of that portion of the finance charge either computed in advance or prepaid constitutes more than one-half of the total finance charge applicable to the consumer credit sale or consumer loan.

(36) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced that would support a finding of its nonexistence.

(37) "Regularly" has the same meaning as stated in the federal "Truth in Lending Act" and the federal "Consumer Leasing Act".

(38) "Revolving credit" means an arrangement pursuant to which:

(a) A creditor may permit a consumer, from time to time, to purchase or lease on credit from the creditor or to obtain loans from the creditor;

(b) The amounts financed and the finance and other appropriate charges are debited to an account;

(c) The finance charge, if made, is computed on the account periodically; and

(d) Either the consumer has the privilege of paying in full or in installments or the creditor periodically imposes charges computed on the account for delaying payment and permits the consumer to continue to purchase or lease on credit.

(39) "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his or her obligations under the agreement.

(40) "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

(41) "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(42) "Seller", except as otherwise provided, includes an assignee of the seller's right to payment, but use of the term does not in itself impose on an assignee any obligation of the seller with respect to events occurring before the assignment.

(43) "Seller credit card" means an arrangement pursuant to which a person gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person or from that person and any other person.

(44) "Services" includes:

(a) Work, labor, and other personal services;

(b) Privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like; and

(c) Insurance provided by a person other than the insurer.

(45) "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business:

(a) Organized, chartered, or holding an authorization certificate under the laws of any state or of the United States that authorize the person to make loans and to receive deposits, including a savings, share, certificate, or deposit account; and

(b) Subject to supervision by an official or agency of any state or of the United States.

(46) "Supervised lender" means a person authorized to make or take assignments of supervised loans under a license issued by the administrator or as a supervised financial organization.

(47) "Supervised loan" means a consumer loan, including a loan made pursuant to a revolving credit account, in which the rate of the finance charge exceeds twelve percent per year as determined according to the provisions on finance charges contained in section 5-2-201.

(48) "Written" or "in writing" means any record conveying information and that is in a form the consumer may retain, or is capable of being displayed in visual text in a form the consumer may retain, including paper, electronic, digital, magnetic, optical, and electromagnetic.

Source: L. 2000: Entire article R&RE, p. 1183, § 1, effective July 1; (17) amended, p. 443, § 2, effective July 1. **L. 2001:** (1), (5)(b)(II), (15)(a)(III), and (26)(c) amended, p. 27, § 1, effective March 9. **L. 2003:** (16.5) added, p. 1892, § 1, effective July 1. **L. 2004:** (11)(b)(II)(A) and (15)(c) amended, p. 1187, § 6, effective August 4.

Editor's note: (1) This section is similar to former § 5-1-301, as it existed prior to 2000.

(2) Subsection (17) was amended in Senate Bill 00-144. Those amendments were duplicated in § 5-1-301 (45)(a) as contained in the repeal and reenactment of article 1 of title 5 by House Bill 00-1185.

Cross references: (1) For additional definitions of the days under subsection (6) of this section, see § 24-11-101.

(2) For the definitions and federal statutory cites of the "Truth in Lending Act" and the "Consumer Leasing Act", see § 5-1-302.

5-1-302. Definitions - federal "Truth in Lending Act" and federal "Consumer Leasing Act". In this code, federal "Truth in Lending Act", 15 U.S.C. sec. 1601 et seq., and federal "Consumer Leasing Act", 15 U.S.C. sec. 1667 et seq., mean chapters of the "Consumer Credit Protection Act" (Public Law 90-321; 82 Stat. 146), as amended from time to time, and include regulations issued pursuant to those acts.

Source: L. 2000: Entire article R&RE, p. 1194, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 5-1-302, as it existed prior to 2000.

(2) "Consumer Leasing Act", referred to throughout this title, means the federal "Consumer Leasing Act of 1976", Pub.L. 94-240.

5-1-303. Index of definitions in code. Definitions in this code and the sections in which they appear are:

"Actuarial method"
section 5-1-301 (1)
"Administrator"
sections 5-1-301 (2)

and 5-6-103
"Agreement"
section 5-1-301 (3)
"Agricultural purpose"
section 5-1-301 (4)
"Amount financed"
section 5-1-301 (5)
"Business day"
section 5-1-301 (6)
"Cash price"
section 5-1-301 (7)
"Closing costs"

section 5-1-301 (8)
"Conspicuous"
section 5-1-301 (9)
"Consumer"
section 5-1-301 (10)
"Consumer credit insurance"
section 5-4-103 (1)
"Consumer credit sale"
section 5-1-301 (11)
"Consumer credit transaction"
section 5-1-301 (12)
"Consumer insurance premium loan"
section 5-1-301 (13)
"Consumer lease"
section 5-1-301 (14)
"Consumer loan"
section 5-1-301 (15)
"Credit"
section 5-1-301 (16)
"Credit card bank or
financial institution"
section 5-2-213 (1)
"Creditor"
section 5-1-301 (17)
"Credit Insurance Act"
section 5-4-103 (2)
"Dwelling"
section 5-1-301 (18)
"Earnings"
section 5-1-301 (19)
"Federal 'Truth in Lending Act'" and
"Federal 'Consumer Leasing Act'"
section 5-1-302
"Finance charge"
section 5-1-301 (20)
"Goods"
section 5-1-301 (21)
"Home solicitation sale"
section 5-3-401
"Investment purpose"
section 5-1-301 (22)
"Lender"
section 5-1-301 (23)

"Lender credit card or similar arrangement"
section 5-1-301 (24)
"Loan"
section 5-1-301 (25)
"Loan primarily secured by an interest in land"
section 5-1-301 (26)
"Material disclosures"
section 5-1-301 (27)
"Merchandise certificate"
section 5-1-301 (28)
"Mobile home"
section 5-1-301 (29)
"Official fees"
section 5-1-301 (30)
"Organization"
section 5-1-301 (31)
"Payable in installments"
section 5-1-301 (32)
"Person"
section 5-1-301 (33)
"Person related to"
section 5-1-301 (34)
"Precomputed"
section 5-1-301 (35)
"Presumed" or "Presumption"
section 5-1-301 (36)
"Receive"
section 5-1-201 (10)
"Regularly"
section 5-1-301 (37)
"Residence"
section 5-1-201 (6)
"Revolving credit"
section 5-1-301 (38)
"Sale of goods"
section 5-1-301 (39)
"Sale of an interest in land"
section 5-1-301 (40)
"Sale of services"
section 5-1-301 (41)
"Seller"

section 5-1-301 (42)
"Seller credit card"
section 5-1-301 (43)
"Services"
section 5-1-301 (44)
"Supervised financial organization"
section 5-1-301 (45)
"Supervised lender"
section 5-1-301 (46)
"Supervised loan"
section 5-1-301 (47)
"Written" or "In writing"
section 5-1-301 (48)

Source: L. 2000: Entire article R&RE, p. 1194, § 1, effective July 1.

Editor's note: This section is similar to former § 5-1-303, as it existed prior to 2000.

ARTICLE 2

Finance Charges and Related Provisions

Editor's note: This article was numbered as article 2 of chapter 73, C.R.S. 1963. This title was repealed and reenacted in 1971, and this article was subsequently repealed and reenacted in 2000, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

PART 1

GENERAL PROVISIONS

5-2-101. Short title. This article shall be known and may be cited as "Uniform Consumer Credit Code - Finance Charges and Related Provisions".

Source: L. 2000: Entire article R&RE, p. 1195, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-101, as it existed prior to 2000.

5-2-102. Scope. For purposes of this article, "consumer credit transaction" applies to consumer loans, including supervised loans, consumer credit sales, and refinancing and consolidations of these transactions but does not include consumer leases except for the charges and procedures in sections 5-2-202 and 5-2-203. The provisions concerning credit card surcharges contained in section 5-2-212 apply to all sales and leases.

Source: L. 2000: Entire article R&RE, p. 1195, § 1, effective July 1. **L. 2009:** Entire section amended, (HB 09-1141), ch. 41, p. 157, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-102, as it existed prior to 2000.

PART 2

MAXIMUM FINANCE CHARGES AND OTHER FEES AND CHARGES

5-2-201. Finance charge for consumer credit transactions. (1) With respect to a consumer loan other than a supervised loan, including a revolving loan, a lender may contract for and receive a finance charge calculated according to the actuarial method not exceeding twelve percent per year on the unpaid balance of the amount financed.

(2) With respect to a supervised loan or a consumer credit sale, except for a loan or sale pursuant to a revolving account, a supervised lender or seller may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding the equivalent of the greater of either of the following:

(a) The total of:

(I) Thirty-six percent per year on that part of the unpaid balances of the amount financed that is one thousand dollars or less;

(II) Twenty-one percent per year on that part of the unpaid balances of the amount financed that is more than one thousand dollars but does not exceed three thousand dollars; and

(III) Fifteen percent per year on that part of the unpaid balances of the amount financed that is more than three thousand dollars; or

(b) Twenty-one percent per year on the unpaid balances of the amount financed.

(3) (a) Except as provided in paragraph (b) of this subsection (3), the finance charge for a supervised loan or consumer credit sale pursuant to a revolving credit account, calculated according to the actuarial method, may not exceed twenty-one percent per year on the unpaid balance of the amount financed.

(b) Notwithstanding paragraph (a) of this subsection (3), if there is an unpaid balance on the date as of which the finance charge is applied, the creditor may contract for and receive a minimum finance charge not exceeding fifty cents.

(4) (a) Except as provided in paragraph (b) of this subsection (4), this section does not limit or restrict the manner of contracting for the finance charge, whether by way of add-on, discount, single annual percentage rate, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section.

(b) A seller or lender may contract for the payment by a consumer of a prepaid finance charge. In addition to any other disclosure required by this code, a seller or lender shall disclose to the consumer the amount of any such prepaid finance charge.

(c) If the consumer credit transaction is precomputed:

(I) The finance charge may be calculated on the assumption that all scheduled payments will be made when due;

(II) The effect of prepayment is governed by the provisions on rebate upon prepayment contained in section 5-2-211.

(5) Except as provided in subsection (8) of this section, the term of a consumer credit transaction, for the purposes of this section, commences on the date the consumer credit transaction is made. Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth of a month. Subject to classifications and differentiations the creditor may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(6) Subject to classifications and differentiations the creditor may reasonably establish, the creditor may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate this section if:

(a) When applied to the median amount within each range, it does not exceed the maximum permitted in this section; and

(b) When applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to paragraph (a) of this subsection (6) by more than eight percent of such rate.

(7) Notwithstanding the provisions of subsections (1), (2), and (3) of this section, the creditor, in connection with a consumer credit transaction other than a deferred deposit loan as defined in section 5-3.1-102 (3) or one pursuant to a revolving credit account, may contract for and receive a minimum loan finance charge of not more than twenty-five dollars.

(8) With respect to a consumer insurance premium loan, the term of the loan commences on the earliest inception date of a policy or contract of insurance on which payment of the premium is financed by the loan.

Source: L. 2000: Entire article R&RE, p. 1196, § 1, effective July 1. **L. 2001:** (4)(b) amended, p. 28, § 2, effective March 9. **L. 2003:** (7) amended, p. 1892, § 2, effective July 1.

Editor's note: This section is similar to former § 5-2-201, as it existed prior to 2000.

5-2-202. Additional charges. (1) In addition to the finance charge permitted by this article and in a consumer lease, a creditor may contract for and receive the following additional charges in connection with a consumer credit transaction:

(a) Official fees and taxes;

(b) Charges for insurance as described in subsection (3) of this section;

(c) Annual charges, payable in advance, for the privilege of using a credit card or similar arrangement;

(d) Charges for other benefits conferred on the consumer, including insurance, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, are of a type that is not for credit, and are authorized as permissible additional charges by rule adopted by the administrator;

(e) The following charges if agreed to by the parties:

(I) A charge, not to exceed the greater of two dollars or two and one-half percent of the amount advanced, for each cash advance transaction made pursuant to a credit card; and

(II) A fee, not to exceed twenty-five dollars, assessed upon return or dishonor of a check or other instrument tendered as payment.

(2) No finance charge may be assessed on any charge listed in paragraph (e) of subsection (1) of this section.

(3) An additional charge may be made for insurance written in connection with the transaction, other than insurance protecting the creditor against the consumer's default or other credit loss, if:

(a) With respect to insurance against loss of or damage to property or against liability, the creditor furnishes a clear and specific statement in writing to the consumer setting forth the cost of the insurance if obtained from or through the creditor and stating that the consumer may choose the person through whom the insurance is to be obtained; and

(b) With respect to consumer credit insurance providing life, accident, or health coverage, the insurance coverage is not a factor in the approval by the creditor of the extension of credit and this fact is clearly disclosed in writing to the consumer and if, in order to obtain the insurance in connection with the extension of credit, the consumer gives specific affirmative written indication of the consumer's desire to do so after written disclosure to the consumer of the cost thereof.

(4) With respect to a debt secured by an interest in land, bona fide and reasonable closing costs described in section 5-1-301 (8) are additional charges.

Source: L. 2000: Entire article R&RE, p. 1197, § 1, effective July 1. **L. 2002:** (1)(b) amended, p. 1012, § 2, effective June 1. **L. 2009:** IP(1) amended, (HB 09-1141), ch. 41, p. 157, § 2, effective July 1.

Editor's note: This section is similar to former § 5-2-202, as it existed prior to 2000.

5-2-203. Delinquency charges. (1) With respect to a consumer credit transaction, the parties may contract for a delinquency charge on any installment or minimum payment not paid in full within ten days after its scheduled due date in an amount not exceeding:

(a) Fifteen dollars for a transaction not secured by an interest in land; except that, if the transaction is precomputed, the amount may not exceed the greater of fifteen dollars or the deferral charge described in section 5-2-204 (1) that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent; or

(b) Five percent of the unpaid amount of the installment or minimum payment due for a transaction secured by an interest in land.

(2) A delinquency charge under this section may be collected only once on an installment

or minimum payment however long it remains in default. No delinquency charge may be collected if the installment or minimum payment has been deferred and a deferral charge described in section 5-2-204 has been paid or incurred until ten days after the deferred due date. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an installment or minimum payment that is paid in full within ten days after its scheduled installment due date even though an earlier maturing installment, minimum payment, or a delinquency charge on an earlier installment or minimum payment may not have been paid in full. For purposes of this subsection (3), payments are applied first to current installments or minimum payments due and then to delinquent installments or minimum payments due.

(4) (a) A creditor who has imposed a delinquency charge shall notify the consumer in writing of the amount of the delinquency charge assessed as follows:

(I) Before the due date of the next scheduled payment;

(II) If the creditor provides the consumer with periodic statements for each installment, on or with the next periodic statement provided to the consumer after the delinquency charge has been assessed; or

(III) For a revolving credit account for which a credit card is issued and that is not secured by an interest in land, before, on, or with the next periodic statement after the delinquency charge has been assessed.

(b) A creditor shall not assess a delinquency charge unless the delinquency charge is assessed within thirty days after the scheduled due date of any installment not paid in full or, for a revolving credit account for which a credit card is issued and that is not secured by an interest in land, within ninety days after the scheduled due date of the delinquent minimum payment.

(5) No finance charge may be assessed on any delinquency charge. For purposes of this section, for revolving credit, an installment is the minimum payment that the debtor is required to make during any billing cycle excluding any past-due amount from any previous billing cycle.

(6) If two installments or parts thereof of a precomputed transaction are in default for ten days or more, the creditor may elect to convert the transaction from a precomputed transaction to one in which the finance charge is based on unpaid balances, and the terms of the converted transaction shall be no less favorable to the consumer than the terms of the original transaction. In this event the creditor shall make a rebate pursuant to the provisions on rebate upon prepayment contained in section 5-2-211 as of the maturity date of the first delinquent installment and thereafter may make a finance charge as authorized by the provisions on finance charges. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge described in section 5-2-201. If the creditor proceeds under this subsection (6), any delinquency or deferral charges made with respect to installments due at or after the maturity date of the first delinquent installment shall be rebated and no further delinquency or deferral charges shall be made.

Source: L. 2000: Entire article R&RE, p. 1198, § 1, effective July 1. **L. 2007:** (4) amended, p. 842, § 1, effective May 14.

Editor's note: This section is similar to former § 5-2-203, as it existed prior to 2000.

5-2-204. Deferral charges. (1) With respect to a precomputed consumer credit transaction, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid installments, and the creditor may make and collect a charge not exceeding the rate previously stated to the consumer pursuant to the provisions on disclosure contained in section 5-3-101 applied to the amount or amounts deferred for the period of deferral calculated without regard to differences in the lengths of months, but proportionally for a part of a month, counting each day as one-thirtieth of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter.

(2) The creditor, in addition to the deferral charge, may make appropriate additional charges described in section 5-2-202, and the amount of these charges that is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

(3) The parties may agree in writing at the time of a precomputed consumer credit transaction that, if an installment is not paid within ten days after its due date, the creditor may unilaterally grant a deferral and make charges as provided in this section. No deferral charge may be made for a period after the date that the creditor elects to accelerate the maturity of the agreement.

(4) A delinquency charge made by the creditor on an installment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency.

(5) A deferral charge made according to this section is earned pro rata during the period in which no installment is scheduled to be paid by reason of the deferral and is fully earned on the last day of that period.

Source: L. 2000: Entire article R&RE, p. 1200, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-204, as it existed prior to 2000.

5-2-205. Finance charge on refinancing. (1) With respect to a consumer credit transaction, the creditor may by agreement with the consumer refinance the unpaid balance and may contract for and receive a finance charge based on the amount financed resulting from the refinancing at a rate not exceeding that permitted by the provisions on finance charges. For the purpose of determining the finance charge permitted, the amount financed resulting from the refinancing comprises the following:

(a) If the transaction was not precomputed, the total of the unpaid balance and the accrued charges on the date of the refinancing, or, if the transaction was precomputed, the amount that the consumer would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment contained in section 5-2-211 on the date of refinancing; except that, for the purpose of computing this amount, no minimum charge described in section 5-2-201 shall be allowed; and

(b) Appropriate additional charges described in section 5-2-202, payment of which is deferred.

Source: L. 2000: Entire article R&RE, p. 1200, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-205, as it existed prior to 2000.

5-2-206. Finance charge on consolidation. If a consumer owes an unpaid balance to a creditor with respect to a consumer credit transaction and becomes obligated on another consumer credit transaction with the same creditor, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer credit transaction was not precomputed, the parties may agree to add the unpaid amount of the amount financed and accrued charges on the date of consolidation to the amount financed with respect to the subsequent consumer credit transaction. If the previous consumer credit transaction was precomputed, the parties may agree to refinance the unpaid balance pursuant to the provisions on refinancing contained in section 5-2-205 and to consolidate the amount financed resulting from the refinancing by adding it to the amount financed with respect to the subsequent consumer credit transaction. In either case, the creditor may contract for and receive a finance charge based on the aggregate amount financed resulting from the consolidation at a rate not in excess of that permitted by the provisions on finance charges.

Source: L. 2000: Entire article R&RE, p. 1201, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-205, as it existed prior to 2000.

5-2-207. Prepaid finance charge. (1) Subject to the provisions of subsection (2) of this section, a creditor may contract for the payment by the consumer of a prepaid finance charge; except that the total finance charge contracted for and received by the creditor shall not exceed that permitted for consumer credit transactions.

(2) With respect to a refinancing pursuant to section 5-2-205 or consolidation pursuant to section 5-2-206 of a previous consumer credit transaction for which a prepaid finance charge was imposed, if said refinancing or consolidation is consummated within one year after the previous transaction, a new prepaid finance charge may be imposed:

(a) Only on that portion of the aggregate amount financed resulting from the refinancing or consolidation that exceeds the unpaid balance of the previous transaction determined in accordance with the provisions of section 5-2-205 or section 5-2-206, whichever is appropriate; or

(b) On the aggregate amount financed resulting from the refinancing or consolidation; except that any unearned portion of the prepaid finance charge imposed in connection with the previous transaction shall be rebated to the consumer in accordance with the actuarial method as defined in section 5-1-301 and applicable rules adopted by the administrator.

Source: L. 2000: Entire article R&RE, p. 1201, § 1, effective July 1.

Editor's note: This section is similar to former § 5-3-206.5, as it existed prior to 2000.

5-2-208. Conversion to revolving account. The parties may agree to add to a revolving

account the unpaid balance of a consumer credit transaction not made pursuant to a revolving account. The unpaid balance is an amount equal to the amount financed determined according to the provisions on refinancing contained in section 5-2-205.

Source: L. 2000: Entire article R&RE, p. 1201, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-207 (5), as it existed prior to 2000.

5-2-209. Advances to perform covenants of consumer. (1) If the agreement with respect to a consumer credit transaction contains covenants by the consumer to perform certain duties pertaining to insuring or preserving collateral, and the creditor pursuant to the agreement pays for performance of the duties on behalf of the consumer, the creditor may add the amounts paid to the debt if:

(a) The expenditure is reasonable to protect the risk of loss or damage to the property;

(b) The creditor has mailed to the consumer, at the consumer's last known address, written notice of the consumer's nonperformance and has given the consumer reasonable opportunity after such notice to so perform; and

(c) In the absence of performance, the creditor has made all expenditures on behalf of the consumer in good faith and in a commercially reasonable manner.

(2) Within a reasonable time after advancing any sums, the creditor shall state to the consumer in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule, and, if the duties of the consumer performed by the creditor pertain to insurance, a brief description of the insurance paid for by the creditor including the type and amount of coverage. No further information need be given.

(3) A finance charge may be made for sums advanced pursuant to this section at a rate not exceeding the rate stated to the consumer pursuant to the provisions on disclosure contained in section 5-3-101 with respect to the consumer credit transaction; except that, with respect to a revolving account, the amount of the advance may be added to the unpaid balance of the debt and the creditor may make a finance charge not exceeding that permitted by the provisions on finance charges.

Source: L. 2000: Entire article R&RE, p. 1202, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-208, as it existed prior to 2000.

5-2-210. Right to prepay. Subject to the provisions on rebate upon prepayment contained in section 5-2-211, the consumer may prepay in full, or in part if payment is no less than five dollars, the unpaid balance of a consumer credit transaction at any time without penalty. A payment in the amount of a scheduled installment, other than the last scheduled installment, not identified by the consumer as a partial prepayment shall not be deemed to be a partial prepayment regardless of when the payment is made if the amount equals the next scheduled installment. If such a payment is applied by the creditor to the scheduled installment, the payment shall be deemed to have been made on the due date for the scheduled installment to which it was

applied.

Source: L. 2000: Entire article R&RE, p. 1202, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-209, as it existed prior to 2000.

5-2-211. Rebate upon prepayment - definitions. (1) Except as otherwise provided in this section, upon prepayment in full of the unpaid balance of a precomputed consumer credit transaction, an amount not less than the unearned portion of the finance charge calculated according to this section shall be rebated to the consumer. If the rebate otherwise required is less than one dollar, no rebate need be made.

(2) Upon prepayment in full of a consumer credit transaction, other than one pursuant to a revolving account, a refinancing, or a consolidation, whether or not precomputed, the creditor may collect or retain a minimum charge within the limits stated in this subsection (2) if the finance charge earned at the time of prepayment is less than any minimum charge contracted for. The minimum charge may not exceed the lesser of the amount of finance charge contracted for or twenty-five dollars.

(3) (a) Except as otherwise provided in this section, the unearned portion of the finance charge is a fraction of the finance charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which prepayment occurs, and the denominator is the sum of all periodic balances under either the consumer credit agreement or, if the balance owing resulted from a refinancing described in section 5-2-205 or a consolidation described in section 5-2-206, under the refinancing agreement or consolidation agreement.

(b) With respect to a precomputed transaction entered into on or after October 28, 1975, and payable according to its original terms in more than sixty-one installments or on any precomputed transaction entered into on or after January 1, 1982, the unearned portion of the finance charge is, at the option of the lender, either:

(I) That portion that is applicable to all fully unexpired computational periods as originally scheduled, or if deferred, as deferred, that follow the date of prepayment. For this purpose, the applicable charge is the total of that which would have been made for each such period, had the consumer credit transaction not been precomputed, by applying to unpaid balances of the amount financed, according to the actuarial method, the annual percentage rate of charge previously stated to the consumer pursuant to the provisions on disclosure contained in section 5-3-101 based upon the assumption that all payments were made as originally scheduled, or if deferred, as deferred. The creditor, at the creditor's option, may round the annual percentage rate to the nearest one-half of one percent so long as such procedure is not consistently used to obtain a greater yield than would otherwise be permitted; or

(II) The total finance charge minus the earned finance charge. The earned finance charge shall be determined by applying the annual percentage rate previously stated to the consumer pursuant to the provisions on disclosure contained in section 5-3-101 according to the actuarial method to the actual unpaid balances for the actual time the balances were unpaid up to the date of prepayment. If a delinquency or deferral charge was collected, it shall be treated as a payment.

(c) In the case of a consumer credit transaction primarily secured by an interest in land,

reasonable sums actually paid or payable to persons not related to the creditor for customary closing costs included in the finance charge shall be deducted from the finance charge before the calculation prescribed by this subsection (3) is made.

(4) As used in this section, unless the context otherwise requires:

(a) "Computational period" means one month if one-half or more of the intervals between scheduled payments under the agreement is one month or more and otherwise means one week.

(b) The "interval" to the due date of the first scheduled installment or the final scheduled payment date is measured from the date of a consumer credit transaction and includes either the first or last day of the interval. If the interval to the due date of the first scheduled installment does not exceed one month by more than fifteen days when the computational period is one month or eleven days when the computational period is one week, the interval shall be considered as one computational period.

(c) "Periodic balance" means the amount scheduled to be outstanding on the last day of a computational period before deducting the payment, if any, scheduled to be made on that day.

(5) (a) This subsection (5) applies only if the schedule of payments is not regular.

(b) If the computational period is one month and:

(I) If the number of days in the interval to the due date of the first scheduled installment is less than one month by more than five days or more than one month by more than five but not more than fifteen days, the unearned finance charge shall be increased by an adjustment for each day by which the interval is less than one month and, at the option of the creditor, may be reduced by an adjustment for each day by which the interval is more than one month; the adjustment for each day shall be one-thirtieth of that part of the finance charge earned in the computational period prior to the due date of the first scheduled installment assuming that period to be one month; and

(II) If the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full month, the additional number of days shall be considered a computational period only if sixteen days or more. This subparagraph (II) applies whether or not subparagraph (I) of this paragraph (b) applies.

(c) Notwithstanding paragraph (b) of this subsection (5), if the computational period is one month, the number of days in the interval to the due date of the first installment exceeds one month by not more than fifteen days and the schedule of payments is otherwise regular, the creditor at the creditor's option may exclude the extra days and the charge for the extra days in computing the unearned finance charge; but if the creditor does so and a rebate is required before the due date of the first scheduled installment, the creditor shall compute the earned charge for each elapsed day as one-thirtieth of the amount the earned charge would have been if the first interval had been one month.

(d) If the computational period is one week and:

(I) If the number of days in the interval to the due date of the first scheduled installment is less than five days or more than nine days but not more than eleven days, the unearned finance charge shall be increased by an adjustment for each day by which the interval is less than seven days and, at the option of the creditor, may be reduced by an adjustment for each day by which the interval is more than seven days; the adjustment for each day shall be one-seventh of that part

of the finance charge earned in the computational period prior to the due date of the first scheduled installment assuming that period to be one week; and

(II) If the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full week, the additional number of days shall be considered a computational period only if four days or more. This subparagraph (II) applies whether or not subparagraph (I) of this paragraph (d) applies.

(6) Except as otherwise provided in paragraph (b) of subsection (3) of this section, if a deferral described in section 5-2-204 has been agreed to, the unearned portion of the finance charge is the portion thereof attributable according to the sum of the balances method to the period from the first day of the computational period following that in which prepayment occurs; except that the numerator of the fraction is the sum of the periodic balances, after rescheduling to give effect to any deferral, scheduled to follow the computational period in which prepayment occurs. A separate rebate of the deferral charge is not required unless the unpaid balance of the transaction is paid in full during the deferral period, in which event the creditor shall also rebate the unearned portion of the deferral charge.

(7) Except as otherwise provided in paragraph (b) of subsection (3) of this section, this section does not preclude the collection or retention by the creditor of delinquency charges described in section 5-2-203.

(8) If the maturity is accelerated for any reason and judgment is obtained, the consumer is entitled to the same rebate as if payment had been made on the date judgment is entered.

(9) Upon prepayment in full of a consumer credit transaction by the proceeds of consumer credit insurance described in section 5-4-103, the consumer or the consumer's estate is entitled to the same rebate as though the consumer had prepaid the agreement on the date the proceeds of the insurance are paid to the creditor but no later than ten business days after satisfactory proof of loss is furnished to the creditor.

Source: L. 2000: Entire article R&RE, p. 1203, § 1, effective July 1. **L. 2001:** IP(3)(b) and (5)(d)(I) amended, p. 28, § 3, effective March 9.

Editor's note: This section is similar to former § 5-2-210, as it existed prior to 2000.

5-2-212. Surcharges on credit transactions - prohibition. (1) Except as otherwise provided in sections 24-19.5-103 (3) and 29-11.5-103 (3), C.R.S., no seller or lessor in any sales or lease transaction or any company issuing credit or charge cards may impose a surcharge on a holder who elects to use a credit or charge card in lieu of payment by cash, check, or similar means. A surcharge is any additional amount imposed at the time of the sales or lease transaction by the merchant, seller, or lessor that increases the charge to the buyer or lessee for the privilege of using a credit or charge card. For purposes of this section, charge card includes those cards pursuant to which unpaid balances are payable on demand.

(2) A discount offered by a seller or lessor for the purpose of inducing payment by cash, check, or other means not involving the use of a seller or lender credit card shall not constitute a finance charge if such discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously in accordance with regulations of the

administrator.

Source: L. 2000: Entire article R&RE, p. 1206, § 1, effective July 1. **L. 2003:** (1) amended, p. 1442, § 3, effective April 29.

Editor's note: This section is similar to former § 5-3-110, as it existed prior to 2000.

5-2-213. Lender and seller credit cards. (1) For purposes of this section, "credit card bank or financial institution" means a commercial bank, credit union, thrift, savings and loan association, savings bank, or other state or federally supervised institution in this state that issues credit cards and may export rates and fees pursuant to the "National Bank Act", 12 U.S.C. sec. 85, "Depository Institutions Deregulation and Monetary Control Act of 1980", 12 U.S.C. secs. 1463, 1785, and 1831d, "Federal Credit Union Act", 12 U.S.C. sec. 1757, or "Alternative Mortgage Transaction Parity Act of 1982", 12 U.S.C. secs. 3801 to 3805, and any regulations under those acts.

(2) Notwithstanding any other provisions of this part 2, with respect to a lender or seller credit card issued by a credit card bank or financial institution:

(a) The finance charge, calculated according to the actuarial method, may not exceed the amounts provided in section 5-2-201; and

(b) Any fees imposed for a minimum finance charge described in section 5-2-201 (3)(b), annual charges described in section 5-2-202 (1)(c), cash advances described in section 5-2-202 (1)(e)(I), return or dishonor of a check described in section 5-2-202 (1)(e)(II), delinquency described in section 5-2-203, or exceeding the credit limit may be in an amount established by written agreement of the parties.

Source: L. 2000: Entire article R&RE, p. 1206, § 1, effective July 1. **L. 2013:** (1) amended, (SB 13-154), ch. 282, p. 1468, § 20, effective July 1.

Editor's note: This section is similar to former § 5-3-508, as it existed prior to 2000.

5-2-214. Alternative charges for loans not exceeding one thousand dollars. (1) For a consumer loan where the amount financed is not more than one thousand dollars, a supervised lender may charge, in lieu of the loan finance charges permitted by section 5-2-201, the following finance charges:

(a) An acquisition charge for making the original loan, not to exceed ten percent of the amount financed;

(a.5) An acquisition charge for making any refinanced loan, not to exceed seven and one-half percent of the amount financed; and

(b) A monthly installment account handling charge, not to exceed the following amounts:

Amount financed
Per month charge

$100.00 - $ 300
$12.50
$300.01 - $ 500
$15.00
$500.01 - $ 750
$17.50
$750.01 - $ 1,000
$20.00

(2) The minimum term of a loan made pursuant to this section shall be ninety days. The maximum term of a loan made pursuant to this section shall be twelve months. All loans shall be scheduled to be payable in substantially equal installments at equal periodic intervals.

(3) On a loan subject to the alternative charges authorized by this section, no other finance charge or any other charge or fee is permitted except as specifically provided for in this section and except for the delinquency charges provided for in section 5-2-203, reasonable attorney fees provided for in section 5-5-112, and the fee for a dishonored check provided for in section 5-2-202 (1)(e)(II).

(4) The acquisition charge authorized in this section shall be fully earned at the time the loan is made and shall not be subject to refund; except that, if the loan is prepaid in full, refinanced, or consolidated within the first sixty days, the first ten dollars of the acquisition charge shall be retained by the lender and the remainder of the acquisition charge shall be refunded at a rate of one-sixtieth of the remainder of the acquisition charge per day, beginning on the day after the date of the prepayment, refinancing, or consolidation and ending on the sixtieth day after the loan was made.

(5) Upon the prepayment of a loan made pursuant to this section, the unearned portion of the installment account handling charge shall be refunded to the consumer. The unearned portion of the installment account handling charge that is refunded shall be calculated pursuant to the provisions on rebate upon prepayment contained in section 5-2-211 on the date of refinancing; except that, for the purpose of computing this amount, no minimum charge described in section 5-2-201 shall be allowed.

(6) The rates and charges permitted by this section shall not apply to deferred deposit loans subject to article 3.1 of this title.

(7) A lender shall not take collateral from a consumer as security for payment for any loan made pursuant to this section.

(8) A lender may not refinance a loan made pursuant to this section more than three times in one year.

Source: L. 2004: Entire section added, p. 589, § 1, effective August 4. **L. 2007:** (1)(a) and (5) amended and (1)(a.5), (7), and (8) added, p. 711, §§ 1, 2, effective August 3.

PART 3

SUPERVISED LOANS AND
SUPERVISED LENDERS

5-2-301. Authority to make supervised loans. (1) Unless a person is a supervised financial organization or has first obtained a license from the administrator authorizing him or her to make supervised loans, he or she shall not engage in the business of:

(a) Making supervised loans or undertaking direct collection of payments from or enforcement of rights against consumers arising from supervised loans he or she has previously made; or

(b) Taking assignments of and undertaking direct collection of payments from or enforcement of rights against consumers arising from supervised loans; except that a person who is licensed by the administrator as a collection agency pursuant to article 16 of this title 5 or is licensed by the Colorado supreme court to practice law, and who takes assignment of supervised loans only after such loans are in default, is not required to obtain a supervised lender license to engage in the activities described in this subsection (1)(b).

Source: L. 2000: Entire article R&RE, p. 1206, § 1, effective July 1. **L. 2006:** (1)(b) amended, p. 530, § 1, effective April 18. **L. 2017:** (1)(b) amended, (HB 17-1238), ch. 260, p. 1170, § 6, effective August 9.

Editor's note: This section is similar to former § 5-3-502, as it existed prior to 2000.

5-2-302. License to make supervised loans. (1) The administrator shall receive and act on all applications for licenses to make supervised loans under this code. Applications shall be filed in the manner prescribed by the administrator and shall contain such information as the administrator may reasonably require. No license shall be issued without payment of a nonrefundable license fee. The license year shall be the calendar year.

(2) No license shall be issued unless the administrator, upon investigation, finds that the financial responsibility, character, and fitness of the applicant and of the members, managers, partners, officers, and directors thereof are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this code. In determining financial responsibility of an applicant proposing to engage in making consumer insurance premium loans, the administrator shall consider the liabilities the lender may incur for erroneous cancellation of insurance. The administrator may deny an application for licensure for any of the grounds provided in section 5-2-303.

(3) (a) Upon written request, the applicant is entitled to a hearing on the question of the applicant's qualifications for a license if:

(I) The administrator has notified the applicant in writing that his or her application has been denied; or

(II) The administrator has not issued a license within sixty days after the application for the license was filed.

(b) A request for a hearing may not be made more than sixty days after the administrator has mailed a writing to the applicant notifying the applicant that the application has been denied and stating in substance the administrator's findings supporting denial of the application.

(4) If a supervised lender has more than one place of business, it must obtain a master

license. The administrator may authorize the addition of branch locations to the master license. A separate license fee and proof of financial responsibility shall be required for each authorized branch location. Each master license and branch location license shall remain in full force and effect until surrendered, suspended, or revoked.

(5) (a) The application for approval of a branch location license may be more abbreviated than the application for a new or master supervised lender's license. An application for a branch location license may be filed by any means, including facsimile or electronic filing, followed by the license fee required by this section.

(b) Upon receipt of a completed branch location license application and the required license fee, the branch location is automatically licensed for a temporary period not to exceed one hundred twenty days. If the administrator does not deny the branch location application on or before the end of that period, the temporary branch location license shall become permanent. The administrator may deny an application for a branch location for any of the grounds provided in subsection (2) of this section and section 5-2-303.

(c) The administrator's approval of an additional branch location license may be provided by letter. No license certificate need be issued for a licensed branch location. All provisions of this part 3 relating to licenses apply equally to branch location licenses.

(6) No licensee shall change the location of any place of business or license without giving the administrator at least fifteen days prior written notice. The administrator may by rule promulgated in accordance with article 4 of title 24, C.R.S., establish an administrative fee for such a change of address.

(7) A licensee shall not engage in the business of making supervised loans at any place of business for which the licensee does not hold a license, nor shall a licensee engage in business under any other name than that in the license. The administrator may by rule establish an administrative fee for such a change of name. For the purposes of this subsection (7), a consumer insurance premium loan is made at the lender's business office.

(8) Each license shall be renewed by payment of a nonrefundable license fee and the filing of a renewal form. The fee and renewal form shall be due each January 31. If a licensee fails to pay the prescribed fee on or before March 1, it shall pay a penalty of five dollars per day per license from March 2 to the date the payment is postmarked. However, if a licensee fails to pay the appropriate renewal and penalty fees by March 15, its license shall automatically expire.

(9) (Deleted by amendment, L. 2009, (HB 09-1141), ch. 41, p. 157, § 3, effective January 1, 2010.)

Source: L. 2000: Entire article R&RE, p. 1207, § 1, effective July 1. **L. 2009:** (1), (8), and (9) amended, (HB 09-1141), ch. 41, p. 157, § 3, effective January 1, 2010.

Editor's note: This section is similar to former §§ 5-3-503 and 5-6-203, as they existed prior to 2000.

5-2-303. Denial and discipline of license. (1) The administrator may deny an application for a license or take disciplinary action against a person licensed to make supervised loans if the administrator finds that:

(a) The applicant or licensee has violated this code or any rule or order lawfully made pursuant thereto;

(b) Facts or conditions exist that would clearly have justified the administrator in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made;

(c) The applicant has failed to complete an application for licensure;

(d) The applicant or licensee has failed to provide information required by the administrator within a reasonable time as fixed by the administrator;

(e) The applicant or licensee has failed to provide or maintain proof of financial responsibility;

(f) The applicant or licensee is insolvent;

(g) The applicant or licensee has made, in any document or statement filed with the administrator, a false representation of a material fact or has omitted to state a material fact;

(h) The applicant, licensee, or its owners, partners, members, officers, or directors have been convicted of or entered a plea of guilty or nolo contendere to a crime specified in part 4 of article 4 of title 18, C.R.S., or in part 1, 2, 3, 5, or 7 of article 5 of title 18, C.R.S., to a crime involving fraud or deceit, or to any similar crime under the jurisdiction of any federal court or court of another state;

(i) The applicant or licensee has failed to make, maintain, or produce records which comply with section 5-2-304 and any regulation adopted by the administrator;

(j) The applicant or licensee has been the subject of any disciplinary action by any state or federal agency;

(k) A final judgment has been entered against the applicant or licensee for violations of this code, any state or federal law concerning consumer finance, banking, or mortgage brokers or lenders, or any state or federal law prohibiting deceptive or unfair trade or business practices; or

(l) The applicant or licensee has failed to, in a timely manner as fixed by the administrator, take or provide proof of the corrective action required by the administrator subsequent to an examination or investigation pursuant to section 5-2-305 or 5-6-106.

(2) The administrator may summarily suspend a license as provided in section 24-4-104, C.R.S.

(3) Whenever the administrator denies a license application or takes disciplinary action pursuant to this section, the administrator shall enter an order to that effect and notify the licensee or applicant of the denial or disciplinary action. The notification required by this subsection (3) shall be given by personal service or by mail to the last known address of the licensee or applicant as shown on the application, license, or as subsequently furnished in writing to the administrator.

(4) Any person holding a license to make supervised loans may relinquish the license by notifying the administrator in writing of its relinquishment. The revocation, suspension, expiration, or relinquishment of a license shall not affect the licensee's liability for acts previously committed nor impair the administrator's ability to issue a final agency order or impose discipline against the licensee.

(5) No revocation, suspension, or relinquishment of a license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any consumer.

(6) The administrator may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists that clearly would have justified the administrator in refusing to grant a license.

(7) After a finding of one or more of the conditions stated in subsection (1) of this section, the administrator may take any or all of the following actions:

(a) Deny an application for licensure including an application for a branch office license;

(b) Revoke the license;

(c) Suspend the license for a period of time;

(d) Issue an order to the licensee to cease and desist from such acts;

(e) Order the licensee to make refunds to consumers of excess charges under this code;

(f) Impose penalties of up to a maximum of one thousand dollars for each violation all or part of which may be specifically designated for consumer and creditor educational expenses;

(g) Bar the person from applying for or holding a license for a period of five years following revocation of his or her license;

(h) Issue a letter of admonition; or

(i) Impose a penalty of two hundred dollars per day for failure to make, produce, or retain records required to be maintained under this code within forty-eight hours after the administrator's written demand. If the administrator has provided advance written notice of forty-eight hours or more to a licensee prior to conducting an examination pursuant to section 5-2-305, the penalty may be imposed without allowing additional time.

(8) The discipline stated in paragraphs (h) and (i) of subsection (7) of this section may be imposed without a hearing, but the licensee may, within thirty days thereafter, file with the administrator a written notice requesting a hearing. If such request is timely made, the letter of admonition shall be deemed vacated and a hearing shall be held. If, after such hearing, there is a finding that one or more of the grounds for discipline exist, any or all of the forms of discipline listed in this section may be imposed.

Source: L. 2000: Entire article R&RE, p. 1209, § 1, effective July 1. **L. 2003:** (4) amended, p. 1892, § 3, effective July 1.

Editor's note: This section is similar to former §§ 5-3-503 and 5-3-504, as they existed prior to 2000.

5-2-304. Records - annual reports - proof of financial responsibility. (1) Every licensee shall maintain records in conformity with this code, rules adopted thereunder, and generally accepted accounting principles and practices in a manner that will enable the administrator to determine whether the licensee is complying with the provisions of this code. The record-keeping system of a licensee shall be sufficient if the licensee makes the required information reasonably available. The records need not be kept in the place of business where supervised loans are made if the administrator is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than four years after making the final entry relating to the loan, but, in the case of a revolving loan account, the four years is measured from the date of each entry.

(2) On or before June 1 of each year, every licensee shall file with the administrator an annual report in the form prescribed by the administrator relating to all supervised loans made by the licensee, which report shall also demonstrate satisfactory proof of the licensee's financial responsibility. At all other times, the licensee shall maintain satisfactory proof of financial responsibility. The administrator shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. Information contained in annual reports shall be confidential and may be published only in composite form. The administrator may, by rule, determine the types and amounts of financial responsibility deemed to be satisfactory.

(3) If a licensee fails to file the annual report or proof of financial responsibility by July 1, the administrator may impose a penalty of five dollars per day from July 2 to the date the filing is postmarked. However, if a licensee fails to file and pay the appropriate penalty by July 15, or, at all other times, fails to provide satisfactory proof of financial responsibility within thirty days after receiving notice from the administrator, its license shall automatically expire.

Source: L. 2000: Entire article R&RE, p. 1211, § 1, effective July 1. **L. 2003:** (2) and (3) amended, p. 1893, § 4, effective July 1.

Editor's note: This section is similar to former § 5-3-505, as it existed prior to 2000.

5-2-305. Examinations and investigations. (1) The administrator shall examine periodically, at intervals the administrator deems appropriate, the loans, business, and records of every licensee. In addition, for the purpose of discovering violations of this code or securing information lawfully required, the administrator or, in lieu thereof, the official or agency to whose supervision the organization is subject pursuant to section 5-6-105, may at any time investigate the loans, business, and records of any supervised lender or any supervised financial organization. For these purposes the administrator shall have free and reasonable access to the offices, places of business, and records of the lender.

(2) (a) If the lender's records are located outside this state, the lender shall, at the lender's option, either make them available to the administrator at a convenient location within this state or pay the reasonable and necessary expenses for the administrator or the administrator's representative to examine them at the place where they are maintained; except that the lender shall make the records available for examination at the administrator's office or at any other location the administrator deems appropriate, at the cost of the lender, if the administrator determines that the examination of the records at the location where the records are maintained endangers the safety of the administrator's representative or that there are not adequate facilities at the location where the records are maintained to conduct the examination. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the administrator's behalf.

(b) The administrator may require any lender whose records are located within the state to make its records available for examination at the administrator's office or at any other location the administrator deems appropriate at the cost of the lender if the administrator determines that the examination of the records at the location where the records are maintained endangers the

safety of the administrator's representative or that there are not adequate facilities at the location where the records are maintained to conduct the examination.

(3) For the purposes of this section, the administrator may administer oaths or affirmations, and, upon the administrator's own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(4) Upon failure without lawful excuse to obey a subpoena or to give testimony, the administrator may apply to the district court in the city and county of Denver for an order compelling compliance.

(5) After the administrator has examined a licensee pursuant to this section, the administrator shall provide a report of the examination to the licensee and request the licensee to take the corrective action required therein. The licensee shall, within a time and manner as fixed by the administrator, take the corrective action required in the report and provide proof that the corrective action was taken. The corrective action required may include refunds of excess charges and corrections of disclosures required by this code. This subsection (5) does not require the administrator to allow a licensee to take corrective action prior to the administrator filing legal or administrative action for repeated or willful violations of this code.

Source: L. 2000: Entire article R&RE, p. 1211, § 1, effective July 1.

Editor's note: This section is similar to former § 5-3-506, as it existed prior to 2000.

5-2-306. Administrative procedures - applicability. Except as otherwise provided, the provisions of sections 24-4-102 to 24-4-106, C.R.S., apply to and govern all rules promulgated and all administrative action taken by the administrator pursuant to this code; except that section 24-4-104 (3), C.R.S., shall not apply to any such action.

Source: L. 2000: Entire article R&RE, p. 1213, § 1, effective July 1.

Editor's note: This section is similar to former § 5-3-507, as it existed prior to 2000.

5-2-307. Judicial review. Any person aggrieved by any final action or order of the administrator and affected thereby is entitled to a review thereof by the court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S.

Source: L. 2000: Entire article R&RE, p. 1213, § 1, effective July 1.

Editor's note: This section is similar to former §§ 5-6-107 and 5-6-108, as they existed prior to 2000.

5-2-308. Regular schedule of payments - maximum loan term. (1) Supervised loans not made pursuant to a revolving credit account and in which the principal is three thousand dollars or less shall be scheduled to be payable in substantially equal installments at equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor and:

(a) Over a period of not more than thirty-seven months if the principal is more than one thousand dollars; or

(b) Over a period of not more than twenty-five months if the principal is one thousand dollars or less.

Source: L. 2000: Entire article R&RE, p. 1213, § 1, effective July 1.

Editor's note: This section is similar to former § 5-3-511, as it existed prior to 2000.

5-2-309. Conduct of business other than making loans. A supervised lender may not carry on any other business for the purpose of evasion or violation of this code nor may the supervised lender extend credit on the condition or requirement that the consumer obtain additional credit, goods, or services from the supervised lender or a person related to the supervised lender unless otherwise permitted by law.

Source: L. 2000: Entire article R&RE, p. 1213, § 1, effective July 1.

Editor's note: This section is similar to former § 5-3-512, as it existed prior to 2000.

Cross references: For regulation of pawnbrokers, see article 56 of title 12.

5-2-310. Application of other provisions. Except as otherwise provided, all provisions of this code applying to consumer loans apply to supervised loans.

Source: L. 2000: Entire article R&RE, p. 1213, § 1, effective July 1.

Editor's note: This section is similar to former § 5-3-513, as it existed prior to 2000.

PART 4

(Reserved)

PART 5

OTHER CREDIT TRANSACTIONS

5-2-501. Transactions subject to code by agreement of parties. The parties to a transaction other than a consumer credit transaction may agree in a writing signed by the parties

that the transaction is subject to the provisions of this code. If the parties so agree, the transaction is a consumer credit transaction for the purposes of this code.

Source: L. 2000: Entire article R&RE, p. 1213, § 1, effective July 1.

Editor's note: This section is similar to former § 5-3-601, as it existed prior to 2000.

5-2-502. Finance charge for other transactions. With respect to a transaction that is specifically exempt from the rate ceilings of this code by the provisions of section 5-1-301 (15)(c), the parties may contract for the payment by the consumer of any finance charge up to a rate not to exceed an annual percentage rate of forty-five percent pursuant to section 18-15-104, C.R.S. The rate of the finance charge shall be calculated on the unpaid balances of the debt on the assumption that the debt will be paid according to its terms and will not be paid before the end of the agreed term.

Source: L. 2000: Entire article R&RE, p. 1214, § 1, effective July 1.

Editor's note: This section is similar to former § 5-3-605, as it existed prior to 2000.

ARTICLE 3

Regulation of Agreements and Practices

Editor's note: This article was numbered as article 3 of chapter 73, C.R.S. 1963. This title was repealed and reenacted in 1971, and this article was subsequently repealed and reenacted in 2000, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

PART 1

DISCLOSURES, NOTICES, RECORDS, AND ADVERTISING

5-3-101. Applicability - information required. (1) For purposes of this section, a consumer credit transaction includes a transaction secured primarily by an interest in land without regard to the rate of the finance charge if the consumer credit transaction is otherwise a consumer credit transaction.

(2) The creditor shall disclose to the consumer to whom credit is extended with respect

to a consumer credit transaction the information, disclosures, and notices required by the federal "Truth in Lending Act", the federal "Consumer Leasing Act", and any regulation thereunder.

(3) The information, disclosures, and notices required by subsection (2) of this section must be provided if the transaction is a consumer credit transaction under this code even though the transaction is one of a class of credit transactions exempted from the federal "Truth in Lending Act", the federal "Consumer Leasing Act", and any regulation thereunder.

Source: L. 2000: Entire article R&RE, p. 1214, § 1, effective July 1. **L. 2001:** (1) amended, p. 28, § 4, effective March 9.

Editor's note: This section is similar to former § 5-2-301, as it existed prior to 2000.

Cross references: For the definitions and federal statutory cites of the "Truth in Lending Act" and the "Consumer Leasing Act", see § 5-1-302.

5-3-102. Notice of assignment. The consumer is authorized to pay the original creditor until the consumer receives notification of assignment of rights to payment pursuant to a consumer credit transaction and that payment is to be made to the assignee. A notification that does not reasonably identify the rights assigned is ineffective. If requested by the consumer, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless the assignee does so the consumer may pay the original creditor.

Source: L. 2000: Entire article R&RE, p. 1214, § 1, effective July 1.

Editor's note: This section is similar to former § 5-3-406, as it existed prior to 2000.

5-3-103. Change in terms of revolving credit accounts. (1) If a creditor makes a change in the terms of a revolving account without complying with this section, any additional cost or charge to the consumer resulting from the change is an excess charge and subject to the remedies available to consumers described in section 5-5-202 and to the administrator described in section 5-6-114.

(2) (a) Except as otherwise provided in paragraph (b) or (c) of this subsection (2), whenever any term of a revolving credit account is changed or the required minimum periodic payment thereon is increased, the creditor shall mail or deliver written notice of the change, at least one billing cycle before the effective date of the change, to each consumer who may be affected by the change.

(b) The notice required by paragraph (a) of this subsection (2) shall be given in advance, but need not be given one billing cycle in advance, if the change has been agreed to by the consumer or if the change is an increase in a finance charge, periodic rate, or other charge permitted under section 5-2-202 as a result of the consumer's delinquency or default.

(c) The notice otherwise required by paragraph (a) of this subsection (2) is not required if the change:

(I) Results from the consumer's delinquency or default but is not of a kind listed in

paragraph (b) of this subsection (2);

(II) Results from an agreement related to a court proceeding or arbitration;

(III) Is a reduction of any charge or component thereof; or

(IV) Is a suspension of future credit privileges or termination of a consumer credit transaction.

(3) The notice provisions of subsection (2) of this section shall not apply if:

(a) The consumer, after receiving notice in writing of the specific change, agrees in writing to the change;

(b) The consumer elects to pay an amount designated on a billing statement as including a new charge for a benefit offered to the consumer when the benefit and charge constitutes the change in terms and when the billing statement also states the amount payable if the new charge is excluded;

(c) The change involves no significant cost to the consumer; or

(d) The agreement provides limitations on changing of terms that are more restrictive than the requirements of subsection (2) of this section.

(4) The notice provided for in this section is given to the consumer when mailed to the consumer at the address used by the creditor for sending periodic billing statements.

Source: L. 2000: Entire article R&RE, p. 1214, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-416, as it existed prior to 2000.

5-3-104. Receipts - statements of account - evidence of payment. (1) The creditor shall deliver or mail to the consumer, without request, a written receipt for each payment by coin or currency on an obligation pursuant to a consumer credit transaction. A periodic statement showing a payment received by the creditor complies with this subsection (1).

(2) Upon written request of a consumer, the creditor of a consumer credit transaction, other than one pursuant to a revolving credit account, shall provide a written statement of the dates and amounts of payments made within the twelve months preceding the month in which the request is received and the total amount unpaid as of the end of the period covered by the statement. The statement shall be provided without charge twice during each year of the term of the obligation. If additional statements are requested, the creditor may charge not more than ten dollars for each additional statement.

(3) Within thirty days after a consumer has fulfilled all obligations with respect to a consumer credit transaction, other than one pursuant to a revolving credit account, the creditor shall deliver or mail to the consumer written evidence acknowledging payment in full of all obligations with respect to the transaction and written evidence of release of any security interest and termination of any financing statement held, retained, or acquired.

Source: L. 2000: Entire R&RE, p. 1216, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-110, as it existed prior to 2000.

5-3-105. Notice to cosigners and similar parties. (1) No natural person, other than the

spouse of the consumer, shall be obligated as a cosigner, comaker, guarantor, endorser, surety, or similar party with respect to a consumer credit transaction, unless before or contemporaneously with signing any agreement of obligation or any writing setting forth the terms of the consumer's agreement, the person receives a written notice that contains a completed identification of the debt he or she may have to pay and reasonably informs such person of his or her obligation with respect to it. Such written notice may be set forth in the consumer's agreement of obligation or in a separate writing. For purposes of this section, the word "cosigner", "comaker", "guarantor", "endorser", or "surety" means a natural person who, by agreement and without compensation, renders himself or herself liable for the obligation of another in a consumer credit transaction, and the terms "agreement" and "consumer's agreement" mean the original underlying agreement.

(2) The notice required by this section must be clear and conspicuous notice and comply with the disclosure requirements of 16 CFR 444.3, 12 CFR 227.14, or 12 CFR 535.3.

(3) The notice required by this section need not be given to a seller, lessor, or lender who is obligated to an assignee of his or her rights.

(4) A person entitled to notice pursuant to this section shall also be given a copy of any writing setting forth the terms of the consumer's agreement and of any separate agreement of obligation signed by the person entitled to the notice.

(5) A cosignor is entitled to a notice of right to cure pursuant to sections 5-5-110 (4) and 5-5-111 (3).

Source: L. 2000: Entire article R&RE, p. 1216, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 5-5-109, as it existed prior to 2000.

(2) Although this section was effective July 1, 2000, section 5 of chapter 265, Session Laws of Colorado 2000, provides that the disclosures described in subsection (5) are effective January 1, 2001.

5-3-106. Disclosures for real estate secured consumer credit transactions. (1) With respect to a real estate secured consumer credit transaction payable in installments, other than one pursuant to a revolving credit account, if the creditor credits payments made after the due date as of the date of receipt rather than the date payment was due, the creditor must clearly and conspicuously disclose to the consumer at or before the time that credit is extended the effect of untimely payments using language in substantially the following form:

"The dollar amount of the finance charge disclosed to you for this credit transaction is based upon your payments being received by the creditor on the date payments are due. If your payments are received after the due date, even if received before the date a late fee applies, you may owe additional and substantial money at the end of the credit transaction and there may be little or no reduction of principal. This is due to the accrual of daily interest until a payment is received."

(2) A creditor that makes or arranges for extensions of consumer loans secured by a dwelling and that uses credit scores for that purpose shall, upon request of the consumer, provide to the consumer to whom the credit report relates, as soon as practicable and reasonable, but in a

period not to exceed thirty days, a copy of the information specifically required to be disclosed pursuant to section 5-18-107 (1) in a form obtained from a consumer reporting agency as defined in section 5-18-103 (4). The creditor may charge a reasonable fee for making such information available to the consumer and such charge shall be an additional charge within the meaning of section 5-2-202 and not part of the finance charge.

(3) (a) Nothing in subsection (2) of this section shall require the creditor to:

(I) Explain to the consumer the information specifically required to be disclosed pursuant to section 5-18-107 (1);

(II) Disclose any information other than the information required pursuant to subsection (2) of this section;

(III) Disclose any credit score or related information obtained by the creditor after the transaction occurs; or

(IV) Provide more than one disclosure to any one consumer per credit transaction.

(b) The creditor's obligation pursuant to subsection (2) of this section and this subsection (3) shall be limited to providing a copy of the information that was received from a consumer reporting agency, as defined in section 5-18-103 (4). A creditor who uses a credit score has no liability under this subsection (3) or subsection (2) of this section for the content of the credit score information received from a consumer reporting agency or from the omission of any information within the report provided by the consumer reporting agency.

Source: L. 2000: Entire article R&RE, p. 1217, § 1, effective July 1. **L. 2001:** Entire section amended, p. 28, § 5, effective March 9. **L. 2002:** Entire section amended, p. 647, § 3, effective July 1, 2003. **L. 2003:** (1) amended, p. 1893, § 5, effective July 1. **L. 2017:** (2), (3)(a)(I), and (3)(b) amended, (HB 17-1238), ch. 260, p. 1170, § 7, effective August 9.

Editor's note: Although this section was effective July 1, 2000, section 5 of chapter 265, Session Laws of Colorado 2000, provides that the disclosures described in this section are effective January 1, 2001.

5-3-107. Disclosures for consumer credit sale secured by a motor vehicle. If the property that secures a consumer credit sale includes a motor vehicle and the written agreement does not provide for automobile liability insurance, the following clause shall be in the written agreement in capital letters and bold-face type: **"THIS CONTRACT DOES NOT PROVIDE FOR AUTOMOBILE LIABILITY INSURANCE, AND SAID BUYER ALSO STATES THAT HE OR SHE HAS/DOES NOT HAVE** (strike words not applicable) **IN EFFECT AN AUTOMOBILE LIABILITY POLICY AS DEFINED IN SECTION 42-7-103 (2), COLORADO REVISED STATUTES, ON THE MOTOR VEHICLE SOLD BY THIS CONTRACT."**

Source: L. 2000: Entire article R&RE, p. 1217, § 1, effective July 1. **L. 2009:** Entire section amended, (SB 09-292), ch. 369, p. 1939, § 4, effective August 5.

5-3-108. Written agreement required. No consumer credit transaction shall be valid or

enforceable in this state unless its terms are contained in a written agreement and a copy is provided to the consumer at or before the time credit is extended. A creditor may provide the copy to the consumer in a form other than paper upon the consumer's written authorization.

Source: L. 2000: Entire article R&RE, p. 1217, § 1, effective July 1.

5-3-109. Records. Every creditor shall maintain records in conformity with this code, rules adopted thereunder, and generally accepted accounting principles and practices in a manner that will establish that the creditor is complying with the provisions of this code. The record-keeping system of a creditor shall be sufficient if the creditor makes the required information reasonably available. The records pertaining to any credit transaction need not be preserved for more than four years after making the final entry relating to the transaction, but, in the case of a revolving credit account, the four years is measured from the date of each entry.

Source: L. 2000: Entire article R&RE, p. 1217, § 1, effective July 1.

5-3-110. Advertising. (1) A creditor may not advertise, print, display, publish, distribute, broadcast, transmit or cause to be advertised, printed, displayed, published, distributed, broadcast, or transmitted in any manner any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions of credit of a consumer credit transaction.

(2) This section imposes no liability on the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

(3) Advertising that complies with the federal "Truth in Lending Act" and the federal "Consumer Leasing Act" does not violate this section.

Source: L. 2000: Entire article R&RE, p. 1217, § 1, effective July 1.

Editor's note: This section is similar to former §§ 5-2-312 and 5-2-313, as they existed prior to 2000.

Cross references: For the definitions and federal statutory cites of the "Truth in Lending Act" and the "Consumer Leasing Act", see § 5-1-302.

5-3-111. Use of credit scores. Any provision in a contract that prohibits the disclosure of a credit score by a consumer reporting agency or a person who makes or arranges loans secured by a dwelling is void. For the purposes of this section, "dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence.

Source: L. 2002: Entire section added, p. 648, § 4, effective July 1, 2003.

PART 2

LIMITATIONS ON AGREEMENTS
AND PRACTICES

5-3-201. Security in sales or leases. (1) With respect to a consumer credit sale, a creditor may take a security interest in the property sold. In addition, a creditor may take a security interest in goods upon which services are performed or to which goods sold are annexed, or in land to which the goods are affixed or that is maintained, repaired, or improved as a result of the sale of the goods or services, if in the case of a security interest in land the debt secured is three thousand dollars or more, or in the case of a security interest in goods the debt secured is one thousand dollars or more. Except as provided with respect to cross-collateral described in section 5-3-202, a creditor may not otherwise take a security interest in property of the consumer to secure the debt arising from a consumer credit sale.

(2) With respect to a consumer lease, a creditor may not take a security interest in property of the consumer to secure the debt arising from the lease. This subsection (2) does not apply to a security deposit for a consumer lease.

(3) A security interest taken in violation of this section is void.

Source: L. 2000: Entire article R&RE, p. 1218, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-407, as it existed prior to 2000.

5-3-202. Cross-collateral. (1) In addition to contracting for a security interest pursuant to the provisions on security in sales or leases contained in section 5-3-201, a seller in a consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller has an existing security interest in the other property. The seller may also contract for a security interest in the property sold in the subsequent sale as security for the previous debt.

(2) If the seller contracts for a security interest in other property pursuant to this section, the rate of finance charge thereafter on the aggregate unpaid balances so secured may not exceed that permitted if the balances so secured were consolidated pursuant to the provisions on consolidation involving a refinancing contained in section 5-2-205 (1). The seller has a reasonable time after so contracting to make any adjustments required by this section. "Seller" in this section does not include an assignee not related to the original seller.

Source: L. 2000: Entire article R&RE, p. 1218, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-408, as it existed prior to 2000.

5-3-203. Debt secured by cross-collateral. (1) If debts arising from two or more consumer credit sales, other than sales pursuant to a revolving credit account, are secured by cross-collateral or consolidated into one debt payable on a single schedule of payments and the debt is secured by security interests taken with respect to one or more of the sales, payments

received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debts originally incurred with respect to each item are paid.

(2) Payments received by the seller upon a revolving credit account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

(3) If the debts consolidated arose from two or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt.

Source: L. 2000: Entire article R&RE, p. 1219, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-409, as it existed prior to 2000.

5-3-204. Restrictions on interest in land as security. (1) With respect to a consumer loan in which the amount financed is three thousand dollars or less, a lender may not contract for an interest in land as security. A security interest taken in violation of this section is void.

(2) For the purposes of this section, on revolving credit accounts, the amount financed shall be determined by the limit in the amount of credit made available to or for the account of the consumer if that limit is established by an express written agreement by the lender and if the lender does not retain the right to unilaterally reduce that credit limit, except in the event of default.

Source: L. 2000: Entire article R&RE, p. 1219, § 1, effective July 1.

Editor's note: This section is similar to former § 5-3-510, as it existed prior to 2000.

5-3-205. Use of multiple agreements. A creditor may not use multiple agreements with respect to a single consumer credit transaction for the purpose of obtaining a higher finance charge than would otherwise be permitted by this code or to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure and advertising. Dividing a single consumer credit transaction between a husband and wife shall be presumed to be a violation of this section. The excess amount of finance charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on the effect of violations on rights of parties contained in section 5-5-201 and the provisions on civil actions by the administrator contained in section 5-6-114.

Source: L. 2000: Entire article R&RE, p. 1219, § 1, effective July 1.

Editor's note: This section is similar to former §§ 5-2-402 and 5-3-409, as they existed prior to 2000.

5-3-206. No assignment of earnings. (1) A creditor may not take an assignment of earnings of the consumer for payment or as security for payment of a debt arising out of a consumer credit transaction. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the consumer.

(2) A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to him or her secured by an assignment of earnings.

Source: L. 2000: Entire article R&RE, p. 1220, § 1, effective July 1.

Editor's note: This section is similar to former §§ 5-2-410 and 5-3-403, as they existed prior to 2000.

5-3-207. Authorization to confess judgment prohibited. A consumer may not authorize any person to confess judgment on a claim arising out of a consumer credit transaction. An authorization in violation of this section is void.

Source: L. 2000: Entire article R&RE, p. 1220, § 1, effective July 1.

Editor's note: This section is similar to former §§ 5-2-415 and 5-3-407, as they existed prior to 2000.

5-3-208. Balloon payments. With respect to a consumer credit transaction other than one pursuant to a revolving credit account, if any scheduled payment is more than twice as large as the average of all other regularly scheduled payments, the consumer has the right to refinance the amount of that payment at the time it is due at the creditor's prevailing rates for such type of transaction if the consumer meets the creditor's normal credit standards and if the creditor is, at that time, in the business of making such transactions. The creditor shall disclose this right in writing to the consumer at the time the transaction is entered into. These provisions do not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the consumer. This section shall not apply to a transaction of a class defined by rule of the administrator promulgated in accordance with article 4 of title 24, C.R.S., as not requiring for the protection of the consumer his or her right to refinance as provided in this section.

Source: L. 2000: Entire article R&RE, p. 1220, § 1, effective July 1.

Editor's note: This section is similar to former §§ 5-2-405 and 5-3-402, as they existed prior to 2000.

5-3-209. Referral sales. With respect to a consumer credit sale or consumer lease, the

seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the consumer as an inducement for a sale or lease in consideration of the consumer giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount, or other value is contingent upon the occurrence of an event subsequent to the time the consumer agrees to buy or lease. If a consumer is induced by a violation of this section to enter into a consumer credit sale or consumer lease, the agreement is unenforceable by the seller or lessor and the consumer, at his or her option, may rescind the agreement or retain the goods delivered and the benefit of any services performed without any obligation to pay for them.

Source: L. 2000: Entire article R&RE, p. 1220, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-411, as it existed prior to 2000.

5-3-210. Discrimination prohibited. No consumer credit transaction regulated by this code shall be denied any person, nor shall terms and conditions be made more stringent, on the basis of discrimination, solely because of disability, race, creed, religion, color, sex, sexual orientation, marital status, national origin, or ancestry. This section shall not apply to any consumer credit transaction made or denied by a seller, lessor, or lender whose total original unpaid balances arising from consumer credit transactions for the previous calendar year are less than one million dollars.

Source: L. 2000: Entire article R&RE, p. 1220, § 1, effective July 1. **L. 2008:** Entire section amended, p. 1598, § 10, effective May 29.

Editor's note: This section is similar to former § 5-1-109, as it existed prior to 2000.

Cross references: (1) For civil liability for discrimination, see § 5-5-206; for discrimination generally, see article 34 of title 24.

(2) For the legislative declaration contained in the 2008 act amending this section, see section 1 of chapter 341, Session Laws of Colorado 2008.

PART 3

LIMITATIONS ON CONSUMERS' LIABILITIES

5-3-301. Restriction on liability in consumer lease. The obligation of a lessee upon expiration of a consumer lease, may not exceed twice the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property or for other default.

Source: L. 2000: Entire article R&RE, p. 1221, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-406, as it existed prior to 2000.

5-3-302. Limitation on default charges. Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer credit transaction may not provide for charges as a result of default by the consumer other than those authorized by this code. A provision in violation of this section is unenforceable.

Source: L. 2000: Entire article R&RE, p. 1221, § 1, effective July 1.

Editor's note: This section is similar to former §§ 5-2-414 and 5-3-405, as they existed prior to 2000.

5-3-303. Assignee subject to claims and defenses. (1) With respect to a consumer credit sale or consumer lease, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer against the seller or lessor arising from the sale or lease of goods or services, notwithstanding that the assignee is a holder in due course of a negotiable instrument issued in connection with the consumer credit sale or consumer lease.

(2) A claim or defense of a consumer specified in subsection (1) of this section may be asserted against the assignee under this section only to the extent of the amount owing to the assignee with respect to the sale or lease of the goods or services as to which the claim or defense arose at the time the assignee has written notice of the claim or defense.

(3) For the purpose of determining the amount owing to the assignee with respect to the sale or lease:

(a) Payments received by the assignee after the consolidation of two or more consumer credit sales, except pursuant to a revolving credit account, are deemed to have been first applied to the payment of the sales first made; if the sales consolidated arose from sales made on the same day, payments are deemed to have been first applied to the smallest sale; and

(b) Payments received upon a revolving credit account are deemed to have been first applied to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

(4) An agreement may not limit or waive the claims or defenses of a consumer under this section.

Source: L. 2000: Entire article R&RE, p. 1221, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-403, as it existed prior to 2000.

5-3-304. Use of account - constructive assent to terms. The use of a revolving credit account by a consumer, or by any person authorized by the consumer, constitutes the consumer's acceptance of the creditor's offer of credit and creates a binding contract on the creditor's terms then in effect. Such terms may be modified in the future as agreed by the parties and subject to the requirements of this article, including, but not limited to, the notice requirements of section 5-3-103.

Source: L. 2000: Entire article R&RE, p. 1222, § 1, effective July 1.

Editor's note: This section is similar to former §§ 5-2-417 and 5-3-411, as they existed prior to 2000.

5-3-305. Advance payment to reserve lodging and motor vehicle rental services - notice to consumer required. If a deposit, reservation fee, or other advance payment is to be charged to a revolving credit account for lodging or motor vehicle rental services to be provided in the future in this state, the seller shall not charge such advance payment to the consumer's account without first notifying the consumer, either orally or in writing, and giving the consumer the opportunity to reject the services.

Source: L. 2000: Entire article R&RE, p. 1222, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-418, as it existed prior to 2000.

PART 4

HOME SOLICITATION SALES

5-3-401. Definitions - "home solicitation sale". "Home solicitation sale" means a consumer credit sale of goods or services in which the seller or a person acting for the seller personally solicits the sale and the buyer's agreement or offer to purchase is given to the seller or a person acting for the seller at a residence. It does not include a sale made pursuant to a preexisting revolving credit account, a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, a transaction conducted and consummated entirely by mail or telephone, or a sale that is subject to the provisions of the federal "Truth in Lending Act" on the consumer's right to rescind certain transactions.

Source: L. 2000: Entire article R&RE, p. 1222, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-501, as it existed prior to 2000.

Cross references: For the definition and federal statutory cite of the "Truth in Lending Act", see § 5-1-302.

5-3-402. Buyer's right to cancel. (1) Except as provided in subsection (5) of this section, in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase that complies with this part 4.

(2) Cancellation occurs when the buyer gives written notice of cancellation to the seller

at the address stated in the agreement or offer to purchase.

(3) Notice of cancellation, if given by mail, is given when it is deposited in a mail box properly addressed and postage prepaid.

(4) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(5) The buyer may not cancel a home solicitation sale if, by separate dated and signed statement that is not as to its material provisions a printed form and describes an emergency requiring immediate remedy, the buyer requests the seller to provide goods or services without delay in order to safeguard the health, safety, or welfare of natural persons or to prevent damage to property the buyer owns or for which the buyer is responsible, and:

(a) The seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation; and

(b) In the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

Source: L. 2000: Entire article R&RE, p. 1222, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-502, as it existed prior to 2000.

5-3-403. Form of agreement or offer - statement of buyer's rights. (1) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller must present to the buyer, and obtain his signature to, a written agreement or offer to purchase that designates as the date of the transaction the date on which the buyer actually signs and contains a statement of the buyer's rights that complies with subsection (2) of this section. A copy of any writing required by this subsection (1) to be signed by the buyer, completed at least as to the date of the transaction and the name and mailing address of the seller, shall be given to the buyer at the time the buyer signs the writing.

(2) The statement shall comply with any notice of cancellation or a similar requirement of any trade regulation rule of the federal trade commission that by its terms applies to the home solicitation sale.

(3) Until the seller has complied with this section, the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of the buyer's intention to cancel; except that the buyer's right of cancellation shall expire three years after the date of the consummation of the home solicitation sale, notwithstanding the fact that the seller has not complied with this part 4.

Source: L. 2000: Entire article R&RE, p. 1223, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-503, as it existed prior to 2000.

5-3-404. Restoration of down payment. (1) Within ten days after a notice of cancellation has been received by the seller or an offer to purchase has been otherwise revoked,

the seller shall tender to the buyer any payments made by the buyer, any note or other evidence of indebtedness, and any goods traded in. A provision permitting the seller to keep all or any part of any goods traded in, payment, note, or other evidence of indebtedness is in violation of this section and unenforceable.

(2) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) Until the seller has complied with the obligations imposed by this section, the buyer may retain possession of goods delivered to the buyer by the seller and has a lien on the goods in the buyer's possession or control for any recovery to which the buyer is entitled.

Source: L. 2000: Entire article R&RE, p. 1223, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-504, as it existed prior to 2000.

5-3-405. Duty of buyer - no compensation for services prior to cancellation. (1) Except as provided by the provisions on retention of goods by the buyer contained in section 5-3-404 (3) and allowing for ordinary wear and tear or consumption of the goods contemplated by the transaction, within a reasonable time after a home solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale, but the buyer is not obligated to tender at any place other than the buyer's residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this section, forty days is presumed to be a reasonable time.

(2) The buyer has a duty to take reasonable care of the goods in his or her possession before cancellation or revocation and for a reasonable time thereafter during which time the goods are otherwise at the seller's risk.

(3) If a home solicitation sale is canceled, the seller is not entitled to compensation for any services the seller performed pursuant to it.

Source: L. 2000: Entire article R&RE, p. 1224, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-505, as it existed prior to 2000.

PART 5

CONSUMER INSURANCE PREMIUM FINANCING

5-3-501. Scope. The provisions of this part 5 apply to consumer insurance premium loans.

Source: L. 2000: Entire article R&RE, p. 1224, § 1, effective July 1.

Editor's note: This section is similar to former § 5-7-101, as it existed prior to 2000.

5-3-502. Form of insurance premium loan agreement. An agreement pursuant to which a consumer insurance premium loan is made shall contain the names of the insurance agent or broker negotiating each policy or contract and of the insurer issuing each policy or contract, the number and inception date of and premium for each policy or contract, the date on which the term of the loan begins, and a clear and conspicuous notice that each policy or contract may be canceled if payment is not made in accordance with the agreement. If a policy or contract has not been issued by the time the agreement is signed, the agreement may provide that the insurance agent or broker may insert the appropriate information in the agreement and, if he or she does so, shall furnish the information promptly in writing to the insured.

Source: L. 2000: Entire article R&RE, p. 1224, § 1, effective July 1.

Editor's note: This section is similar to former § 5-7-102, as it existed prior to 2000.

5-3-503. Notice of cancellation. If a default exists on a consumer insurance premium loan and any right to cure that exists has expired without cure being effected, the lender may give notice of cancellation of each insurance policy or contract to be canceled. If given, the notice of cancellation shall be in writing and given to the insurer who issued the policy or contract and to the insured. The insurer, within two business days after receipt of the notice of cancellation together with a copy of the insurance premium loan agreement if not previously given to the insurer, shall give any notice of cancellation required by the policy, contract, or law and, within ten business days after the effective date of the cancellation, pay to the lender any premium unearned on the policy or contract as of that effective date. Within ten business days after receipt of the unearned premium, the lender shall pay to the consumer indebted upon the insurance premium loan any excess of the unearned premium received over the amount owing by the consumer upon the insurance premium loan.

Source: L. 2000: Entire article R&RE, p. 1224, § 1, effective July 1.

Editor's note: This section is similar to former § 5-7-103, as it existed prior to 2000.

ARTICLE 3.1

Deferred Deposit Loan Act

Law reviews: For article, "Borrowing from Peter to Pay Paul: A Statistical Analysis of Colorado's Deferred Deposit Loan Act", see 83 Den. U.L. Rev. 387 (2005).

5-3.1-101. Short title. This article shall be known and may be cited as the "Deferred

Deposit Loan Act".

Source: L. 2000: Entire article added, p. 439, § 1, effective July 1.

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

(1) "Administrator" means the administrator of the "Uniform Consumer Credit Code".

(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.

(2) "Consumer" means a person other than an organization who is the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.

(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" or "payday 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;

(b) Agrees to hold the instrument for a period of time prior to negotiation or deposit of the instrument; and

(c) Pays to the consumer, credits to the consumer's account, or pays to another person on the consumer's behalf the amount of the instrument, less finance charges permitted by section 5-3.1-105.

(4) "Instrument" means a personal check or authorization to transfer or withdraw funds from an account signed by the consumer and made payable to a person subject to this article.

(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 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.

(b) Lender includes, but is not limited to, a supervised financial organization as defined in section 5-1-301 (45).

(c) Notwithstanding that a bank, saving and loan association, credit union, or supervised lender may be exempted by federal law from this code's interest rate, finance charges, and licensure provisions, all other applicable provisions of this code apply to both a deferred deposit loan and a deferred deposit lender.

(6) "Loan amount" means the amount financed as defined in regulation z of the federal "Truth in Lending Act", 12 CFR 226.18 (b), as amended, or as supplemented by this code, articles 1 to 9 of this title.

Source: L. 2000: Entire article added, p. 439, § 1, effective July 1. **L. 2001:** (5)(b) amended, p. 29, § 6, effective March 9. **L. 2004:** (2.5) added and (3) (a) amended, p. 317, § 1, effective July 1. **L. 2010:** (1.5) added and IP(3) and (5)(a) amended, (HB 10-1351), ch. 267, p. 1221, § 2, effective August 11.

Cross references: For the legislative declaration in the 2010 act adding subsection (1.5) and amending the introductory portion to subsection (3) and subsection (5)(a), see section 1 of chapter 267, Session Laws of Colorado 2010.

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 maximum loan term or minimum finance charge. 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.

Source: L. 2000: Entire article added, p. 440, § 1, effective July 1. **L. 2001:** Entire section amended, p. 29, § 7, effective March 9. **L. 2003:** Entire section amended, p. 1893, § 6, effective July 1. **L. 2004:** Entire section amended, p. 317, § 2, effective July 1. **L. 2010:** Entire section amended, (HB 10-1351), ch. 267, p. 1222, § 3, effective August 11.

Cross references: For the legislative declaration in the 2010 act amending this section, see section 1 of chapter 267, Session Laws of Colorado 2010.

5-3.1-104. Notice to consumers. A lender shall provide the following notice in a prominent place on each loan agreement in at least ten-point type:

A DEFERRED DEPOSIT LOAN IS NOT INTENDED TO MEET LONG-TERM FINANCIAL NEEDS.
A DEFERRED DEPOSIT LOAN SHOULD BE USED ONLY TO MEET SHORT-TERM CASH NEEDS.
RENEWING THE DEFERRED DEPOSIT LOAN RATHER THAN PAYING THE DEBT IN FULL WILL REQUIRE ADDITIONAL FINANCE CHARGES.

Source: L. 2000: Entire article added, p. 440, § 1, effective July 1.

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.

Source: L. 2000: Entire article added, p. 441, § 1, effective July 1. **L. 2010:** Entire section amended, (HB 10-1351), ch. 267, p. 1222, § 4, effective August 11.

Cross references: For the legislative declaration in the 2010 act amending this section, see section 1 of chapter 267, Session Laws of Colorado 2010.

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. 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.

(2) A consumer shall have the right to rescind the deferred deposit loan on or before 5 p.m. the next business day following the loan transaction.

Source: L. 2000: Entire article added, p. 441, § 1, effective July 1. **L. 2004:** (1) amended, p. 318, § 3, effective July 1. **L. 2010:** (1) amended, (HB 10-1351), ch. 267, p. 1223, § 5, effective August 11.

Cross references: For the legislative declaration in the 2010 act amending subsection (1), see section 1 of chapter 267, Session Laws of Colorado 2010.

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

STATE LAW PROHIBITS DEFERRED DEPOSIT LOANS EXCEEDING FIVE HUNDRED DOLLARS ($500) TOTAL DEBT PLUS APPLICABLE FINANCE CHARGES PERMITTED BY LAW FROM A DEFERRED DEPOSIT LENDER. EXCEEDING THIS AMOUNT MAY CREATE FINANCIAL HARDSHIPS FOR YOU AND YOUR FAMILY. YOU HAVE THE

RIGHT TO RESCIND THIS TRANSACTION BY 5 P.M. THE NEXT BUSINESS DAY FOLLOWING THIS TRANSACTION.

Source: L. 2000: Entire article added, p. 441, § 1, effective July 1. **L. 2001:** Entire section amended, p. 29, § 8, effective March 9.

5-3.1-108. Renewal - new loan - consecutive loans - payment plan - definitions. (1) A deferred deposit loan shall not be renewed more than once. After such renewal, the consumer shall pay the debt in cash or its equivalent. If the consumer does not pay the debt, then the lender may deposit the consumer's instrument.

(2) Upon renewal of a deferred deposit loan, the lender may assess an additional finance charge not to exceed an annual percentage rate of forty-five percent. 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.

(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.

(4) Nothing in this section prohibits a lender from refinancing a deferred deposit loan as a supervised loan subject to the provision of this code, articles 1 to 9 of this title; except that the lender may not contract for or receive the minimum finance charge contained in section 5-2-201 (7).

(5) (Deleted by amendment, L. 2010, (HB 10-1351), ch. 267, p. 1223, § 6, effective August 11, 2010.)

Source: L. 2000: Entire article added, p. 441, § 1, effective July 1. **L. 2001:** (4) amended, p. 29, § 9, effective March 9. **L. 2004:** (3) amended, p. 318, § 4, effective July 1. **L. 2007:** (5) added, p. 384, § 1, effective July 1. **L. 2010:** (2) and (5) amended, (HB 10-1351), ch. 267, p. 1223, § 6, effective August 11.

Cross references: For the legislative declaration in the 2010 act amending subsections (2) and (5), see section 1 of chapter 267, Session Laws of Colorado 2010.

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, 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.

Source: L. 2000: Entire article added, p. 442, § 1, effective July 1. **L. 2004:** Entire section amended, p. 318, § 5, effective July 1.

5-3.1-110. Endorsement of instrument. A lender shall not negotiate or present an instrument for payment unless the instrument is endorsed with the actual business name of the lender.

Source: L. 2000: Entire article added, p. 442, § 1, effective July 1.

5-3.1-111. Redemption of instrument. Prior to the lender negotiating or presenting the instrument, the consumer shall have the right to redeem any instrument held by a lender as a result of a deferred deposit loan if the consumer pays the full amount of the instrument to the lender.

Source: L. 2000: Entire article added, p. 442, § 1, effective July 1.

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, 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 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.

Source: L. 2000: Entire article added, p. 442, § 1, effective July 1. **L. 2004:** Entire section amended, p. 318, § 6, effective July 1.

5-3.1-113. Posting of charges. Any lender offering a deferred deposit loan shall post at any place of business where deferred deposit loans are made a notice of the finance charges imposed for such deferred deposit loans.

Source: L. 2000: Entire article added, p. 442, § 1, effective July 1. **L. 2003:** Entire section amended, p. 1894, § 7, effective July 1.

5-3.1-114. Notice on assignment or sale of instruments. Prior to sale or assignment of instruments held by the lender as a result of a deferred deposit loan, the lender shall place a notice on the instrument in at least ten-point type to read:

THIS IS A DEFERRED DEPOSIT LOAN INSTRUMENT.

Source: L. 2000: Entire article added, p. 442, § 1, effective July 1.

5-3.1-115. Records and annual reports. A lender shall maintain records and file an annual report in accordance with section 5-2-304.

Source: L. 2000: Entire article added, p. 442, § 1, effective July 1. **L. 2001:** Entire section amended, p. 30, § 10, effective March 9.

5-3.1-116. License requirement. In accordance with section 5-2-301, no person shall engage in the business of deferred deposit loans without having first obtained a supervised lender's license pursuant to section 5-2-302. A separate license shall be required for each location where such business is conducted.

Source: L. 2000: Entire article added, p. 442, § 1, effective July 1. **L. 2001:** Entire section amended, p. 30, § 11, effective March 9.

5-3.1-117. Examination and investigation. A lender may be examined and investigated in accordance with section 5-2-305.

Source: L. 2000: Entire article added, p. 443, § 1, effective July 1. **L. 2001:** Entire section amended, p. 30, § 12, effective March 9.

5-3.1-118. Denial of license - discipline. (1) The administrator may deny a license or discipline a lender in accordance with sections 5-2-302, 5-2-303, and 5-2-306.

(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 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.

Source: L. 2000: Entire article added, p. 443, § 1, effective July 1. **L. 2001:** (1) amended, p. 30, § 13, effective March 9. **L. 2004:** (2) amended and (3) added, p. 319, § 7, effective July 1.

5-3.1-119. Applicability of other provisions of this title. The provisions of the code, articles 1 to 9 of this title, apply to a lender unless such provisions are inconsistent with this article.

Source: L. 2000: Entire article added, p. 443, § 1, effective July 1.

5-3.1-120. Criminal culpability. A consumer shall not be subject to any criminal penalty for entering into a deferred deposit loan agreement. A consumer shall not be subject to any criminal penalty in the event the instrument is dishonored, unless the consumer's account on which the instrument was written was closed before the agreed upon date of negotiation, subject to the provisions of section 18-5-205, C.R.S.

Source: L. 2000: Entire article added, p. 443, § 1, effective July 1.

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 disguising loan proceeds as cash rebates for the pretextual installment sale of goods and services.

Source: L. 2000: Entire article added, p. 443, § 1, effective July 1. **L. 2010:** Entire section amended, (HB 10-1351), ch. 267, p. 1224, § 7, effective August 11.

Cross references: For the legislative declaration in the 2010 act amending this section, see section 1 of chapter 267, Session Laws of Colorado 2010.

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.

Source: L. 2004: Entire section added, p. 320, § 8, effective July 1.

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.

Source: L. 2004: Entire section added, p. 320, § 9, effective July 1.

ARTICLE 3.5

Consumer Equity Protection

Law reviews: For article, "The Colorado Equity Protection Act: A Response to Predatory Lending Practices", see 32 Colo. Law. 79 (April 2003).

PART 1

OBLIGOR PROTECTION

5-3.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Bridge loan" means temporary or short-term financing with a maturity of less than eighteen months that requires payments of only interest until the entire unpaid balance is due and payable.

(2) "Covered loan" means a consumer credit transaction secured by property located within this state that is considered a mortgage under section 152 of the federal "Home Ownership and Equity Protection Act of 1994", 15 U.S.C. sec. 1602 (aa), as amended, and regulations adopted pursuant thereto by the federal reserve board, including, without limitation, 12 CFR 226.32, as amended; except that, if the total points and fees paid by the obligor at or before closing exceed six percent of the total loan amount, such loan shall be deemed to be a covered loan if the transaction otherwise meets the requirements of this subsection (2).

(3) "Lender" means any individual or entity that originates one or more covered loans. The individual or entity to whom a covered loan is initially payable, either on the face of the note or contract or by agreement when there is no note or contract, shall be deemed to be the lender.

(4) "Mortgage broker" means a person other than an employee or exclusive agent of a lender who, for compensation, brings an obligor and lender together to obtain a covered loan.

(5) "Obligor" means each obligor, co-obligor, co-signer, or grantor obligated to repay a covered loan.

(6) "Political subdivision" means a county, city and county, city, town, service authority, school district, local improvement district, law enforcement authority, city or county housing authority, or water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

(7) "Principal balance" means the amount financed plus prepaid finance charges as defined in the federal "Truth in Lending Act", 15 U.S.C. sec. 1601 et seq., as amended.

(8) "Servicer" has the same meaning as set forth in section 2605 (i)(2) of the federal "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. sec. 2601 et seq., as amended.

Source: L. 2002: Entire article added, p. 1594, § 1, effective June 7. **L. 2003:** (2) amended, p. 1894, § 8, effective July 1.

5-3.5-102. Protection of obligors. (1) A covered loan is subject to the following limitations:

(a) **Limitation on balloon payment.** No covered loan may contain a provision for a scheduled payment that is more than twice as large as the average of earlier regularly scheduled payments, unless such balloon payment becomes due and payable not less than one hundred twenty months after the date of execution of the loan. This prohibition does not apply when the payment schedule is adjusted to account for the seasonal or irregular income of the obligor or if the purpose of the loan is a bridge loan connected with, or related to, the acquisition or construction of a dwelling intended to become the obligor's principal dwelling.

(b) **No call provision.** No covered loan may contain a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This prohibition shall not apply when:

(I) Acceleration of repayment of the loan is justified:

(A) By default in which the obligor fails to meet the repayment terms of the agreement for any outstanding balance; or

(B) Pursuant to a due-on-sale provision;

(II) There is fraud or material misrepresentation by an obligor in connection with the loan;

(III) There is a provision permitting acceleration if the lender, in good faith, believes itself to be materially insecure or believes that the prospect of future payment has become materially impaired; or

(IV) There is any action or inaction by the obligor that adversely affects the lender's security for the loan or any rights of the lender in such security.

(c) **No negative amortization.** No covered loan may contract for a payment schedule with regular periodic payments that cause the principal balance to increase; except that this paragraph (c) shall not prohibit negative amortization as a consequence of a temporary forbearance or restructure sought by the obligor.

(d) **No increased interest rate upon default.** No covered loan may contract for any increase in the interest rate as a result of a default; except that this paragraph (d) shall not apply to periodic interest rate changes in a variable rate loan that is otherwise consistent with the provisions of the loan agreement if the change in the interest rate is not occasioned by the event of default or a permissible acceleration of the indebtedness.

(e) **Limitations on mandatory arbitration clauses.** No covered loan may be subject to a mandatory arbitration clause that:

(I) Does not comply with rules set forth by a nationally recognized arbitration organization such as the American arbitration association;

(II) Does not require the arbitration proceeding to be conducted:

(A) Within the federal judicial district in which the subject property is located;

(B) In the city nearest the obligor's residence where a federal district court is located; or

(C) At such other location as may be mutually agreed upon by the parties;

(III) Does not require the lender to contribute at least fifty percent of the amount of any filing fee; and

(IV) Does not require the lender to pay standard daily arbitration fees, both its own and those of the obligor, for at least the first day of arbitration.

(f) **No advance payments.** No covered loan may include terms under which any periodic payments required under the loan are paid in advance from the loan proceeds provided to the obligor.

(g) **Limitations on prepayment fees.** (I) **First thirty-six months only.** A prepayment fee or penalty shall be permitted only on a refinance to a different lender other than pursuant to a sale and only during the first thirty-six months after the date of execution of a covered loan. Prepayment fees and penalties shall not exceed six months' interest for prepayment within the first three years of the loan. The prepayment fees or penalties permitted by this paragraph (g) shall apply only to covered loans that are secured by a first mortgage, deed of trust, or security interest to refinance, by amendment, payoff, or otherwise, an existing loan made to finance the acquisition or construction of a dwelling, including a refinance loan providing additional sums of

money for any purpose, regardless of whether related to acquisition or construction. No prepayment fees or penalties shall be included in the loan documents or charged to the obligor for prepayment:

(A) After the third year of the loan;

(B) Pursuant to a refinance with the same lender; or

(C) That is partial.

(II) **No prepayment fees for certain refinancing.** No prepayment fee or penalty may be charged on a refinancing of a covered loan if the covered loan being refinanced is owned by the refinancing lender at the time of such refinancing.

(III) **Lender must offer choice.** A lender shall not include a prepayment penalty fee in a covered loan unless the lender offers the obligor the option of choosing a loan product without a prepayment penalty fee. A lender shall be deemed to have complied with this requirement if the obligor receives and executes the following disclosure, which may be incorporated with any other required disclosure:

LOAN PRODUCT CHOICE

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product with / without a prepayment penalty.

Source: L. 2002: Entire article added, p. 1595, § 1, effective June 7. **L. 2003:** (1)(a) amended, p. 1894, § 9, effective July 1.

5-3.5-103. Restricted acts and practices. (1) The following acts and practices are prohibited in the making of a covered loan:

(a) **No lending without cautionary notice.** (I) A lender may not make a covered loan unless the lender or a mortgage broker has given the following notice, or a substantially similar notice, in writing to the obligor within a reasonable period of time after determining that the loan would result in a covered loan, but no later than the time by which the notice is required under the notice provision contained in 12 CFR 226.31 (c), as amended:

CONSUMER CAUTION

If you obtain this loan, the lender will have a mortgage in Colorado; this is a deed of trust on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan. Mortgage loan rates and closing costs and fees vary based on many factors, including your particular credit and financial circumstances, your earnings history, the loan-to-value requested, and the type of property that will secure your loan. The loan rate and fees could vary based on which lender or broker you select.

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application. If you proceed with this mortgage loan, you should also remember that you may face serious financial risks if you use this loan to pay off

credit card debts and other debts in connection with this transaction and then later incur significant new credit card charges or other debts. If you continue to accumulate debt after this loan is closed and then experience financial difficulties, you could lose your home and any equity you have in it if you do not meet your mortgage loan obligations.

Property taxes and homeowner's insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.

Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors.

(II) It shall be a rebuttable presumption that a lender or broker has met its obligation to provide this disclosure if the consumer provides the lender or broker with a signed acknowledgment of receipt of a copy of the notice set forth in subparagraph (I) of this paragraph (a).

(b) **No lending without due regard to repayment ability.** (I) A lender may not make a covered loan to a consumer based on the consumer's collateral without regard to the consumer's repayment ability, including the consumer's current and expected income, current obligations, and employment.

(II) There is a presumption that a creditor has violated this paragraph (b) if the creditor engages in a pattern or practice of making loans subject to 12 CFR 226.32 without verifying and documenting consumers' repayment abilities.

(III) (A) In the case of a stated income loan, the reasonable basis for believing that there are sufficient funds to support the covered loan may not be based solely on the income stated by the obligor, but may include other information in the possession of the lender after the solicitation of all information that the lender customarily solicits in connection with stated income loans. A lender shall not knowingly or willfully originate a covered loan as a stated income loan with the intent of evading this subparagraph (III).

(B) A person who willfully and knowingly gives false or inaccurate information or fails to provide information that the person is required to disclose pursuant to applicable law may have violated and may be subject to penalties established in 15 U.S.C. sec. 1611.

(c) **Refinancing within a one-year period.** Within one year after having extended credit subject to this article, no lender shall refinance any covered loan to the same obligor into another covered loan unless the refinancing is in the obligor's interest. An assignee holding or servicing an extension of mortgage credit subject to this article shall not, for the remainder of the one-year period following the date of origination of the credit, refinance any covered loan to the same obligor into another covered loan unless the refinancing is in the obligor's interest. A creditor or assignee shall not engage in acts or practices to evade this paragraph (c), including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors, or modifying a loan agreement, regardless of whether the existing loan is satisfied and replaced by the new loan, and charging a fee.

(d) **No refinancing certain low-rate loans.** A lender shall not replace or consolidate a zero interest rate, or other low-rate, loan made by a governmental or nonprofit lender with a covered loan within the first ten years after the low-rate loan was made unless the current holder

of the loan consents in writing to the refinancing. For purposes of this paragraph (d), a "low-rate" loan is a loan that carries a current interest rate two percentage points or more below the current yield on United States department of the treasury securities with a comparable maturity. If the loan's current interest rate is either a discounted introductory rate or a rate that automatically steps up over time, then the fully-indexed rate or the fully stepped-up rate, as appropriate, should be used in lieu of the current rate to determine whether a loan is a low-rate loan.

(e) **Restrictions on covered loan proceeds to pay home improvement contracts.** A lender shall not pay a contractor under a home-improvement contract from the proceeds of a covered loan other than by an instrument payable to the obligor or jointly to the obligor and the contractor or, at the election of the obligor, through a third-party escrow agent in accordance with terms established in a written agreement signed by the obligor, the lender, and the contractor prior to the disbursement of funds to the contractor.

(f) **No financing of credit insurance.** No covered loan may include, directly or indirectly, financing of any premiums for any credit life, credit disability, credit property, or credit unemployment insurance, any other life or health insurance products, or any payments for any debt cancellation or suspension agreement or contracts; except that calculated insurance premiums or debt cancellation or suspension fees paid on a monthly basis shall not be considered to have been financed by the lender for purposes of this paragraph (f).

(g) **No recommending default.** No lender shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a covered loan that refinances all or any portion of such existing loan or debt.

(h) **No fee for payoff quote.** No creditor may charge a fee for informing or transmitting to any person the balance due to pay off a covered loan or to provide a release upon prepayment. A creditor shall provide a payoff balance within a reasonable time after a request, but in any event not more than five business days after a written request.

Source: L. 2002: Entire article added, p. 1597, § 1, effective June 7. **L. 2003:** (1)(c) amended, p. 1894, § 10, effective July 1.

5-3.5-104. Reporting to credit bureaus. A lender or its servicer shall report at least quarterly both the favorable and unfavorable payment history information of the obligor on payments due to the lender on a covered loan to a nationally recognized consumer credit reporting agency. This section shall not prevent a lender or its servicer from agreeing with the obligor not to report specified payment history information in the event of a resolved or unresolved dispute with an obligor, and shall not apply to covered loans held or serviced by a lender for less than ninety days.

Source: L. 2002: Entire article added, p. 1600, § 1, effective June 7.

PART 2

ENFORCEMENT AND LIABILITY

5-3.5-201. Enforcement - liability. The attorney general and any obligor of a covered loan may enforce this article with respect to such covered loan in the manner provided for violations of the federal "Home Ownership and Equity Protection Act of 1994", 15 U.S.C. sec. 1639, and regulations adopted pursuant thereto by the federal reserve board, including, without limitation, 12 CFR 226.32, as set forth in the federal "Truth in Lending Act", 15 U.S.C. sec. 1640, and regulations adopted pursuant thereto by the federal reserve board, including the provisions on civil liability, class actions, rescission, correction, and bona fide error. Persons engaged in the purchase, sale, assignment, securitization, or servicing of covered loans shall be liable under this article for the action or inaction of persons originating such loans only in the manner and to the extent provided for violation of the federal "Home Ownership and Equity Protection Act of 1994" and the federal "Truth in Lending Act", 15 U.S.C. sec. 1641, and regulations adopted pursuant thereto by the federal reserve board.

Source: L. 2002: Entire article added, p. 1600, § 1, effective June 7.

PART 3

MISCELLANEOUS PROVISIONS

5-3.5-301. Effective date - applicability. Section 5-3.5-303 is intended to restate and confirm the existing law of this state, namely that the laws of this state relating to the financial and lending activities are to be applied on a uniform, statewide basis. Parts 1 and 2 of this article shall take effect January 1, 2003. This part 3 shall take effect upon passage. This article shall apply to covered loans offered or entered into on or after January 1, 2003.

Source: L. 2002: Entire article added, p. 1601, § 1, effective June 7.

5-3.5-302. Severability. The provisions of this article are severable and if any of its provisions are held unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this article. It is hereby declared to be the legislative intent that this article would have been adopted if the unconstitutional provisions had not been included.

Source: L. 2002: Entire article added, p. 1601, § 1, effective June 7.

5-3.5-303. Relationship to other laws. (1) **General rule.** All political subdivisions of this state, including municipalities, shall be prohibited from enacting and enforcing ordinances, resolutions, and regulations pertaining to lending activities.

(2) **Preemption.** Any provision of this article preempted by federal law with respect to a national bank or federal savings association shall also, to the same extent, not apply to an operating subsidiary of a national bank or federal savings association that satisfies the requirements for operating subsidiaries established in 12 CFR 5.34, relating to operating subsidiaries, or 12 CFR 559.3, relating to the characteristics of and requirements for subordinate organizations of federal savings associations, nor to a bank chartered under the laws of Colorado or any operating subsidiary of such a state chartered bank.

(3) **Interpretation.** The provisions of this article shall be interpreted and applied to the fullest extent practical in a manner consistent with applicable federal laws and regulations, and shall not be deemed to constitute an attempt to override federal law.

Source: L. 2002: Entire article added, p. 1601, § 1, effective June 7.

ARTICLE 3.7

Consumer Credit Solicitation Protection

5-3.7-101. Consumer credit solicitation protection - definitions. (1) A solicitor that makes a firm offer of credit for a lender credit card or a seller credit card to a consumer by mail solicitation and receives an acceptance of that offer that lists the address of the consumer accepting the offer as different from the address to which the offer was sent shall, prior to issuing or directing issuances of the lender credit card or seller credit card, verify that the consumer accepting the offer is the same consumer to whom the offer was sent.

(2) As used in this section, unless the context otherwise requires:

(a) "Firm offer of credit" shall have the same meaning as set forth in 15 U.S.C. sec. 1681a (l).

(b) "Solicitor" means the person making the offer by mail solicitation and does not include a card issuer or other creditor when that creditor or card issuer relies on an independent third party to provide the services.

(c) "Verify" means the use of commercially reasonable efforts to ascertain that the consumer responding to a mail solicitation is the same consumer to whom the solicitation was directed. For the purposes of this article, a solicitor shall be deemed to verify that the consumer accepting a mail solicitation is the same consumer to whom the solicitation was directed if:

(I) A consumer responding at a telephone number appearing in a publicly available directory or database as the telephone number of the consumer to whom the solicitation was mailed identifies himself or herself as the consumer to whom the solicitation was mailed and acknowledges the consumer's acceptance of the solicitation; or

(II) A consumer presents the solicitor, including presentation by facsimile transmission or mail, the original or a copy of one or more documents, including a driver's license, social security card, passport, or any other identification document issued by a state or federal governmental agency, that, on the face of the document or documents, appears to confirm such consumer's identity as the consumer to whom a solicitation was mailed and the consumer acknowledges acceptance of the solicitation; or

(III) The solicitor verified, by any means adopted in federal regulations, that the consumer accepting the solicitation is the consumer to whom the solicitation was directed; or

(IV) The solicitor verified by any other means, that under the standards and practices of the industry in which the solicitor is engaged would be deemed sufficient, that the consumer accepting the solicitation is the same consumer to whom the solicitation was sent.

Source: L. 2004: Entire article added, p. 657, § 1, effective July 1.

ARTICLE 4

Insurance

Editor's note: This article was numbered as article 4 of chapter 73, C.R.S. 1963. This title was repealed and reenacted in 1971, and this article was subsequently repealed and reenacted in 2000, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

PART 1

INSURANCE IN GENERAL

5-4-101. Short title. This article shall be known and may be cited as "Uniform Consumer Credit Code - Insurance".

Source: L. 2000: Entire article R&RE, p. 1225, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-101, as it existed prior to 2000.

5-4-102. Scope - relation to credit insurance act - applicability to parties. (1) This article applies to insurance provided or to be provided in relation to a consumer credit transaction.

(2) This article supplements and does not repeal the "Credit Insurance Act", article 10 of title 10, C.R.S. The provisions of this code concerning administrative controls, liabilities, and penalties do not apply to persons acting as insurers, and the similar provisions of the "Credit Insurance Act" do not apply to creditors and consumers.

Source: L. 2000: Entire article R&RE, p. 1225, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-102, as it existed prior to 2000.

5-4-103. Definitions - "consumer credit insurance" - "Credit Insurance Act". As used in this code, unless the context otherwise requires:

(1) "Consumer credit insurance" means insurance, other than insurance on property, by which the satisfaction of debt in whole or in part is a benefit provided but does not include:

(a) Insurance, as to which a finance charge is imposed and provided in relation to a credit

transaction in which a payment is scheduled more than ten years after the extension of credit;

(b) Insurance issued as an isolated transaction on the part of the insurer not related to an agreement or plan for insuring consumers of the creditor; or

(c) Insurance indemnifying the creditor against loss due to the consumer's default.

(2) "Credit Insurance Act" means the "Credit Insurance Act", article 10 of title 10, C.R.S.

Source: L. 2000: Entire article R&RE, p. 1225, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-103, as it existed prior to 2000.

5-4-104. Creditor's provision of and charge for insurance - excess amount of charge. (1) Except as otherwise provided in this article and subject to the provisions on additional charges contained in section 5-2-202 and maximum charges contained in section 5-2-201, a creditor may agree to provide insurance and may contract for and receive a charge for insurance separate from and in addition to other charges. A creditor need not make a separate charge for insurance provided or required by the creditor. This code does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance.

(2) The excess amount of a charge for insurance provided for in agreements in violation of this article is an excess charge for the purposes of:

(a) The provisions on remedies and penalties contained in article 5 of this title as to effect of violations on rights of parties under section 5-5-201; and

(b) The provisions on administration contained in article 6 of this title as to civil actions by the administrator under section 5-6-114.

Source: L. 2000: Entire article R&RE, p. 1225, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-104, as it existed prior to 2000.

5-4-105. Conditions applying to insurance to be provided by creditor. (1) If a creditor agrees with a consumer to provide insurance:

(a) The insurance shall be evidenced by an individual policy or certificate of insurance delivered to the consumer or sent to the consumer at his or her address as stated by the consumer within thirty days after the term of the insurance commences under the agreement between the creditor and consumer; or

(b) The creditor shall promptly notify the consumer of any failure or delay in providing the insurance.

Source: L. 2000: Entire article R&RE, p. 1226, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-105, as it existed prior to 2000.

5-4-106. Unconscionability. (1) In applying the provisions of this code on

unconscionability contained in sections 5-5-109 and 5-6-112 to a separate charge for insurance, consideration shall be given, among other factors, to:

(a) Potential benefits to the consumer including the satisfaction of the consumer's obligations;

(b) The creditor's need for the protection provided by the insurance; and

(c) The relation between the amount and terms of credit granted and the insurance benefits provided.

(2) If consumer credit insurance otherwise complies with this article and other applicable law, neither the amount nor the term of the insurance nor the amount of a charge therefor is in itself unconscionable.

Source: L. 2000: Entire article R&RE, p. 1226, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-106, as it existed prior to 2000.

5-4-107. Maximum charge by creditor for insurance. (1) Except as provided in subsection (2) of this section, if a creditor contracts for or receives a separate charge for insurance, the amount charged to the consumer for the insurance may not exceed the premium to be charged by the insurer as computed at the time the charge to the consumer is determined conforming to any rate filings required by law and made by the insurer with the commissioner of insurance.

(2) A creditor who provides consumer credit insurance in relation to a revolving credit account may calculate the charge to the consumer in each billing cycle by applying the current premium rate to:

(a) The average daily unpaid balance of the debt in the cycle;

(b) The unpaid balance of the debt or a median amount within a specified range of unpaid balances of debt on approximately the same day of the cycle. The day of the cycle need not be the day used in calculating the finance charge, but the specified range shall be the range used for that purpose; or

(c) The unpaid balances of the amount financed calculated according to the actuarial method.

Source: L. 2000: Entire article R&RE, p. 1227, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-107, as it existed prior to 2000.

5-4-108. Refund or credit required - amount. (1) (a) Except as provided in subsection (3) of this section, an appropriate refund or credit of unearned premiums shall be made to the person entitled thereto with respect to any separate charge made to the consumer for insurance if:

(I) The insurance is not provided or is provided for a shorter term than that for which the charge to the consumer for insurance was computed; or

(II) The insurance terminates prior to the end of the term for which it was written because of prepayment in full of the indebtedness or the insurance terminates for any other

reason.

(b) All consumer credit insurance shall terminate upon prepayment in full of the indebtedness.

(2) If a refund or credit of unearned premiums is required pursuant to the provisions of subsection (1) of this section:

(a) The original creditor, if he or she is the holder of the indebtedness at the time of prepayment, shall either promptly make the appropriate refund or credit or shall promptly notify the consumer and the insurer in writing that a refund or credit is due. Upon the receipt of notice that a refund or credit is due, the insurer shall promptly make an appropriate refund or credit of unearned premiums pursuant to the provisions of section 10-10-110 (2), C.R.S. For purposes of this section, "original creditor" means the person to whom the indebtedness was initially payable, and "insurer" means every person engaged as principal, indemnitor, surety, or contractor in the business of making contracts of insurance, excluding any licensed insurance agent.

(b) (I) The assignee, if the indebtedness has been assigned, shall either promptly make the appropriate refund or credit or shall promptly notify the consumer, the original creditor, and the insurer, if known, in writing that a refund or credit is due. For the purposes of this section, "assignee" means a person other than the original creditor who at the time of prepayment holds the indebtedness.

(II) The original creditor, upon receipt of notice pursuant to subparagraph (I) of this paragraph (b), shall either promptly make the appropriate refund or credit or shall promptly notify the insurer in writing that a refund or credit of unearned premiums is due.

(c) The insurer, upon the receipt of notice that a refund or credit is due pursuant to paragraph (a) or (b) of this subsection (2), shall make an appropriate refund or credit of unearned premiums pursuant to the provisions of section 10-10-110 (2), C.R.S., and subsection (1) of this section.

(d) An assignee or original creditor gives notice pursuant to this section upon delivery or mailing of the notice to the last address provided to him or her. Once an original creditor or an assignee has notified the appropriate party, as provided in paragraphs (a) and (b) of this subsection (2), the original creditor and the assignee shall have no further obligations.

(3) This article does not require a refund or credit of unearned premiums if:

(a) All refunds and credits due to the debtor under this article amount to less than one dollar; or

(b) The charge for insurance is computed from time to time on the outstanding balance of the indebtedness and the charge relates to only one premium period.

(4) Except as otherwise required, a refund or credit is not required because:

(a) The insurance is terminated by payment of proceeds under the policy; or

(b) The original creditor or assignee pays or accounts for premiums to the insurer in the amounts and at the times determined by the agreement between them; or

(c) The original creditor or assignee receives directly or indirectly under any policy of insurance a gain or advantage not prohibited by law.

(5) If a single type of insurance is terminated by the payment of proceeds under the policy pursuant to paragraph (a) of subsection (4) of this section, a refund or credit of unearned premiums for all other types of consumer credit insurance issued on the same indebtedness shall

be made if so required by the provisions of this section and section 10-10-110 (2), C.R.S.

(6) A refund or credit required by subsection (1) of this section is appropriate as to amount if it is computed according to a method prescribed or approved by the commissioner of insurance or a formula filed by the insurer with the commissioner of insurance at least thirty days before the consumer's right to a refund or credit becomes determinable unless the method or formula is employed after the commissioner of insurance notifies the insurer that he or she disapproves it.

Source: L. 2000: Entire article R&RE, p. 1227, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-108, as it existed prior to 2000.

5-4-109. Existing insurance - choice of insurer. If a creditor requires insurance, upon notice to the creditor the consumer shall have the option of providing the required insurance through an existing policy of insurance owned or controlled by the consumer or through a policy to be obtained and paid for by the consumer, but the creditor may for reasonable cause decline the insurance provided by the consumer.

Source: L. 2000: Entire article R&RE, p. 1229, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-109, as it existed prior to 2000.

5-4-110. Charge for insurance in connection with a deferral, refinancing, or consolidation - duplicate charges. (1) A creditor may not contract for or receive a separate charge for insurance in connection with a deferral described in section 5-2-204, a refinancing described in section 5-2-205, or a consolidation described in section 5-2-206 unless:

(a) The consumer agrees at or before the time of the deferral, refinancing, or consolidation that the charge may be made;

(b) The consumer is or is to be provided with insurance for an amount or a term, or insurance of a kind, in addition to that to which the consumer would have been entitled had there been no deferral, refinancing, or consolidation;

(c) The consumer receives a refund or credit on account of any unexpired term of existing insurance in the amount that would be required if the insurance were terminated under section 5-4-108; and

(d) The charge does not exceed the amount permitted under section 5-4-107.

(2) A creditor may not contract for or receive a separate charge for insurance that duplicates insurance with respect to which the creditor has previously contracted for or received a separate charge.

Source: L. 2000: Entire article R&RE, p. 1229, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-110, as it existed prior to 2000.

5-4-111. Cooperation between administrator and commissioner of insurance. The administrator and the commissioner of insurance are authorized and directed to consult and assist one another in maintaining compliance with this article. They may jointly pursue investigations, prosecute suits, and take other official action, as may seem to them appropriate, if either of them is otherwise empowered to take the action. If the administrator is informed of a violation or suspected violation by an insurer of this article or of the insurance laws, rules, and regulations of this state, the administrator shall advise the commissioner of insurance of the circumstances.

Source: L. 2000: Entire article R&RE, p. 1229, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-111, as it existed prior to 2000.

5-4-112. Administrative action of commissioner of insurance. (1) To the extent that the commissioner's responsibility under this article requires, the commissioner of insurance shall promulgate rules in accordance with article 4 of title 24, C.R.S., with respect to insurers, and with respect to refunds described in section 5-4-108, and, in case of violation, may make an order for compliance.

(2) Sections 24-4-102 to 24-4-106, C.R.S., apply to and govern all administrative action taken by the commissioner of insurance pursuant to this section.

Source: L. 2000: Entire article R&RE, p. 1230, § 1, effective July 1. **L. 2003:** (1) amended, p. 1895, § 11, effective July 1.

Editor's note: This section is similar to former § 5-4-112, as it existed prior to 2000.

PART 2

CONSUMER CREDIT INSURANCE

5-4-201. Term of insurance. (1) Consumer credit insurance provided by a creditor may be subject to the furnishing of evidence of insurability satisfactory to the insurer. Whether or not such evidence is required, the term of the insurance shall commence no later than when the consumer becomes obligated to the creditor or when the consumer applies for the insurance, whichever is later, except as follows:

(a) If any required evidence of insurability is not furnished until more than thirty days after the term would otherwise commence, the term may commence on the date when the insurer determines the evidence to be satisfactory; or

(b) If the creditor provides insurance not previously provided covering debts previously created, the term may commence on the effective date of the policy.

(2) The originally scheduled term of the insurance shall extend at least until the due date of the last scheduled payment of the debt except as follows:

(a) If the insurance relates to a revolving credit account, the term need extend only until the payment of the debt under the account and may be sooner terminated after at least thirty days'

notice to the consumer; or

(b) If the consumer is advised in writing that the insurance will be written for a specified shorter time, the term need extend only until the end of the specified time.

(3) The term of the insurance shall not extend more than thirty days after the originally scheduled due date of the last scheduled payment of the debt unless it is extended without additional cost to the consumer or as an incident to a deferral, refinancing, or consolidation.

Source: L. 2000: Entire article R&RE, p. 1230, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-201, as it existed prior to 2000.

5-4-202. Amount of insurance. (1) Except as provided in subsection (2) of this section:

(a) In the case of consumer credit insurance providing life coverage, the amount of insurance may not initially exceed the debt and, if the debt is payable in installments, may not at any time exceed the greater of the scheduled or actual amount of the debt; or

(b) In the case of any other consumer credit insurance, the total amount of periodic benefits payable may not exceed the total of scheduled unpaid installments of the debt, and the amount of any periodic benefit may not exceed the original amount of debt divided by the number of periodic installments in which it is payable.

(2) If consumer credit insurance is provided in connection with a revolving credit account, the amounts payable as insurance benefits may be reasonably commensurate with the amount of debt as it exists from time to time. If consumer credit insurance is provided in connection with a commitment to grant credit in the future, the amounts payable as insurance benefits may be reasonably commensurate with the total from time to time of the amount of debt and the amount of the commitment.

Source: L. 2000: Entire article R&RE, p. 1231, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-202, as it existed prior to 2000.

5-4-203. Filing and approval of rates and forms. (1) A creditor may not use a form or charge in connection with credit insurance that does not comply with section 10-10-109, C.R.S.

(2) and (3) (Deleted by amendment, L. 2003, p. 1895, § 12, effective July 1, 2003.)

Source: L. 2000: Entire article R&RE, p. 1231, § 1, effective July 1. **L. 2001:** (2) amended, p. 894, § 5, effective June 1. **L. 2003:** Entire section amended, p. 1895, § 12, effective July 1.

Editor's note: This section is similar to former § 5-4-203, as it existed prior to 2000.

PART 3

PROPERTY AND LIABILITY INSURANCE

5-4-301. Property insurance. (1) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless:

(a) The insurance covers a substantial risk of loss of or damage to property related to the credit transaction;

(b) The amount, terms, and conditions of the insurance are reasonable in relation to the character and value of the property insured or to be insured; and

(c) The term of the insurance is reasonable in relation to the terms of credit.

(2) The term of the insurance is reasonable if it is customary and does not extend substantially beyond a scheduled maturity.

(3) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless the amount financed exclusive of charges for the insurance is one thousand dollars or more and the value of the property is one thousand dollars or more.

Source: L. 2000: Entire article R&RE, p. 1232, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-301, as it existed prior to 2000.

5-4-302. Insurance on creditor's interest only. If a creditor contracts for or receives a separate charge for insurance against loss of or damage to property, the risk of loss or damage not willfully caused by the consumer is on the consumer only to the extent of any deficiency in the effective coverage of the insurance even though the insurance covers only the interest of the creditor.

Source: L. 2000: Entire article R&RE, p. 1232, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-302, as it existed prior to 2000.

5-4-303. Liability insurance. A creditor may not contract for or receive a separate charge for insurance against liability unless the insurance covers a substantial risk of liability arising out of the ownership or use of property related to the credit transaction.

Source: L. 2000: Entire article R&RE, p. 1232, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-303, as it existed prior to 2000.

5-4-304. Cancellation by creditor. This section does not apply to an insurance premium loan. A creditor shall not request cancellation of a policy of property or liability insurance except after the consumer's default or in accordance with a written authorization by the consumer, and in either case the cancellation does not take effect until written notice is delivered to the consumer or mailed to the consumer at his or her address as stated by the consumer. The notice shall state that the policy may be canceled on a date not less than ten days after the notice is delivered or, if the notice is mailed, not less than thirteen days after it is mailed.

Source: L. 2000: Entire article R&RE, p. 1233, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-304, as it existed prior to 2000.

ARTICLE 5

Remedies and Penalties

Editor's note: This article was numbered as article 5 of chapter 73, C.R.S. 1963. This title was repealed and reenacted in 1971, and this article was subsequently repealed and reenacted in 2000, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

PART 1

LIMITATIONS ON CREDITORS' REMEDIES

5-5-101. Short title. This article shall be known and may be cited as the "Uniform Consumer Credit Code - Remedies and Penalties".

Source: L. 2000: Entire article R&RE, p. 1233, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-101, as it existed prior to 2000.

5-5-102. Scope. This part 1 applies to actions or other proceedings to enforce rights arising from consumer credit transactions.

Source: L. 2000: Entire article R&RE, p. 1233, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-102, as it existed prior to 2000.

5-5-103. Restrictions on deficiency judgments in consumer credit sales. (1) This section applies to a consumer credit sale of goods or services. A consumer is not liable for a deficiency unless the creditor has disposed of the goods in accordance with the provisions on the disposition of collateral of the "Uniform Commercial Code" contained in part 6 of article 9 of title 4, C.R.S.

(2) If the creditor repossesses, with or without the aid of judicial process, or voluntarily accepts surrender of goods that were the subject of the sale and in which the creditor has a

security interest, the parties obligated are not personally liable to the creditor for the unpaid balance of the debt arising from the sale of a commercial unit of goods of which the cash sale price was three thousand dollars or less, and the creditor's duty to dispose of the collateral is governed by the provisions on the disposition of collateral of the "Uniform Commercial Code" contained in part 6 of article 9 of title 4, C.R.S.

(3) If the creditor repossesses, with or without the aid of judicial process, or voluntarily accepts surrender of goods that were not the subject of the sale but in which the creditor has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the cash price of the sale was three thousand dollars or less, the parties obligated are not personally liable to the creditor for the unpaid balance of the debt arising from the sale, and the creditor's duty to dispose of the collateral is governed by the provisions on disposition of collateral of the "Uniform Commercial Code" contained in part 6 of article 9 of title 4, C.R.S.

(4) For the purpose of determining the unpaid balance of consolidated debts or debts pursuant to revolving credit accounts, the allocation of payments to a debt shall be determined in the same manner as provided for determining the amount of debts secured by various security interests under sections 5-3-202 and 5-3-203.

(5) The consumer may be liable in damages to the creditor if the consumer has misused, abused, or wrongfully damaged the collateral or if, after default and demand in writing, the consumer has wrongfully failed to make the collateral available to the creditor. Nothing in this section shall limit or restrict the remedies of the holders of a security interest for damage to the collateral because of conversion, destruction, or other wrongful acts.

(6) If the creditor elects to bring an action against the consumer for a debt arising from a consumer credit sale of goods or services, when under this section the creditor would not be entitled to a deficiency judgment if the creditor took possession of the collateral, and obtains judgment:

(a) The creditor may not take possession of the collateral; and

(b) The collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

Source: L. 2000: Entire article R&RE, p. 1233, § 1, effective July 1. **L. 2001:** (1), (2), and (3) amended, p. 1444, § 36, effective July 1. **L. 2003:** (3) amended, p. 1896, § 13, effective July 1.

Editor's note: This section is similar to former § 5-5-103, as it existed prior to 2000.

5-5-104. Insecurity and impaired collateral. (1) If a creditor takes possession of any collateral because the creditor deems himself or herself insecure or because the creditor feels his or her collateral is impaired, and the creditor fails to prove that, at the time possession was taken, the creditor, in good faith, had reasonable cause to believe that he or she was insecure or that his or her collateral was impaired:

(a) The creditor shall be liable to the consumer for court costs and attorney fees as determined by the court; and

(b) The consumer shall not be liable for any finance charge incurred during the period the consumer is without use of the collateral.

Source: L. 2000: Entire article R&RE, p. 1234, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-103.5, as it existed prior to 2000.

5-5-105. No garnishment before judgment. Prior to entry of judgment in an action against the consumer for debt arising from a consumer credit transaction, the creditor may not replevin goods, except motor vehicles, of the consumer with the use of force from a dwelling upon an ex parte order of court or attach unpaid earnings of the consumer by garnishment or like proceedings.

Source: L. 2000: Entire article R&RE, p. 1234, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-104, as it existed prior to 2000.

5-5-106. Limitation on garnishment - definitions. (1) For the purposes of this part 1:

(a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld.

(b) "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

(2) (a) The maximum part of the aggregate disposable earnings of an individual for any workweek that is subjected to garnishment to enforce payment of a judgment arising from a consumer credit transaction may not exceed the lesser of:

(I) Twenty-five percent of the individual's disposable earnings for that week; or

(II) The amount by which the individual's disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by section 206 (a)(1) of the "Fair Labor Standards Act of 1938", 29 U.S.C. sec. 201 et seq., in effect at the time the earnings are payable; or

(III) The amount by which the individual's disposable earnings for that week exceed thirty times the state minimum hourly wage pursuant to section 15 of article XVIII of the state constitution in effect at the time the earnings are payable.

(b) In the case of earnings for a pay period other than a week, the administrator may prescribe by rule a multiple of the federal minimum hourly wage or the state minimum hourly wage, equivalent in effect to that set forth in subparagraphs (II) or (III) of paragraph (a) of this subsection (2).

(3) No court may make, execute, or enforce an order or process in violation of this section.

(4) It shall not be necessary for any individual to claim the exemptions for that portion of the aggregate disposable earnings that are not subject to garnishment as set forth in subsection (2) of this section, and such exemption from garnishment shall be self-executing in any garnishment procedure.

(5) This section does not repeal, alter, or affect other statutes of this state prohibiting

garnishments or providing for larger exemptions from garnishments than are allowed under this section.

Source: L. 2000: Entire article R&RE, p. 1234, § 1, effective July 1. **L. 2007:** (2) amended, p. 878, § 6, effective July 1.

Editor's note: This section is similar to former § 5-5-105, as it existed prior to 2000.

Cross references: For the legislative declaration contained in the 2007 act amending subsection (2), see section 1 of chapter 226, Session Laws of Colorado 2007.

5-5-107. No discharge from employment for garnishment. No employer shall discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit transaction.

Source: L. 2000: Entire article R&RE, p. 1235, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-106, as it existed prior to 2000.

5-5-108. Extortionate extensions of credit. (1) If it is the understanding of the creditor and the consumer at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person, the repayment of the extension of credit is unenforceable through civil judicial processes against the consumer.

(2) If it is shown that an extension of credit was made at an annual percentage rate exceeding forty-five percent calculated according to the actuarial method and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation, or property of any person to collect extensions of credit or to punish the nonpayment thereof, there is prima facie evidence that the extension of credit was unenforceable under subsection (1) of this section.

Source: L. 2000: Entire article R&RE, p. 1235, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-107, as it existed prior to 2000.

5-5-109. Unconscionability - inducement by unconscionable conduct - unconscionable debt collection. (1) With respect to a transaction that is, gives rise to, or leads the consumer to believe will give rise to a consumer credit transaction, if the court as a matter of law finds:

(a) The agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or

(b) Any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable term or part, or so limit the application of any unconscionable term or part as to avoid any unconscionable result.

(2) With respect to a consumer credit transaction, if the court as a matter of law finds that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt arising from that transaction, the court may grant an injunction and award the consumer any actual damages the consumer has sustained.

(3) If it is claimed or appears to the court that the agreement or transaction or any term or part thereof may be unconscionable or that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the agreement or transaction or term or part thereof or of the conduct to aid the court in making the determination.

(4) In applying subsection (2) of this section, consideration shall be given to each of the following factors, among others, as applicable:

(a) Using or threatening to use force or violence against the consumer or members of the consumer's family;

(b) Communicating with the consumer or a member of the consumer's family at frequent intervals or at unusual hours or under other circumstances so that it is a reasonable inference that the primary purpose of the communication was to harass the consumer;

(c) Using fraudulent, deceptive, or misleading representations such as a communication that simulates legal process or that gives the appearance of being authorized, issued, or approved by a government, governmental agency, or attorney at law when it is not or threatening or attempting to enforce a right with knowledge or reason to know that the right does not exist;

(d) Causing or threatening to cause injury to the consumer's reputation or economic status by:

(I) Disclosing information affecting the consumer's reputation for credit worthiness with knowledge or reason to know that the information is false;

(II) Communicating with the consumer's employer before obtaining a final judgment against the debtor, except, as permitted by statute, to verify the consumer's employment, to ascertain the consumer's whereabouts, or to request that the consumer contact the creditor;

(III) Disclosing to a person, with knowledge or reason to know that the person does not have a legitimate business need for the information, or in any way prohibited by statute, information affecting the consumer's credit or other reputation; or

(IV) Disclosing information concerning the existence of a debt known to be disputed by the consumer without disclosing that fact;

(e) Engaging in conduct with knowledge that like conduct has been restrained or enjoined by a court in a civil action by the administrator against any person pursuant to the provisions on injunctions against fraudulent or unconscionable agreements or conduct contained in section 5-6-112.

(5) If, in an action in which unconscionability is claimed, the court finds unconscionability pursuant to subsection (1) or (2) of this section, the court may award reasonable fees to the attorney for the consumer. If the court does not find unconscionability and

the consumer claiming unconscionability has brought or maintained an action the consumer knew to be groundless, the court may award reasonable fees to the attorney for the party against whom the claim is made. In determining attorney fees, the amount of the recovery on behalf of the consumer is not controlling.

(6) The remedies of this section are in addition to remedies otherwise available for the same conduct under laws other than this code, but double recovery of actual damages may not be had.

(7) For the purpose of this section, a charge or practice expressly permitted by this code is not in itself unconscionable.

Source: L. 2000: Entire article R&RE, p. 1236, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-108, as it existed prior to 2000.

Cross references: For the "Colorado Fair Debt Collection Practices Act", see article 14 of title 12.

5-5-110. Notice of right to cure. (1) With respect to a consumer credit transaction, after a consumer has been in default for ten days for failure to make a required payment and has not voluntarily surrendered possession of goods or the mobile home that are collateral, a creditor may give the consumer the notice described in this section. A creditor gives notice to the consumer pursuant to this section when the creditor delivers the notice to the consumer or mails the notice to the consumer at the consumer's residence, as defined in section 5-1-201 (6).

(2) Except as provided in subsection (3) of this section, the notice shall be in writing and conspicuously state: The name, address, and telephone number of the creditor to which payment is to be made, a brief identification of the credit transaction, the right to cure the default, and the amount of payment and date by which payment must be made to cure the default. A notice in substantially the following form complies with this subsection (2):

(Name, address, and telephone number of creditor)

(Account number, if any)

(Brief identification of credit transaction)

(Date) is the LAST DATE FOR PAYMENT.

(Amount) is the AMOUNT NOW DUE.

You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above) by the LAST DAY FOR PAYMENT (above), you may continue with the contract as though you were not late. If you do not pay by this date, we may exercise our rights under the law.

If you are late again in making your payments, we may exercise our rights without sending you another notice like this one. If you have questions, write or telephone the creditor promptly.

(3) If the consumer credit transaction is a consumer insurance premium loan, the notice shall conform to the requirements of subsection (2) of this section, and a notice in substantially the form specified in subsection (2) of this section shall be deemed compliance with this subsection (3) except for the following:

(a) In lieu of a brief identification of the credit transaction, the notice shall identify the transaction as a consumer insurance premium loan and shall identify each policy or contract that may be canceled;

(b) In lieu of the statement in the form of notice specified in subsection (2) of this section that the creditor may exercise its rights under law, a statement shall be included that each policy or contract identified in the notice may be canceled; and

(c) The last paragraph of the form of notice specified in subsection (2) of this section shall be omitted.

(4) A notice of right to cure delivered or mailed to a cosigner pursuant to this section shall be modified to state that the consumer is late in making his or her payment, include the consumer's name, and that if the amount now due is not paid by the last date for payment, the creditor may exercise its rights against the consumer, cosigner, or both.

Source: L. 2000: Entire article R&RE, p. 1237, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 5-5-111, as it existed prior to 2000.

(2) Although this section was effective on July 1, 2000, section 5 of chapter 265, Session Laws of Colorado 2000, provides that the disclosures described in subsection (4) are effective January 1, 2001.

5-5-111. Cure of default. (1) With respect to a consumer credit transaction, except as provided in subsection (2) of this section, after a default consisting only of the consumer's failure to make a required payment, a creditor, because of that default, may neither accelerate maturity of the unpaid balance of the obligation nor take possession of or otherwise enforce a security interest in the goods or the mobile home that are collateral until twenty days after giving the consumer a notice of right to cure described in section 5-5-110. Until the expiration of the minimum applicable period after the notice is given, all defaults consisting of a failure to make the required payment may be cured by tendering to the creditor the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges. Cure restores the consumer to his or her rights under the agreement as though the defaults had not occurred.

(2) With respect to defaults on the same obligation, other than defaults on an obligation secured by a mobile home, after a creditor has once given the consumer a notice of right to cure described in section 5-5-110, this section gives no right to cure and imposes no limitation on the creditor's right to proceed against the consumer or goods that are collateral with respect to any subsequent default that occurs within twelve months of such notice. With respect to defaults on the same obligation that is secured by a mobile home, this section gives no right to cure and

imposes no limitation on the creditor's right to proceed against the consumer or goods that are collateral with respect to any third default that occurs within twelve months of such notice. For the purpose of this section, in connection with revolving credit accounts, the obligation is the consumer's account, and there is no right to cure and no limitation on the creditor's rights with respect to any default that occurs within twelve months after an earlier default as to which a creditor has given the consumer notice of right to cure.

(3) Unless a creditor has provided the cosignor on a consumer credit transaction with a notice of right to cure that complies with section 5-5-110 and this section, in addition to the notice of right to cure provided to the consumer, the creditor may neither accelerate maturity of the unpaid balance of the obligation as to the cosignor nor report that amount on the cosignor's consumer report with a consumer reporting agency, as defined in section 5-18-103 and 15 U.S.C. sec. 1681a.

(4) This section and the provisions on waiver, agreements to forego rights, and settlement of claims do not prohibit a consumer from voluntarily surrendering possession of goods that are collateral and the creditor from thereafter enforcing its security interest in the goods at any time after default.

(5) This section shall not apply to consumer credit transactions that are payable in four or fewer installments.

Source: L. 2000: Entire article R&RE, p. 1239, § 1, effective July 1. **L. 2017:** (3) amended, (HB 17-1238), ch. 260, p. 1170, § 8, effective August 9.

Editor's note: (1) This section is similar to former § 5-5-112, as it existed prior to 2000.

(2) Although this section was effective on July 1, 2000, section 5 of chapter 265, Session Laws of Colorado 2000, provides that the disclosures described in subsection (3) are effective January 1, 2001.

5-5-112. Attorney fees. (1) With respect to a consumer credit transaction, the agreement may provide for the payment by the consumer of reasonable attorney fees not in excess of fifteen percent of the unpaid debt after default and referral to an attorney not a salaried employee of the creditor or such additional fee as may be directed by the court. A provision in violation of this section is unenforceable.

(2) This section does not authorize the imposition of attorney fees for preparation of a notice of right to cure if the consumer cures the default pursuant to sections 5-5-110 and 5-5-111.

Source: L. 2000: Entire article R&RE, p. 1240, § 1, effective July 1.

Editor's note: This section is similar to former §§ 5-2-413, 5-3-404, and 5-3-514, as they existed prior to 2000.

PART 2

CONSUMERS' REMEDIES

5-5-201. Effect of violations on rights of parties. (1) If a creditor has violated the provisions of this code applying to limitations on the schedule of payments or loan term for supervised loans contained in section 5-2-308 or authority to make supervised loans contained in section 5-2-301, the consumer is not obligated to pay the finance charge and has a right to recover from the person violating this code or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt a penalty in an amount determined by the court not in excess of three times the amount of the finance charge. With respect to violations arising from consumer credit transactions made pursuant to revolving credit accounts, no action pursuant to this subsection (1) may be brought more than two years after the violation occurred. With respect to violations arising from other consumer credit transactions, no action pursuant to this subsection (1) may be brought more than one year after the due date of the last scheduled payment of the agreement with respect to which the violation occurred.

(2) A consumer is not obligated to pay a charge in excess of that allowed by this code, and if a consumer has paid an excess charge he or she has a right to a refund. A refund may be made by reducing the consumer's obligation by the amount of the excess charge. If the consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may recover the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against consumers arising from the debt.

(3) If a consumer is entitled to a refund and a person liable to the consumer refuses to make a refund within a reasonable time after demand, the consumer may recover from that person a penalty in an amount determined by a court not exceeding the greater of either the amount of the finance charge or ten times the amount of the excess charge. If the creditor has made an excess charge in deliberate violation of or in reckless disregard for this code, the penalty may be recovered even though the creditor has refunded the excess charge. No penalty pursuant to this subsection (3) may be recovered if a court has ordered a similar penalty assessed against the same person in a civil action by the administrator described in section 5-6-114. With respect to excess charges arising from revolving credit accounts, no action pursuant to this subsection (3) may be brought more than two years after the time the excess charge was made. With respect to excess charges arising from other consumer credit transactions, no action pursuant to this subsection (3) may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made.

(4) Except as otherwise provided, no violation of this code impairs rights on a debt.

(5) If an employer discharges an employee in violation of the provisions prohibiting discharge contained in section 5-5-107, the employee may within ninety days bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks.

(6) If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid the error, no liability is imposed under subsections (1) and (3) of this section, and the validity of the transaction is not affected.

(7) In any case in which it is found that a creditor has violated this code, the court may award reasonable attorney fees incurred by the consumer.

(8) If a creditor repeatedly fails to provide a consumer with a statement of an annual percentage rate or finance charge as and to the extent required by the provisions on disclosure contained in section 5-3-101 of this code and has received written notice from the administrator of such repeated failure, any such subsequent failure by the creditor shall relieve any consumer receiving such defective disclosure from any obligation to pay any finance charge in connection with such consumer credit transaction.

Source: L. 2000: Entire article R&RE, p. 1240, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-202, as it existed prior to 2000.

5-5-202. Civil liability for violation of disclosure provisions. (1) Except as otherwise provided in this section, a creditor who, in violation of the provisions on disclosure contained in section 5-3-101, other than the provisions on advertising, fails to disclose information to a person entitled to the information under this code is liable to that person in an amount equal to the sum of:

(a) Twice the amount of the finance charge in connection with the transaction, but the liability pursuant to this paragraph (a) shall be not less than one hundred dollars nor more than one thousand dollars; and

(b) In the case of a successful action to enforce the liability under paragraph (a) of this subsection (1), the costs of the action together with reasonable attorney fees as determined by the court.

(2) A creditor has no liability under this section if, within sixty days after discovering an error and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay a finance charge in excess of the amount or percentage rate actually disclosed.

(3) A creditor may not be held liable in any action brought under this section for a violation of this code if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

(4) Any action that may be brought under this section against the original creditor in any credit transaction involving a security interest in land may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment unless the assignment was involuntary or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this code and that it maintained procedures reasonably adapted to apprise it of the existence of the violations.

(5) No action pursuant to this section may be brought more than one year after the date of the occurrence of the violation.

(6) In this section, creditor includes a person who in the ordinary course of business regularly extends or arranges for the extension of credit or offers to arrange for the extension of credit.

(7) No provision of this section or section 5-5-201 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, interpretation, or written response to a person pursuant to a written request on behalf of such identified person by the administrator or the board of governors of the federal reserve system pursuant to the federal "Truth in Lending Act" or federal "Consumer Leasing Act", notwithstanding that, after such act or omission has occurred, such rule, regulation, interpretation, or written response is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(8) The multiple failure to disclose to any person any information required under this code to be disclosed in connection with a single account under a revolving credit account, other single consumer credit sale, consumer loan, or other extension of consumer credit shall entitle the person to a single recovery under this section, but continued failure to disclose after recovery has been granted shall give rise to rights to additional recoveries.

Source: L. 2000: Entire article R&RE, p. 1241, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-203, as it existed prior to 2000.

Cross references: For the definitions and federal statutory cites of the "Truth in Lending Act" and the "Consumer Leasing Act", see § 5-1-302.

5-5-203. Consumer's right to rescind certain transactions. In the case of a consumer credit transaction with respect to which a security interest is retained or acquired in any property that is used as the principal dwelling of the person to whom credit is extended, the consumer shall have the same right to rescind the transaction as provided in the federal "Truth in Lending Act" and regulations thereunder. In order to comply with this code, a creditor shall comply with those provisions on the right of rescission of certain transactions.

Source: L. 2000: Entire article R&RE, p. 1243, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-204, as it existed prior to 2000.

Cross references: For the definition and federal statutory cite of the "Truth in Lending Act", see § 5-1-302.

5-5-204. Interests in land. For purposes of the provisions on civil liability for violation of the disclosure provisions contained in section 5-5-202 and on a consumer's right to rescind certain transactions contained in section 5-5-203, "consumer credit transaction" includes a transaction primarily secured by an interest in land without regard to the rate of the finance charge if the transaction is otherwise a consumer credit transaction.

Source: L. 2000: Entire article R&RE, p. 1243, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-201, as it existed prior to 2000.

5-5-205. Refunds and penalties as set-off to obligation. Refunds or penalties to which the consumer is entitled pursuant to this part 2 may be set off against the consumer obligation and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by said sections.

Source: L. 2000: Entire article R&RE, p. 1243, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-205, as it existed prior to 2000.

5-5-206. Civil liability for discrimination. If a person has failed to comply with section 5-3-210, the person aggrieved by such failure to comply has a right to recover actual damages from such person but in no event less than one hundred dollars for actual and exemplary damages nor more than one thousand dollars for actual and exemplary damages. In the case of a successful action to enforce such right of recovery, the aggrieved person shall recover the costs of the action together with reasonable attorney fees as determined by the court.

Source: L. 2000: Entire article R&RE, p. 1243, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-206, as it existed prior to 2000.

Cross references: For discrimination, see article 34 of title 24.

PART 3

CRIMINAL PENALTIES

5-5-301. Willful violations. (1) A supervised lender who willfully makes charges in excess of those permitted by the provisions of this code is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(2) A person, other than a supervised financial organization, who willfully engages in the business of making supervised loans without a license in violation of the provisions of this code applying to the authority to make supervised loans described in section 5-2-301 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(3) A person who willfully engages in the business of making consumer credit transactions or of taking assignments of rights against consumers arising therefrom and

undertakes direct collection of payments or enforcement of these rights without complying with the provisions of this code concerning notification contained in section 5-6-202 or payment of fees contained in section 5-6-203 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars.

(4) Any person who violates the provisions of this section and by the same act or acts violates the provisions of section 18-15-104 or 18-15-107, C.R.S., or both, shall be prosecuted for the violation of either or both of said sections and not for a violation of this section.

Source: L. 2000: Entire article R&RE, p. 1243, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-301, as it existed prior to 2000.

5-5-302. Disclosure violations. (1) A person is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment if such person willfully and knowingly:

(a) Gives false or inaccurate information or fails to provide information that such person is required to disclose under the provisions of this code on disclosure and advertising or of any related rule of the administrator adopted pursuant to this code;

(b) Uses any rate table or chart in a manner which consistently understates the annual percentage rate determined according to those provisions; or

(c) Otherwise fails to comply with any requirement of the provisions of this code on disclosure and advertising or of any related rule of the administrator adopted pursuant to this code.

Source: L. 2000: Entire article R&RE, p. 1244, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-302, as it existed prior to 2000.

ARTICLE 6

Administration

Editor's note: This article was numbered as article 6 of chapter 73, C.R.S. 1963. This title was repealed and reenacted in 1971, and this article was subsequently repealed and reenacted in 2000, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 2000, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the title heading. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

PART 1

POWERS AND FUNCTIONS
OF ADMINISTRATOR

5-6-101. Short title. This article shall be known and may be cited as "Uniform Consumer Credit Code - Administration".

Source: L. 2000: Entire article R&RE, p. 1244, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-101, as it existed prior to 2000.

5-6-102. Applicability. (1) This part 1 applies to persons who in this state:

(a) Make or solicit consumer credit transactions; or

(b) Directly collect payments from or enforce rights against consumers arising from sales, leases, or loans specified in paragraph (a) of this subsection (1) wherever they are made.

Source: L. 2000: Entire article R&RE, p. 1244, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-102, as it existed prior to 2000.

5-6-103. Definitions - "administrator". "Administrator" means the assistant attorney general to be designated by the attorney general. Any district attorney may, with the consent of the administrator, exercise the powers and perform the duties of the administrator as provided in section 5-6-104 (1)(a) and (1)(b) and sections 5-6-105 to 5-6-116.

Source: L. 2000: Entire article R&RE, p. 1245, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-103, as it existed prior to 2000.

5-6-104. Powers of administrator - harmony with federal regulations - reliance on rules. (1) In addition to other powers granted by this code, the administrator, within the limitations provided by law, may:

(a) Receive and act on complaints, take action designed to obtain voluntary compliance with this code, or commence proceedings on his or her own initiative;

(b) Counsel persons and groups on their rights and duties under this code;

(c) Establish programs for the education of consumers with respect to credit practices and problems;

(d) Make studies appropriate to effectuate the purposes and policies of this code and make the results available to the public;

(e) With approval of the council of advisors on consumer credit subcommittee, adopt, amend, and repeal substantive rules and regulations to carry out the specific provisions of this code, but not with respect to unconscionable agreements or fraudulent or unconscionable

conduct, and adopt, amend, and repeal procedural rules to carry out the provisions of this code;

(f) Maintain offices within this state;

(g) Enforce the provisions of article 19 of this title 5;

(h) Employ administrative law judges from the office of administrative courts in the department of personnel to conduct hearings on any matter within the administrator's jurisdiction;

(i) License and regulate collection agencies pursuant to article 16 of this title 5; and

(j) Exchange information with another governmental agency or official that has regulatory authority comparable to that of the administrator, subject to an appropriate confidentiality agreement between the administrator and the other agency or official or as otherwise permitted by law. This paragraph (j) shall not be construed to allow the exchange of information with lenders or creditors.

(2) The administrator may adopt rules not inconsistent with the federal "Truth in Lending Act" and federal "Consumer Leasing Act" to assure a meaningful disclosure of credit terms so that a prospective consumer will be able to compare more readily the various credit terms available to him or her and to avoid the uninformed use of credit. Such rules shall supersede any provisions of this code that are inconsistent with the federal "Truth in Lending Act" and federal "Consumer Leasing Act", may contain classifications, differentiations, or other provisions, and may provide for adjustments and exceptions for any class of transactions subject to this code that, in the judgment of the administrator, are necessary or proper to effectuate the purposes of, or to prevent circumvention or evasion of, or to facilitate compliance with, the provisions of this code relating to disclosure of credit terms.

(3) To keep the administrator's rules in harmony with the federal "Truth in Lending Act" and the federal "Consumer Leasing Act" and the regulations prescribed from time to time pursuant to that act by the board of governors of the federal reserve system and with the rules of administrators in other jurisdictions that enact the "Uniform Consumer Credit Code", the administrator, so far as is consistent with the purposes, policies, and provisions of this code, shall:

(a) Before adopting, amending, and repealing rules and regulations, advise and consult with administrators in other jurisdictions that enact the "Uniform Consumer Credit Code"; and

(b) In adopting, amending, and repealing rules and regulations, take into consideration:

(I) The regulations so prescribed by the board of governors of the federal reserve system; and

(II) The rules of administrators in other jurisdictions that enact the "Uniform Consumer Credit Code".

(4) Except for a refund of an excess charge, no liability is imposed under this code for an act done or omitted in good faith in conformity with a rule, regulation, interpretation, or written response to a person pursuant to a written request on behalf of such identified person by the administrator, notwithstanding that after the act or omission the rule, regulation, interpretation, or written response may be amended or repealed or be determined by judicial or other authority to be invalid for any reason.

Source: L. 2000: Entire article R&RE, p. 1245, § 1, effective July 1; (1)(i) added, p. 945, § 26, effective July 1. **L. 2003:** (1)(j) added, p. 1896, § 14, effective July 1. **L. 2005:** (1)(h)

amended, p. 853, § 7, effective June 1. **L. 2017:** (1)(g) and (1)(i) amended, (HB 17-1238), ch. 260, p. 1171, § 9, effective August 9.

Editor's note: (1) This section is similar to former § 5-6-104, as it existed prior to 2000.

(2) Subsection (1)(h) from House Bill 00-1182 was harmonized with House Bill 00-1185 and renumbered as subsection (1)(i).

Cross references: For the definitions and federal statutory cites of the "Truth in Lending Act" and the "Consumer Leasing Act", see § 5-1-302.

5-6-105. Administrative powers with respect to supervised financial organizations. (1) With respect to supervised financial organizations, the powers of examination and investigation described in sections 5-2-305 and 5-6-106 and administrative enforcement described in section 5-6-108 shall be exercised by the official or agency to whose supervision the organization is subject. All other powers of the administrator under this code may be exercised by the administrator with respect to a supervised financial organization.

(2) If the administrator receives a complaint or other information concerning noncompliance with this code by a supervised financial organization, the administrator shall inform the official or agency having supervisory authority over the organization concerned. The administrator may request information about supervised financial organizations from the officials or agencies supervising them.

(3) The administrator and any official or agency of this state having supervisory authority over a supervised financial organization are authorized and directed to consult and assist one another in maintaining compliance with this code. They may jointly pursue investigations, prosecute suits, and take other official action, as they deem appropriate, if either of them otherwise is empowered to take the action. The administrator may recover from a supervised financial organization the administrator's reasonable costs incurred in such investigation, suit, or other official action as part of any relief granted the administrator by a court of competent jurisdiction.

Source: L. 2000: Entire article R&RE, p. 1246, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-105, as it existed prior to 2000.

5-6-106. Investigatory powers. (1) If the administrator has reasonable cause to believe that a person has engaged in an act that is subject to action by the administrator, the administrator may make an investigation to determine if the act has been committed, and, to the extent necessary for this purpose, may administer oaths or affirmations, and, upon his or her own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence. In any

civil action brought by the administrator as a result of such an investigation, the administrator may recover the reasonable costs of making the investigation if the administrator prevails in the action.

(2) If the person's records are located outside this state, the person at his or her option shall either make them available to the administrator at a convenient location within this state or pay the reasonable and necessary expenses for the administrator or the administrator's representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the administrator's behalf.

(3) Upon failure without lawful excuse to obey a subpoena or to give testimony, the administrator may apply to the district court for an order compelling compliance.

(4) The administrator shall not make public the name or identity of a person whose acts or conduct he or she investigates pursuant to this section or the facts disclosed in the investigation, but this subsection (4) does not apply to disclosures in actions or enforcement proceedings pursuant to this code.

Source: L. 2000: Entire article R&RE, p. 1247, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-106, as it existed prior to 2000.

5-6-107. Application of administrative procedures - provisions. Except as otherwise provided, the provisions of sections 24-4-102 to 24-4-106, C.R.S., apply to and govern all rules promulgated and all administrative action taken by the administrator pursuant to this article or the provisions on supervised loans contained in part 3 of article 2 of this title; except that section 24-4-104 (3), C.R.S., shall not apply to any such action.

Source: L. 2000: Entire article R&RE, p. 1247, § 1, effective July 1.
Editor's note: This section is similar to former § 5-6-107, as it existed prior to 2000.

5-6-108. Judicial review. Any person aggrieved by any final action or order of the administrator and affected thereby is entitled to a review thereof by the Colorado court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S.

Source: L. 2000: Entire article R&RE, p. 1247, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-108, as it existed prior to 2000.

5-6-109. Administrative enforcement orders. (1) After notice and hearing, the administrator may order a creditor or a person acting in the creditor's behalf to cease and desist from engaging in violations of this code or any rule or order lawfully made pursuant to this code. The order issued by the administrator may also require the creditor or person to make refunds to consumers of excess charges under this code and pay a penalty up to a maximum of one thousand dollars for each violation, all or part of which may be specifically designated for consumer and

creditor educational purposes.

(2) A respondent aggrieved by an order of the administrator may obtain judicial review of the order in the Colorado court of appeals. The administrator may obtain an order of the court for enforcement of the administrator's order in the district court under section 24-4-106, C.R.S. All proceedings under this section shall be governed by sections 24-4-105 and 24-4-106, C.R.S.

(3) With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the administrator may not issue an order pursuant to this section but may bring a civil action for an injunction under section 5-6-112.

Source: L. 2000: Entire article R&RE, p. 1248, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-108, as it existed prior to 2000.

5-6-110. Assurance of discontinuance. If it is claimed that a person has engaged in conduct subject to an order by the administrator described in section 5-6-108 or by a court described in sections 5-6-111 to 5-6-113, the administrator may accept an assurance in writing that the person will not engage in the conduct in the future. The assurance may also require the person to make refunds to consumers of excess charges under this code, pay a penalty up to a maximum of one thousand dollars for each violation, all or part of which may be specifically designated for consumer and creditor educational purposes, and reimburse the administrator for the administrator's reasonable costs incurred in investigating the conduct. If a person giving an assurance of discontinuance fails to comply with its terms, the assurance is evidence that prior to the assurance such person engaged in the conduct described in the assurance.

Source: L. 2000: Entire article R&RE, p. 1248, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-109, as it existed prior to 2000.

5-6-111. Injunctions against violations of code. The administrator may bring a civil action to restrain a person from violating this code or rules or regulations promulgated thereunder and for other appropriate relief.

Source: L. 2000: Entire article R&RE, p. 1248, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-110, as it existed prior to 2000.

Cross references: For injunctions, see C.R.C.P. 65.

5-6-112. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct. (1) The administrator may bring a civil action to restrain a creditor or a person acting in the creditor's behalf from engaging in a course of:

(a) Making or enforcing unconscionable terms or provisions of consumer credit transactions;

(b) Fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit transactions;

(c) Conduct of any of the types specified in paragraph (a) or (b) of this subsection (1) with respect to transactions that give rise to or lead persons to believe they will give rise to consumer credit transactions; or

(d) Fraudulent or unconscionable conduct in the collection of debts arising from consumer credit transactions.

(2) In an action brought pursuant to this section, the court may grant relief only if it finds:

(a) That the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;

(b) That the agreements or conduct of the respondent has caused or is likely to cause injury to consumers; and

(c) That the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions.

(3) In applying this section, consideration shall be given to each of the following factors, among others:

(a) Whether the creditor should have reasonably believed at the time consumer credit transactions were made that, according to the credit terms or schedule of payments, there was no reasonable probability of payment in full of the obligation by the consumer;

(b) Whether the creditor reasonably should have known, at the time of the transaction, of the inability of the consumer to receive substantial benefits from the transaction;

(c) Gross disparity between the price of the transaction and its value measured by the price at which similar transactions are readily obtainable by like consumers;

(d) The fact that the creditor contracted for or received separate charges for insurance with respect to consumer credit transactions with the effect of making the transactions, considered as a whole, unconscionable;

(e) The fact that the respondent has knowingly taken advantage of the inability of the consumer reasonably to protect his or her interests by reason of physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of the agreement, or similar factors; and

(f) Any of the factors set forth in section 5-5-109 (4).

(4) The administrator may bring a civil action to restrain a creditor or a person acting in the creditor's behalf from engaging in a course of making or arranging consumer loans to enable consumers to buy or lease from a particular seller or lessor goods or services, a principal purpose of which course of action is to avoid giving the consumers those rights that they would have had if the transactions were entered into as a consumer credit sale if:

(a) The lender is a person related to the seller or lessor unless the relationship is remote or is not a factor in the transaction;

(b) The seller or lessor guarantees the loans or otherwise assumes the risk of loss by the lender upon the loans;

(c) The loans are conditioned upon the consumer's purchase or lease of the goods or services from the particular seller or lessor, but the lender's payment of proceeds of the loan to the seller or lessor does not in itself establish that the loan was so conditioned; or

(d) The lender, before the lender makes the consumer loan, has knowledge or, from the lender's course of dealing with the particular seller or lessor or from the lender's records, notice of substantial complaints by other consumers of the particular seller's or lessor's failure or refusal to perform his or her contracts with them and of the particular seller's or lessor's failure to remedy his or her defaults within a reasonable time after notice to him or her of the complaints.

(5) In an action brought pursuant to this code, a charge or practice expressly permitted by this code is not in itself unconscionable.

Source: L. 2000: Entire article R&RE, p. 1248, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-111, as it existed prior to 2000.

5-6-113. Temporary relief. With respect to an action brought to enjoin violations of this code under section 5-6-111 or unconscionable agreements or fraudulent or unconscionable conduct under section 5-6-112, the administrator may apply to the court for a temporary restraining order or a preliminary injunction against a respondent pending final determination of proceedings. If the court finds after a hearing that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in conduct sought to be restrained, it may grant any such temporary restraining order or preliminary injunction it deems appropriate. The court may also issue such orders or judgments as may be necessary to completely compensate or restore to his or her original position any consumer affected by such violation, agreement, or conduct or if there is reasonable cause to believe funds to make refunds of excess charges under this code will not be available at a future date. No bond or other security is required of the administrator before relief under this section may be granted.

Source: L. 2000: Entire article R&RE, p. 1250, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-112, as it existed prior to 2000.

5-6-114. Civil actions by administrator. (1) (a) The administrator may bring a civil action against a creditor for making or collecting charges in excess of those permitted by this code, violating any of the provisions of this code applying to limitations on the schedule of payments or loan term for supervised loans or authority to make supervised loans, or for disclosure violations. An action may relate to transactions with more than one consumer. If it is found that an excess charge has been made, the court shall order the respondent to refund to the consumer the amount of the excess charge and to pay a penalty to the consumer as provided in sections 5-5-201 and 5-5-202. In addition, the court may assess a civil penalty of up to one thousand dollars for each violation of this code.

(b) If a creditor has made an excess charge in deliberate violation of or in reckless disregard for this code or if a creditor has refused to refund an excess charge within a reasonable time after demand by the consumer or the administrator, the court may also order the respondent to pay to the consumers a civil penalty in an amount determined by the court not in excess of the greater of either the amount of the finance charge or ten times the amount of the excess charge.

Refunds and penalties to which the consumer is entitled pursuant to this subsection (1) may be set off against the consumer's obligation.

(c) If a consumer brings an action against a creditor to recover an excess charge or civil penalty, an action by the administrator to recover for the same excess charge or civil penalty shall be stayed while the consumer's action is pending and shall be dismissed if the consumer's action is dismissed with prejudice or results in a final judgment granting or denying the consumer's claim. There shall be no double recovery for refunds of excess charges or a penalty payable to the consumer.

(d) With respect to excess charges arising from revolving accounts, no action pursuant to this subsection (1) may be brought more than four years after the time the excess charge was made. With respect to excess charges arising from other consumer credit transactions, no action pursuant to this subsection (1) may be brought more than four years after the due date of the last scheduled payment of the agreement pursuant to which the charge was made.

(e) If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection (1).

(2) The administrator may bring a civil action against a creditor or a person acting in the creditor's behalf to recover a civil penalty for willfully violating this code, and, if the court finds that the defendant has engaged in a course of repeated and willful violations of this code, it may assess a civil penalty of no more than five thousand dollars. All or part of the penalty under this subsection (2) may be specifically designated for consumer and creditor education. No civil penalty pursuant to this subsection (2) may be imposed for violations of this code occurring more than four years before the action is brought or for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

(3) If the administrator prevails in an action brought under this section, the administrator may recover his or her reasonable costs in investigating and bringing the action and request an order for reimbursement of his or her reasonable attorney fees.

Source: L. 2000: Entire article R&RE, p. 1250, § 1, effective July 1. **L. 2011:** (1)(a) amended, (HB 11-1221), ch. 121, p. 381, § 3, effective July 1.

Editor's note: This section is similar to former § 5-6-113, as it existed prior to 2000.

5-6-115. Jury trial. In an action brought by the administrator under this code, the administrator has no right to trial by jury, but this will not prevent a defendant from requesting a jury trial under the Colorado rules of civil procedure.

Source: L. 2000: Entire article R&RE, p. 1252, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-114, as it existed prior to 2000.

Cross references: For jury trials, see C.R.C.P. 38.

5-6-116. Consumers' remedies not affected. The grant of powers to the administrator in this article does not affect remedies available to consumers under this code or under other principles of law or equity.

Source: L. 2000: Entire article R&RE, p. 1252, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-115, as it existed prior to 2000.

PART 2

NOTIFICATION AND FEES

5-6-201. Applicability. (1) Except as provided in subsections (2) and (3) of this section, this part 2 applies if a person:

(a) Makes consumer credit sales and charges or collects a finance charge, or makes consumer leases; or

(b) Takes assignments of and undertakes direct collection of payments from, or enforcement of rights against, consumers arising from consumer credit sales or consumer leases.

(2) This part 2 does not apply to supervised lenders described in section 5-1-301 (46), persons making consumer loans described in section 5-1-301 (15), or to persons licensed as collection agencies pursuant to article 16 of this title 5.

(3) Sections 5-6-203 (5) and 5-6-204 of this part 2 apply to all fees collected under this code.

Source: L. 2000: Entire article R&RE, p. 1252, § 1, effective July 1. **L. 2009:** (1)(a) amended, (HB 09-1141), ch. 41, p. 158, § 4, effective January 1, 2010. **L. 2017:** (2) amended, (HB 17-1238), ch. 260, p. 1171, § 10, effective August 9.

Editor's note: This section is similar to former § 5-6-201, as it existed prior to 2000.

5-6-202. Notification. (1) Persons subject to this part 2 shall file notification with, and pay the fee prescribed in section 5-6-203 to, the administrator within thirty days after commencing business in this state and, thereafter, on or before January 31 of each year. The notification shall state:

(a) Name of the person;

(b) Name in which business is transacted if different from paragraph (a) of this subsection (1);

(c) Address of principal office, which may be outside this state;

(d) Address of all offices or retail stores, if any, in this state at which consumer credit sales or consumer leases are made or, in the case of a person taking assignments of obligations, the offices or places of business within this state at which business is transacted;

(e) If consumer credit sales or consumer leases are made otherwise than at an office or retail store in this state, a brief description of the manner in which they are made;

(f) Address of designated agent upon whom service of process may be made in this state described in section 5-1-203; and

(g) Whether supervised loans are made.

(2) If information in a notification becomes inaccurate after filing, no further notification is required until the following January 31.

Source: L. 2000: Entire article R&RE, p. 1252, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-202, as it existed prior to 2000.

5-6-203. Fees. (1) A person required to file notification shall, with the first notification and on or before January 31 of each year thereafter, pay to the administrator a nonrefundable annual notification fee. The administrator is entitled to examine the loans, business, and records of such person without issuance of a subpoena.

(2) (Deleted by amendment, L. 2009, (HB 09-1141), ch. 41, p. 158, § 5, effective January 1, 2010.)

(3) Persons required to file notification who are assignees of consumer credit sales or consumer leases shall pay an additional nonrefundable annual volume fee on or before January 31 of each year for each one hundred thousand dollars, or part thereof, of the unpaid balances at the time of the assignment of obligations arising from consumer credit sales or consumer leases made in this state and taken by assignment during the preceding calendar year.

(4) A penalty of five dollars per day shall be imposed on any person failing to comply with this section; except that, if the fees required by this section are paid on or before March 1 of each year, no penalty shall be imposed. If a person required to file notification and pay a notification fee fails to do so, the consumer shall have no obligation to pay the finance charge due under the consumer credit transaction, and any finance charges paid shall be refunded to the consumer. In addition, if the administrator examines the loans, business, or records of such person, the person shall pay the reasonable and necessary examination expenses of the administrator.

(5) (a) The administrator shall determine the amount of the notification, volume, and license fees required in this section and in section 5-2-302 and may periodically reduce or increase the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3) and (4), C.R.S., to reduce the uncommitted reserves of the uniform consumer credit code cash fund created in section 5-6-204 to which all or any portion of one or more of the fees is credited.

(b) In accordance with section 24-75-402 (3)(c), C.R.S., for fiscal years prior to July 1, 2018, the uniform consumer credit code cash fund is subject to an alternative maximum reserve of one-third of the amount expended during the previous fiscal year. For fiscal years that begin on or after July 1, 2018, the fund is subject to the maximum reserve established in section 24-75-402, C.R.S.

Source: L. 2000: Entire article R&RE, p. 1253, § 1, effective July 1. **L. 2009:** Entire section amended, (HB 09-1141), ch. 41, p. 158, § 5, effective January 1, 2010. **L. 2010:** (5) amended, (HB 10-1422), ch. 419, p. 2063, § 7, effective August 11. **L. 2015:** (5) amended, (HB

15-1261), ch. 322, p. 1312, § 2, effective June 5.

Editor's note: This section is similar to former § 5-6-203, as it existed prior to 2000.

5-6-204. Cash fund created. (1) All fees collected under this code and under article 10 of this title 5 shall be credited to the uniform consumer credit code cash fund, which is created and referred to in this section as the "fund", and all money credited to the fund shall be used for the administration and enforcement of this code, article 10 of this title 5, and article 19 of this title 5. Interest earned on the fund shall be credited to the fund. The general assembly shall make annual appropriations out of the fund for the administration and enforcement of this code, article 10 of this title 5, and article 19 of this title 5; except that expenditures by the administrator for consumer and creditor education resulting from the penalties provided in sections 5-2-303 (7)(f), 5-6-109 (1), 5-6-110, and 5-6-114 (2) shall not require appropriation by the general assembly if the expenditures do not exceed twenty-five thousand dollars per fiscal year and do not include the hiring of any full-time equivalents.

(2) and (3) Repealed.

(4) Notwithstanding subsection (1) of this section, the state treasurer shall transfer the penalties collected pursuant to section 5-6-114 (1)(a) to the general fund.

Source: L. 2000: Entire article R&RE, p. 1254, § 1, effective July 1. **L. 2001:** Entire section amended, p. 30, § 14, effective March 9. **L. 2002:** Entire section amended, p. 150, § 1, effective March 27. **L. 2003:** (3) added, p. 454, § 1, effective March 5. **L. 2011:** (4) added, (HB 11-1221), ch. 121, p. 382, § 4, effective July 1. **L. 2015:** (2) and (3) repealed, (SB 15-264), ch. 259, p. 941, § 6, effective August 5. **L. 2017:** (1) amended, (HB 17-1238), ch. 260, p. 1171, § 11, effective August 9.

Editor's note: This section is similar to former § 5-6-204, as it existed prior to 2000.

PART 3

COUNCIL OF ADVISORS ON CONSUMER CREDIT

5-6-301. Council of advisors on consumer credit. (1) There is hereby created the council of advisors on consumer credit consisting of nine members who shall be appointed by the governor. One of the advisors shall be designated by the governor as chairperson. In appointing members of the council, the governor shall seek to achieve a fair representation from the various segments of the consumer credit industry and public.

(2) The term of office of each member of the council is three years. A member chosen to fill a vacancy arising otherwise than by expiration of a term shall be appointed for the unexpired term of the member whom he or she is to succeed. A member of the council is eligible for reappointment.

(3) Members of the council shall serve without compensation but are entitled to

reimbursement of actual and necessary expenses incurred in the performance of their duties.

Source: L. 2000: Entire article R&RE, p. 1254, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-301, as it existed prior to 2000.

5-6-302. Function of council - conflict of interest. (1) The council shall advise and consult with the administrator concerning the exercise of the administrator's powers under this code and may make recommendations to the administrator. Members of the council may assist the administrator in obtaining compliance with this code. Since it is an objective of this part 3 to obtain competent representatives of creditors and the public to serve on the council and to assist and cooperate with the administrator in achieving the objectives of this code, service on the council shall not in itself constitute a conflict of interest regardless of the occupations or associations of the members.

(2) (a) There is hereby created a subcommittee of the council of advisors on consumer credit for the purpose specified in paragraph (b) of this subsection (2). The subcommittee shall consist of the attorney general, the chairperson of the council, and three members of the council appointed by such chairperson. Of the subcommittee members who are also members of the council, two shall be representatives of the consumer credit industry and two shall be representatives of the public. Any action taken by a majority of the subcommittee shall constitute action by the council.

(b) The subcommittee may review, repeal, amend, or modify any rule promulgated by the administrator pursuant to section 5-6-104 (1)(e).

Source: L. 2000: Entire article R&RE, p. 1254, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-302, as it existed prior to 2000.

ARTICLE 7

Insurance Premium Financing

5-7-101 to 5-7-103. (Repealed)

Source: L. 2001: Entire article repealed, p. 30, § 15, effective March 9.

Editor's note: This article was added in 1977. For amendments to this article prior to its repeal in 2001, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 9

Effective Date

Editor's note: This title was repealed and reenacted in 1971. This article was numbered as article 9 of chapter 73, C.R.S. 1963. For historical information concerning the repeal and reenactment of this title in 1971, see the editor's note immediately following the title heading for this title.

5-9-101. Time of taking effect prior to June 30, 2000 - provisions for transition. (1) Except as otherwise provided in this section, this code as it existed prior to the enactment of House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, took effect at 12:01 a.m. on October 1, 1971, and was in effect through June 30, 2000.

(2) To the extent appropriate to permit the administrator to prepare for operation of this code as it existed prior to the enactment of House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, when it took effect and to act on applications for licenses to make supervised loans under this code as it existed prior to the enactment of House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, (subsection (1) of section 5-3-503), the provisions on supervised loans (part 5) of the article on loans (article 3 of this title) and of the article on administration (article 6 of this title) took effect on July 1, 1971, and were in effect through June 30, 2000.

(3) Transactions entered into before October 1, 1971, and the rights, duties, and interests flowing from them thereafter, may be terminated, completed, consummated, or enforced as required or permitted by any statute, rule of law, or other law amended, repealed, or modified by this code as though the repeal, amendment, or modification had not occurred, but this code, as it existed prior to the enactment of House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, applies to:

(a) Refinancings, consolidations, and deferrals made on or after October 1, 1971, and before July 1, 2000, concerning sales, leases, and loans whenever made;

(b) Sales or loans made on or after October 1, 1971, and before July 1, 2000, pursuant to revolving charge accounts (section 5-2-108) and revolving loan accounts (section 5-3-108) entered into, arranged, or contracted for before October 1, 1971; and

(c) All credit transactions made before October 1, 1971, insofar as the article on remedies and penalties (article 5 of this title) limits the remedies of creditors.

(4) With respect to revolving charge accounts (section 5-2-108) and revolving loan accounts (section 5-3-108) entered into, arranged, or contracted for before October 1, 1971, disclosure pursuant to the provisions on disclosure (section 5-2-310 and section 5-3-309), shall be made not later than thirty days after October 1, 1971.

Source: L. 71: R&RE, p. 851, § 1. **C.R.S. 1963:** § 73-9-101. **L. 2000:** (1), (2), (3)(a), and (3)(b) amended, p. 1255, § 2, effective July 1.

Editor's note: The provisions referenced in this section reflect the provisions as they existed prior to the repeal and reenactment of articles 2 and 3 of this title in 2000. For the referenced provisions, see the 1999 Colorado Revised Statutes.

5-9-101.5. Time of taking effect - provisions for transition. (1) Except as otherwise provided in this section, this code as it exists following the repeal and reenactment contained in House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, takes effect at 12:01 a.m. on July 1, 2000.

(2) Transactions entered into before July 1, 2000, and the rights, duties, and interests flowing from them thereafter, may be terminated, completed, consummated, or enforced as required or permitted by any statute, rule of law, or other law amended, repealed, or modified by this code as though the repeal, amendment, or modification had not occurred, but this code applies to:

(a) Refinancings, consolidations, and deferrals made on or after July 1, 2000, concerning sales, leases, and loans whenever made;

(b) Sales or loans made on or after July 1, 2000, pursuant to revolving credit accounts entered into, arranged, or contracted for before July 1, 2000; and

(c) All credit transactions made before July 1, 2000, insofar as article 5 of this title limits the remedies of creditors. Notwithstanding anything to the contrary, the disclosures described in sections 5-3-105 (5), 5-3-106, 5-5-110 (4), and 5-5-111 (3) of this code take effect January 1, 2001.

Source: L. 2000: Entire section added, p. 1256, § 4, effective July 1.

5-9-102. Continuation of licensing prior to July 1, 2000. Notwithstanding the repeal and reenactment of articles 2 and 3 of chapter 73, C.R.S. 1963, by this code, all persons licensed or otherwise authorized under the provisions of articles 2 or 3 of chapter 73, C.R.S. 1963, immediately prior to October 1, 1971, are licensed to make supervised loans under this code as it existed prior to the enactment of House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, pursuant to the provisions on supervised loans of the article on loans (part 5 of article 3 of this title) in effect on and after October 1, 1971, but before July 1, 2000, and all provisions of said sections apply to the persons so previously licensed or authorized. The administrator may, but is not required to, deliver evidence of licensing to the persons so previously licensed or authorized.

Source: L. 71: R&RE, p. 851, § 1. **C.R.S. 1963:** § 73-9-102. **L. 2000:** Entire section amended, p. 1256, § 3, effective July 1.

5-9-102.5. Continuation of licensing after July 1, 2000. Notwithstanding the repeal and reenactment of part 5 of article 3 of this title by House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, all persons licensed or otherwise authorized under the provisions of part 5 of article 3 immediately prior to July 1, 2000, are licensed to make supervised loans under this code pursuant to the provisions on supervised loans contained in part 3 of article 2 of this title, and all provisions of said part 3 apply to the persons so previously licensed or authorized. The administrator may, but is not required to, deliver evidence of licensing to the persons so previously licensed or authorized.

Source: L. 2000: Entire section added, p. 1256, § 4, effective July 1.

5-9-103. (Reserved)

ARTICLE 9.5

Refund Anticipation Loans

5-9.5-101. Short title. This article shall be known and may be cited as the "Refund Anticipation Loans Act".

Source: L. 2010: Entire article added, (HB 10-1400), ch. 237, p. 1034, § 1, effective November 1.

5-9.5-102. Legislative declaration - scope. The general assembly hereby finds, determines, and declares that it is in the interest of the public health, safety, and welfare to enact minimum protections for the benefit of consumers availing themselves of refund anticipation loans offered by facilitators.

Source: L. 2010: Entire article added, (HB 10-1400), ch. 237, p. 1034, § 1, effective November 1.

5-9.5-103. Definitions. As used in this article 9.5, unless the context otherwise requires:

(1) "Administrator" means the administrator designated in section 5-6-103.

(2) "Consumer" means a natural person who is solicited for, applies for, or receives the proceeds of a refund anticipation loan.

(3) "Electronic return originator" means a person authorized by the internal revenue service to originate the electronic submission of income tax returns to the internal revenue service.

(4) "Person" has the meaning set forth in section 2-4-401, C.R.S.

(5) "Refund anticipation loan" means a loan made to a Colorado consumer based on the Colorado consumer's anticipated income tax refund.

(6) (a) "Refund anticipation loan facilitator" or "facilitator" means a person who, individually or in conjunction or cooperation with another person, solicits the execution of, processes, arranges for, receives, or accepts an application or agreement for a refund anticipation loan or in any other manner facilitates the making of a refund anticipation loan and includes an electronic return facilitator.

(b) "Refund anticipation loan facilitator" does not include a person validly:

(I) Doing business as a bank, thrift, savings association, or credit union under the laws of the United States or of this state or is an affiliate of such an entity that is acting as a servicer for that entity;

(II) Practicing as a certified public accountant licensed under article 2 of title 12, C.R.S.;

or

(III) Licensed as an attorney by the Colorado supreme court in accordance with section 13-93-101.

Source: L. 2010: Entire article added, (HB 10-1400), ch. 237, p. 1034, § 1, effective November 1. **L. 2017:** IP and (6)(b)(III) amended, (SB 17-227), ch. 192, p. 704, § 2, effective August 9.

5-9.5-104. Restriction on facilitating refund anticipation loans. A person shall not act as a refund anticipation loan facilitator unless the person is, or is directly employed by, an electronic return originator.

Source: L. 2010: Entire article added, (HB 10-1400), ch. 237, p. 1035, § 1, effective November 1.

5-9.5-105. Disclosures required. (1) A facilitator shall not facilitate a refund anticipation loan unless the facilitator makes the disclosures required by subsections (2), (3), and (4) of this section.

(2) **Fee schedule to be posted.** (a) Every place of business in which facilitators facilitate refund anticipation loans shall post a schedule showing the current fees for facilitating refund anticipation loans and for the electronic filing of a consumer's tax return.

(b) Each fee schedule posted pursuant to this subsection (2) shall contain examples of the refund anticipation loan annual percentage rates for refund anticipation loans of two hundred dollars, five hundred dollars, one thousand dollars, one thousand five hundred dollars, two thousand dollars, and five thousand dollars.

(c) Each fee schedule shall also prominently contain the following statement, in at least twenty-eight-point, bold-faced type and in both English and Spanish:

NOTICE

When you take out a refund anticipation loan, you are taking out a loan by borrowing money against your tax refund. If your tax refund is less than expected, you will still owe the entire amount of the loan. If your refund is delayed, you may have to pay additional costs. YOU CAN USUALLY GET YOUR REFUND IN 8 TO 15 DAYS WITHOUT GETTING A LOAN OR PAYING EXTRA FEES. You can have your tax return filed electronically and your refund direct-deposited into your own bank account without obtaining a loan or other paid product. You can make complaints regarding your refund anticipation loan to the administrator of the Uniform Consumer Credit Code in the Colorado state attorney general's office at [current telephone number].

(d) The fee schedule and notice required by this subsection (2) shall be made on a sign measuring no less than sixteen inches by twenty inches and shall be displayed conspicuously and in a prominent location.

(3) **Oral disclosures.** (a) When a consumer applies for a refund anticipation loan, the

facilitator shall orally disclose to the consumer:

(I) That the product is a loan that only lasts one to two weeks;

(II) That, if the consumer's tax refund is less than expected, the consumer is liable for the full amount of the loan and must repay any difference;

(III) The amount of the refund anticipation loan fee; and

(IV) The refund anticipation loan interest rate.

(b) The oral disclosure required under this subsection (3) shall be made in English, Spanish, or any other language that the facilitator uses to communicate orally with the consumer.

(4) **Written statement.** (a) When a consumer applies for a refund anticipation loan and before closing the refund anticipation loan, the facilitator facilitating the loan shall give the consumer a written statement informing the consumer:

(I) That a refund anticipation loan is a loan and is not the borrower's actual income tax refund;

(II) That the consumer may file an income tax return electronically without applying for a refund anticipation loan;

(III) That the consumer is responsible for repayment of the loan and related fees if the tax refund is not paid or is insufficient to repay the loan;

(IV) Any fee that will be charged if the loan is not approved;

(V) The average time, as published by the federal internal revenue service, within which a taxpayer can expect to receive a refund for an income tax return filed:

(A) Electronically, and the refund is deposited directly into the taxpayer's financial institution account or mailed to the taxpayer; and

(B) By mail, and the refund is deposited directly into the taxpayer's financial institution account or mailed to the taxpayer;

(VI) That the federal internal revenue service does not guarantee:

(A) Payment of the full amount of the anticipated refund;

(B) A specific date on which it will mail a refund or deposit the refund into a taxpayer's financial institution account; or

(C) The estimated time within which the proceeds of the refund anticipation loan will be paid to the consumer if the loan is approved;

(VII) The following information, specific to the consumer:

(A) The total fees for the loan; and

(B) The estimated annual percentage rate for the loan, calculated using the guidelines established under the federal "Truth in Lending Act", 15 U.S.C. sec. 1601 et seq., as amended;

(VIII) The procedure for making a complaint to the administrator regarding the refund anticipation loan, including the current address, telephone number, or website of the administrator to which such complaints may be directed.

(b) The written statement required under this subsection (4) shall be provided to the consumer in English, Spanish, or both English and Spanish, as requested by the consumer.

Source: L. 2010: Entire article added, (HB 10-1400), ch. 237, p. 1035, § 1, effective November 1.

5-9.5-106. Unlawful acts - fine. Any person who willfully violates this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Source: L. 2010: Entire article added, (HB 10-1400), ch. 237, p. 1037, § 1, effective November 1.

5-9.5-107. Enforcement - investigation - penalties. (1) The administrator shall enforce this article. To carry out this responsibility, the administrator is authorized to:

(a) Receive and act on complaints, take action designed to obtain voluntary compliance with this article, or commence proceedings on the administrator's own initiative;

(b) Issue and enforce cease-and-desist or other administrative enforcement orders in the same manner as set forth in section 5-6-109;

(c) Make investigations; issue subpoenas to require the attendance of witnesses or the production of documents, which subpoenas may be issued to any persons, whether located in this state or elsewhere, who have engaged in or are engaging in any violation of this article; administer oaths; conduct hearings in aid of any investigation or inquiry necessary to administer the provisions of this article; and apply to the appropriate court for an appropriate order to effect the purposes of this article.

(d) Bring a civil action to restrain a person from violating this article and for other appropriate relief in the same manner as set forth in sections 5-6-111 to 5-6-114 and assess a civil penalty of up to one thousand dollars per violation; and

(e) Use any of the administrator's enforcement powers to restrain or take other action against any person found to be facilitating or enforcing refund anticipation loans in violation of this article.

Source: L. 2010: Entire article added, (HB 10-1400), ch. 237, p. 1037, § 1, effective November 1. **L. 2011:** (1)(d) amended, (HB 11-1221), ch. 121, p. 381, § 1, effective July 1. **L. 2013:** (1)(c) amended, (SB 13-248), ch. 270, p. 1418, § 3, effective July 1.

5-9.5-108. Severability. If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article that can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Source: L. 2010: Entire article added, (HB 10-1400), ch. 237, p. 1038, § 1, effective November 1.

5-9.5-109. Repeal of article. (1) This article is repealed, effective September 1, 2019.

(2) Prior to the repeal of this article, the functions of the administrator under this article are subject to review as provided in section 24-34-104, C.R.S.

Source: L. 2010: Entire article added, (HB 10-1400), ch. 237, p. 1038, § 1, effective November 1. **L. 2016:** (2) amended, (HB 16-1192), ch. 83, p. 232, § 4, effective April 14.

RENTAL PURCHASE

ARTICLE 10

Rental Purchase Agreements

PART 1

GENERAL PROVISIONS

5-10-101. Short title. This article shall be known and may be cited as the "Colorado Rental Purchase Agreement Act".

Source: L. 90: Entire article added, p. 366, § 1, effective January 1, 1991.

5-10-102. Legislative declaration. (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are to:

(a) Simplify, clarify, and modernize the law governing rental purchase agreements;

(b) Provide certain disclosures to consumers who enter into rental purchase agreements and to promote consumer understanding of the terms of rental purchase agreements;

(c) To protect consumers against unfair practices by some rental purchase dealers, having due regard for the interest of legitimate and scrupulous rental dealers; and

(d) To permit and encourage the development of fair and economically sound rental purchase practices.

Source: L. 90: Entire article added, p. 366, § 1, effective January 1, 1991.

5-10-103. Waiver - agreement to forego rights - prohibited. Except as otherwise provided in this article, a lessor or lessee, as those terms are defined in section 5-10-301, may not waive or agree to forego rights or benefits under this article, and any attempt to waive or agree to forego such rights or benefits is void.

Source: L. 90: Entire article added, p. 367, § 1, effective January 1, 1991.

5-10-104. Effective date. Notwithstanding the provisions of section 5-9-101, this article shall take effect January 1, 1991.

Source: L. 90: Entire article added, p. 367, § 1, effective January 1, 1991.

5-10-105. Supplementary general principles of law applicable. Unless displaced by the particular provisions of this article, the "Uniform Commercial Code" and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause, supplement the provisions of this article.

Source: L. 90: Entire article added, p. 367, § 1, effective January 1, 1991.

Cross references: For the "Uniform Commercial Code", see title 4.

PART 2

SCOPE OF ARTICLE

5-10-201. Application. (1) This article shall apply to a rental purchase agreement, or acts, practices, or conduct relating to a rental purchase agreement if:

(a) The rental purchase agreement is entered into in this state; or

(b) The lessee is a resident of this state at the time the lessor offering the rental purchase agreement solicits the rental purchase agreement or modification thereof, whether such solicitation is made personally, by mail, or by telephone.

(2) For the purposes of this article, the residence of the lessee is the address given by the lessee as the lessee's residence in any writing signed by the lessee in connection with the rental purchase agreement. Unless the lessee notifies the lessor in writing of a new or different residence address, the given residence address is presumed to be unchanged.

Source: L. 90: Entire article added, p. 367, § 1, effective January 1, 1991.

5-10-202. Exclusions. (1) This article shall not apply to, and an agreement that complies with this article is not governed by the provision relating to:

(a) A "consumer credit sale" as that term is defined in section 5-1-301 (11);

(b) A "consumer lease" as that term is defined in section 5-1-301 (14);

(c) A "consumer loan" as that term is defined in section 5-1-301 (15);

(d) and (e) Repealed.

(f) A "home solicitation sale" as that term is defined in section 5-3-401;

(g) A "sale of goods" as that term is defined in section 5-1-301 (39);

(h) A "security interest" as that term is defined in section 4-1-201 (b)(35), C.R.S.;

(i) Any lease for agricultural, business, or commercial purposes;

(j) Any lease of money or intangible personal property.

Source: L. 90: Entire article added, p. 367, § 1, effective January 1, 1991. **L. 96:** (1)(d) and (1)(e) repealed, p. 407, § 11, effective July 1. **L. 2000:** IP(1), (1)(a), (1)(b), (1)(c), (1)(f), and (1)(g) amended, p. 1870, § 101, effective August 2. **L. 2006:** (1)(h) amended, p. 503, § 45, effective September 1.

PART 3

DEFINITIONS

5-10-301. Definitions. (1) As used in this article, unless otherwise required by the context:

(a) "Administrator" means the administrator designated in section 5-6-103.

(b) "Advertisement" means a commercial message in any medium that aids, promotes, or assists, directly or indirectly, a rental purchase agreement.

(c) "Cash price" means the price at which a lessor in the ordinary course of business would offer the property that is the subject of a rental purchase agreement to the lessee for cash on the date of the execution of the rental purchase agreement.

(d) "Consummate" means the act of the lessee in entering into a rental purchase agreement.

(e) "Lessee" means a natural person who rents personal property under a rental purchase agreement.

(f) "Lessor" means a person, firm, or corporation who in the ordinary course of business, regularly leases, offers to lease, or arranges for the leasing of property under a rental purchase agreement.

(g) "Liability damage waiver" means a contract or contractual provision, whether separate from or a part of a rental purchase agreement, whereby the lessor agrees, for a charge, to waive any and all claims against the lessee for any damages to, or loss of, the property which is the subject of the rental purchase agreement during the term of the rental agreement.

(h) "Period" means a day, week, month, or other subdivision of the year.

(i) "Personal property" means any property which is made available for a rental purchase agreement and which is not considered real property under the laws of this state.

(j) "Rental purchase agreement" means an agreement for the use of personal property by an individual primarily for personal, family, or household purposes, for an initial period of four months or less, whether or not there is any obligation beyond the initial period, that is automatically renewable with each payment and that permits the lessee to become the owner of the property.

Source: L. 90: Entire article added, p. 368, § 1, effective January 1, 1991.

PART 4

DISCLOSURES AND FORM OF WRITING

5-10-401. Disclosures. (1) A lessor shall disclose to a lessee in a rental purchase agreement the information required either by this part 4 or by the provisions of the federal "Consumer Credit Protection Act" if the federal "Consumer Credit Protection Act" is amended to cover disclosure in a rental purchase agreement. In a rental purchase agreement, the lessor shall disclose the following:

(a) A brief description of the leased property, sufficient to identify the property to the lessee and lessor;

(b) The total number of payments and the total amount of such payments necessary to acquire ownership;

(c) The number, amount, and timing of each payment, including taxes paid to or through the lessor;

(d) A statement that the lessee will not own the property until the lessee has made the total number of payments and the total amount of such payments necessary to acquire ownership;

(e) A statement of all other charges which the lessee may have to pay together with the amount of any such charge and the conditions under which any such charge shall be incurred;

(f) If applicable, a statement that the lessee is responsible for the fair market value of the property if and as of the time it is lost, stolen, damaged, or destroyed;

(g) A statement indicating whether the property is new or used; except that it is not a violation of this paragraph (g) to indicate that the property is used if it is actually new;

(h) A statement that, at any time after the first lease payment is made, the lessee may acquire ownership of the property, and a brief explanation of the price, formula, or other method for determining the price at which the property may be purchased;

(i) A brief explanation of the lessee's right to reinstate, and a description of the amount, or method of determining the amount, of any penalty or other charge for reinstatement as established in section 5-10-602;

(j) The cash price of the property subject to the rental purchase agreement; and

(k) A statement of the maintenance services, if any, the lessor will provide with respect to the property subject to the rental purchase agreement.

(2) In addition to the disclosures required pursuant to subsection (1) of this section, the lessor shall also make the following disclosure:

NOTICE TO LESSEE -- READ BEFORE SIGNING

(1) DO NOT SIGN THIS BEFORE YOU READ THE ENTIRE AGREEMENT INCLUDING ANY WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED.

(2) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.

(3) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.

(4) YOU HAVE THE RIGHT TO EXERCISE ANY EARLY BUY-OUT OPTION AS PROVIDED IN THIS AGREEMENT. EXERCISE OF THIS OPTION MAY RESULT IN A REDUCTION OF YOUR TOTAL COST TO ACQUIRE OWNERSHIP UNDER THIS AGREEMENT.

(5) IF YOU ELECT TO MAKE WEEKLY RATHER THAN MONTHLY PAYMENTS AND EXERCISE YOUR PURCHASE OPTION, YOU MAY PAY MORE FOR THE LEASED PROPERTY.

Source: L. 90: Entire article added, p. 368, § 1, effective January 1, 1991.

Cross references: For the federal "Consumer Credit Protection Act", see Pub.L. 90-321.

5-10-402. Form requirements. (1) The information required by this part 4:

(a) Shall be disclosed in writing in a rental purchase agreement;

(b) Shall be set forth clearly and conspicuously, in not less than eight point standard type;

(c) Shall be set apart and not contain any information not directly related to the disclosures;

(d) Shall be stated using words and phrases of common meaning;

(e) Need not be contained in a single writing or made in the order set forth in this part 4; and

(f) May be supplemented by additional information or explanations supplied by the lessor, so long as the additional information is not stated, utilized, or placed in a manner which will confuse the lessee or contradict, obscure, or distract attention from the required information. The additional information or explanations shall not have the effect of circumventing, evading, or unduly complicating the information required to be disclosed.

(2) The lessor shall disclose all information required by this part 4 before the rental purchase agreement is consummated.

(3) Before any payment is due, the lessor shall furnish the lessee with an exact copy of the rental purchase agreement, which shall be signed by the lessee and which shall evidence the lessee's agreement. If there is more than one lessee in a rental purchase agreement, delivery of a copy of the rental purchase agreement to one of the lessees constitutes compliance with this subsection (3).

Source: L. 90: Entire article added, p. 370, § 1, effective January 1, 1991.

5-10-403. Receipts. The lessor shall furnish the lessee a written receipt for each payment made in cash or by any other method of payment that does not provide evidence of payment when any such payment is delivered in person during normal working hours.

Source: L. 90: Entire article added, p. 370, § 1, effective January 1, 1991.

PART 5

LIMITATION ON AGREEMENTS AND PRACTICES

5-10-501. Acquiring ownership. At any time after the first lease payment is made, the lessee may acquire ownership of the property under the terms specified in the rental purchase agreement.

Source: L. 90: Entire article added, p. 370, § 1, effective January 1, 1991.

5-10-502. Prohibited provisions. (1) A rental purchase agreement shall not contain a provision requiring any of the following:

(a) Assignment of earnings. No lessor shall accept an assignment of earnings from the lessee for payment or as security for payment of a charge arising out of a rental purchase agreement. An assignment of earnings in violation of this paragraph (a) is unenforceable by the assignee of the earnings and revocable by the lessee. This paragraph (a) shall not prohibit a lessee from voluntarily authorizing deductions from his earnings if the authorization is revocable and otherwise permitted by law.

(b) Authorization to confess judgment. No lessor shall take or accept a power of attorney or other authorization from the lessee, or other person acting on his behalf, to confess judgment.

(c) Waivers. No lessor may require a lessee to waive service of process or to waive any defense, counterclaim, or right of action against the lessor, or a person acting on the lessor's behalf as the lessor's agent in collection of payments under the lease or in the repossession of the lease property.

(d) Breach of the peace. No lessor may require a lessee to authorize the lessor or a person acting on the lessor's behalf to enter unlawfully upon the lessee's premises or to commit any breach of the peace in the repossession of the lease property.

(e) Garnishment of wages. No lessor may require a lessee to authorize a prejudgment garnishment of the lessee's wages.

Source: L. 90: Entire article added, p. 370, § 1, effective January 1, 1991.

5-10-503. Balloon payments. A lessee shall not be required to make a payment in addition to regular lease payments in order to acquire ownership of the lease property, nor shall the lessee be required to pay lease payments totaling more than the cost to acquire ownership, as provided in section 5-10-401 (1)(b).

Source: L. 90: Entire article added, p. 371, § 1, effective January 1, 1991.

5-10-504. Prohibited charges. (1) A lessor shall not contract for or receive charges for any of the following:

(a) The purchase of insurance by the lessee from the lessor;

(b) A penalty for early termination of a rental purchase agreement or for the return of an item at any point, except for those charges authorized by sections 5-10-601 and 5-10-602; or

(c) A payment by a co-signer of the rental purchase agreement for any fees or charges which could not be imposed upon the lessee as part of the rental purchase agreement.

(2) No payment or obligation on the part of the lessee shall accrue when the property is being repaired or replaced unless a loaner is provided to the lessee.

Source: L. 90: Entire article added, p. 371, § 1, effective January 1, 1991.

PART 6

LIMITATIONS ON CHARGES

5-10-601. Additional charges. (1) A lessor may contract for and receive an initial nonrefundable fee not to exceed ten dollars per contract. Should any security deposit be required by the lessor, the amount of such deposit and the conditions under which it will be returned shall be disclosed with the disclosures required by section 5-10-401.

(2) A lessor may contract for and receive an initial delivery charge per contract not to exceed fifteen dollars in the case of a rental purchase agreement covering five or fewer items and a delivery charge not to exceed forty-five dollars in the case of a rental purchase agreement covering more than five items, if, in either case, the lessor actually delivers the items to the lessee's dwelling and the delivery charge is disclosed with the disclosures required by section 5-10-401. Said delivery charge shall be assessed in lieu of and not in addition to the initial charge in subsection (1) of this section. A lessor may not contract for or receive a delivery charge on property redelivered after repair or maintenance.

(3) A lessor may contract for and receive a charge for picking up late payments from the lessee if the lessor is required to do so pursuant to the rental purchase agreement or is requested to visit the lessee to pick up a payment. In a rental purchase agreement with payment or renewal dates which are on a monthly basis, this charge may not be assessed more than three times in any six-month period. In rental purchase agreements with payments or renewal options on a weekly or biweekly basis, this charge may not be assessed more than six times in any six-month period. No charge assessed pursuant to this subsection (3) may exceed ten dollars. A pickup fee may be assessed pursuant to this subsection (3) only in lieu of and not in addition to any late charge assessed pursuant to subsection (4) of this section.

(4) (a) The parties may contract for late charges as follows:

(I) For rental purchase agreements with monthly renewal dates, a late charge not exceeding five dollars may be assessed on any payment not made within five days after payment is due, or return of the property is required.

(II) For rental purchase agreements with weekly or bi-weekly renewal dates, a late charge not exceeding three dollars may be assessed on any payments not made within three days after payment is due, or return of the property is required.

(b) A late charge on a rental purchase agreement may be collected only once on any accrued payment, no matter how long it remains unpaid. A late charge may be collected at the time it accrues or at any time thereafter. A lessor may elect to waive imposition of a late charge due on an accrued payment in accordance with the terms of the rental purchase agreement; except that, such waiver shall be in writing and, once a late charge is waived for a specific payment, the lessor may not thereafter seek to impose a late fee for the accrued payment in question. No late charge may be assessed against a payment that is timely made, even though an earlier late charge has not been paid in full.

Source: L. 90: Entire article added, p. 371, § 1, effective January 1, 1991.

5-10-602. Reinstatement fees. A reinstatement fee as provided for in section 5-10-701

shall equal the outstanding balance of any accrued missed payments and late charges plus an additional fee not to exceed five dollars.

Source: L. 90: Entire article added, p. 372, § 1, effective January 1, 1991.

5-10-603. Liability damage waivers - fees. (1) In addition to the other charges permitted by this part 6, the parties may contract for a liability waiver fee not to exceed the greater of ten percent of any periodic lease payment due or two dollars in the case of any rental purchase agreement with weekly or biweekly renewal dates, and not to exceed the greater of ten percent of any periodic lease payment due or five dollars in the case of any rental purchase agreement with monthly renewal dates. The selling or offering for sale of a liability damage waiver pursuant to this article is subject to the following prohibitions and requirements:

(a) A lessor may not sell or offer to sell a liability damage waiver unless all restrictions, conditions, and exclusions are printed in the rental purchase agreement, or in a separate agreement, in eight-point type, or larger, or written in pen and ink or typewritten in or on the face of the rental purchase agreement in a blank space provided therefor. The liability damage waiver may exclude only loss or damage to the property which is the subject of the rental purchase agreement due to moisture, scratches, mysterious disappearance, vandalism, abandonment of the property, or due to any other damages caused intentionally by the lessee or which result from the lessee's willful or wanton misconduct.

(b) The liability damage waiver agreement must include a statement of the total charge for the liability damage waiver. The liability damage waiver agreement must display in eight-point boldface type the following notice:

NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A LIABILITY DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE PROPERTY. BEFORE DECIDING WHETHER TO PURCHASE THE LIABILITY DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN HOMEOWNERS OR CASUALTY INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL PROPERTY, AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS LIABILITY DAMAGE WAIVER IS NOT MANDATORY AND MAY BE DECLINED.

(c) The restrictions, conditions, and exclusions of the liability damage waiver must be disclosed on a separate agreement, sheet, or handout given to the lessee prior to entering into the rental purchase agreement. The separate contract, sheet, or handout must be signed, or otherwise acknowledged by the lessee as being received prior to entering into the rental purchase agreement.

Source: L. 90: Entire article added, p. 372, § 1, effective January 1, 1991.

5-10-604. Taxes. In addition to those charges allowable by this part 6, the lessor may require the lessee to pay all applicable state sales and use taxes levied in connection with the rental purchase agreement.

Source: L. 90: Entire article added, p. 373, § 1, effective January 1, 1991.

PART 7

REMEDIES

5-10-701. Lessee's remedies - reinstatement. (1) A lessee who breaches any rental purchase agreement, including but not limited to the failure to make timely rental payments, has the right to reinstate the original rental purchase agreement without losing any rights or options previously acquired under the rental purchase agreement if both of the following apply:

(a) Subsequent to having failed to make a timely rental payment, the lessee has promptly surrendered the property to the lessor, in the manner as set forth in the rental purchase agreement, and if and when requested by lessor; and

(b) Not more than sixty days have passed since the lessee returned the lease property; except that if the lessee has made more than sixty percent of the total number of payments required under the rental purchase agreement to acquire ownership, such sixty-day period shall be extended to a one-hundred-twenty-day period.

(2) As a condition precedent to reinstatement of the rental purchase agreement, a lessor may collect a reinstatement fee as set forth in section 5-10-602, plus delivery charges allowable by section 5-10-601 (2) if redelivery of the item is necessary.

(3) If reinstatement occurs pursuant to this section, the lessor shall provide the lessee with either the same item leased by the lessee prior to reinstatement or a substitute item of equivalent quality and condition. If a substitute item is provided, the lessor shall provide the lessee with all the information required by section 5-10-401.

Source: L. 90: Entire article added, p. 373, § 1, effective January 1, 1991.

5-10-702. Limitations on lessor's remedies. With respect to a debt arising from a rental purchase agreement, regardless of where made, the lessor may not attach unpaid earnings of the debtor by garnishment or like proceedings prior to the entry of judgment in an action against the lessee arising from the said rental purchase agreement.

Source: L. 90: Entire article added, p. 374, § 1, effective January 1, 1991.

5-10-703. Assignee liability. (1) With respect to a rental purchase agreement, an assignee of the rights of the lessor is subject to all claims and defenses of the lessee against the lessor arising from the lease of property or services, notwithstanding that the assignee is the holder in due course of a negotiable instrument issued in violation of the provisions prohibiting certain negotiable instruments.

(2) A claim or defense of a lessee specified in subsection (1) of this section may be asserted against the assignee under this section only to the extent of the amount owing and paid to the assignee and assignor.

(3) An agreement may not limit or waive the claims or defenses of a lessee under this

section.

Source: L. 90: Entire article added, p. 374, § 1, effective January 1, 1991.

5-10-704. Notice of assignment. The lessee is authorized to pay the original lessor until the lessee receives written notification that the rights to payment pursuant to a rental purchase agreement have been assigned to an assignee and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned shall be ineffective. If requested by the lessee, the assignee shall furnish reasonable proof that the assignment has been made, and, unless he does so, the lessee may pay the lessor.

Source: L. 90: Entire article added, p. 374, § 1, effective January 1, 1991.

PART 8

ENFORCEMENT

5-10-801. Administrator responsibility. (1) The administrator shall enforce this article. To carry out this responsibility, the administrator shall be authorized to:

(a) Receive and act on complaints, take action designed to obtain voluntary compliance with this article, or commence proceedings on the administrator's own initiative;

(b) Issue and enforce cease and desist or other administrative enforcement orders in the same manner as set forth in section 5-6-109;

(c) Make investigations; issue subpoenas to require the attendance of witnesses or the production of documents, which subpoenas may be issued to any person, whether located in this state or elsewhere, who has engaged in or is engaging in any violation of this article; administer oaths; conduct hearings in aid of any investigation or inquiry necessary to administer the provisions of this article; and apply to the appropriate court for an appropriate order to effect the purposes of this article;

(d) Counsel persons and groups on their rights and duties under this article;

(e) Establish programs for the education of consumers with respect to rental purchase agreement practices and problems;

(f) Bring a civil action to restrain a person from violating this article and for other appropriate relief in the same manner as set forth in sections 5-6-111 to 5-6-114 and for a civil penalty of up to one thousand dollars per violation; and

(g) Use any of his enforcement powers to restrain or take other action against any person found to be making or enforcing rental purchase agreements which contain any unconscionable provisions or clauses.

Source: L. 90: Entire article added, p. 374, § 1, effective January 1, 1991. **L. 2000:** (1)(b) and (1)(e) amended, p. 1870, § 102, effective August 2. **L. 2011:** (1)(e) amended, (HB 11-1221), ch. 121, p. 381, § 2, effective July 1. **L. 2013:** (1) amended, (SB 13-248), ch. 270, p. 1418, § 4, effective July 1.

5-10-802. Lessor's records and investigations. (1) In administering this article and in order to determine compliance with this article, the administrator may examine the books and records of persons subject to the article and may make investigations of persons necessary to determine compliance. For this purpose, the administrator may administer oaths or affirmations, and, upon the administrator's own motion or upon request of any party, may subpoena witnesses, compel their attendance, compel testimony, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of, any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence. If the administrator prevails in any civil action brought as a result of such an investigation, the court shall award the administrator costs and a reasonable attorney fee.

(2) If the person's records are located outside Colorado, the person shall, at the person's option, either make them available to the administrator at a convenient location in Colorado, or pay the reasonable and necessary expenses for the administrator or the administrator's representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the administrator's behalf.

(3) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the administrator may apply to a court for an order compelling compliance.

(4) The administrator may not make public the name or identity of a person whose acts or conduct the administrator investigates under this section or the facts disclosed in the investigation, but this subsection (4) shall not apply to disclosures in actions or enforcement proceedings under this article.

Source: L. 90: Entire article added, p. 375, § 1, effective January 1, 1991.

5-10-803. Assurance of discontinuance. If it is claimed that a person has engaged in conduct subject to an order by the administrator or by a court under this article, the administrator may accept an assurance in writing that the person will not engage in the conduct in the future. If a person giving an assurance of discontinuance fails to comply with its terms, the assurance shall be evidence that before the assurance the person engaged in the conduct described in the assurance.

Source: L. 90: Entire article added, p. 375, § 1, effective January 1, 1991.

5-10-804. Notification by lessors - contents. (1) A lessor shall file a notification as prescribed in subsection (2) of this section with the administrator:

(a) Within thirty days after soliciting or entering into a rental purchase agreement subject to this article; and

(b) Before February 1 in each subsequent year that the lessor solicits or enters into a

rental purchase agreement subject to this article.

(2) The notification required under subsection (1) of this section shall state the following:

(a) The name of the lessor and, if different, the name in which business is transacted;

(b) The address of the lessor's principal office, which may be outside Colorado;

(c) The address of all offices or stores, if any, in Colorado at which rental purchase agreements are made;

(d) If rental purchase agreements are made in a place other than an office or store in Colorado, a brief description of the place and manner in which they are made; and

(e) The address of the registered agent upon whom service of process may be made in Colorado.

(3) If information in a notification becomes inaccurate after filing, no further notification is required until the lessor is required to file a subsequent notification pursuant to subsection (1) of this section.

Source: L. 90: Entire article added, p. 376, § 1, effective January 1, 1991.

5-10-805. Fees. (1) A lessor required to file a notification with the administrator under section 5-10-804 shall pay to the administrator the following fees:

(a) Fifty dollars for each address listed in section 5-10-804 (2)(c) paid at the time of the filing of the initial notification with the administrator;

(b) Twenty-five dollars for each address listed in section 5-10-804 (2)(c) paid at the time of the filing of each annual notification subsequently filed with the administrator.

(2) In addition to the fees required under subsection (1) of this section, if the administrator examines the books and records of the lessor, the lessor shall pay to the administrator a fee of two hundred dollars for each day required for the administrator or the administrator's representative to conduct the examination. However, the sum of all fees collected from a lessor under this subsection (2) may not exceed one thousand dollars in any calendar year.

(3) Notwithstanding the amount specified for any fee in this section, the administrator by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the administrator by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

Source: L. 90: Entire article added, p. 376, § 1, effective January 1, 1991. **L. 98:** (3) added, p. 1320, § 12, effective June 1.

PART 9

VIOLATIONS AND PENALTIES

5-10-901. Unlawful acts - fines - deceptive trade practice. (1) Any person who

willfully and intentionally violates any provision of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars.

(2) Any intentional violation of the provisions of this article shall constitute a deceptive trade practice and shall be subject to the provisions of article 1 of title 6, C.R.S.

Source: L. 90: Entire article added, p. 376, § 1, effective January 1, 1991.

5-10-902. Remedies of lessee. (1) In case of a violation by a lessor of any provision of this article with respect to any rental purchase agreement, the lessee in such agreement may bring a suit in any court of competent jurisdiction to recover from such lessor or may set off or counterclaim in any action by such lessor actual damages. If the court finds that any such violation has occurred, it shall award a minimum recovery of two hundred fifty dollars or twenty-five percent of the total cost to acquire ownership under the rental purchase agreement, whichever is greater.

(2) The remedies specified in subsection (1) of this section are in addition to, and not in limitation of, any other remedies provided by law.

(3) In any action brought pursuant to this section, the court shall award the prevailing party the costs of the action and a reasonable attorney fee.

Source: L. 90: Entire article added, p. 377, § 1, effective January 1, 1991.

5-10-903. Unconscionability. (1) With respect to a rental purchase transaction, if the court as a matter of law finds the transaction, the agreement, or any clause of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) If it is claimed or appears to the court that the transaction, the agreement, or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making any such determination related to unconscionability.

(3) If, in an action in which unconscionability is claimed, the court finds unconscionability pursuant to this section, the court may award the costs of the action and a reasonable attorney fee to the lessee. If the court does not find unconscionability and does find that the lessee claiming unconscionability brought or maintained an action he knew to be groundless, the court may award the costs of the action and a reasonable attorney fee to the party against whom the claim was made. In determining such attorney fee, the amount of recovery claimed on behalf of the lessee shall not be controlling.

(4) The remedies of this section are in addition to remedies otherwise available for the same conduct authorized under law other than in this article, but double recovery of actual damages may not be had.

(5) For the purpose of this section, a charge or practice expressly permitted by this article is not in itself unconscionable.

Source: L. 90: Entire article added, p. 377, § 1, effective January 1, 1991.

5-10-904. Effect of correction. Notwithstanding sections 5-10-801 and 5-10-902, any failure to comply with any provisions of this article resulting from a bona fide or clerical error may be corrected by the lessor within sixty days after discovering an error and prior to the institution of any action under this article, or within sixty days of the receipt of written notice of the error after the date of execution of the rental purchase agreement by the lessee. If so corrected, neither the lessor nor any holder is subject to penalty under this section. A copy of any rental purchase agreement to which such a correction is made shall be promptly sent to the lessee.

Source: L. 90: Entire article added, p. 377, § 1, effective January 1, 1991.

5-10-905. Statute of limitations. No action shall be brought by a lessee under this article more than three years after the lessee knew or should have known of the occurrence of the alleged violation. This section does not bar a person from asserting a violation of this article in any action to collect the debt which was brought more than three years from the date of the occurrence of the violation as a matter of defense by recoupment or setoff in such action.

Source: L. 90: Entire article added, p. 378, § 1, effective January 1, 1991.

Cross references: For statutes of limitations generally, see article 80 of title 13.

PART 10

ADVERTISING

5-10-1001. Advertising. (1) An advertisement for a rental purchase agreement shall not state or imply that a specific item is available at specific amounts or terms unless the lessor usually and customarily offers or will offer that item at those amounts or terms.

(2) If any advertisement for a rental purchase agreement refers to or states the amount of any payment or the right to acquire ownership for a specific item, the advertisement must also clearly and conspicuously state the following terms as applicable:

(a) That the transaction is a rental purchase agreement or rent-to-own agreement;

(b) The total number of payments and amount of such payments necessary to acquire ownership; and

(c) That the lessee will not own the property until the total of such payments is paid in full or is paid by prepayment.

(3) Advertising which complies with the "Federal Consumer Credit Protection Act" does not violate this section.

(4) With the exception of the lessor, this section imposes no liability on the owner or personnel of any medium in which an advertisement appears or through which it is disseminated.

Source: L. 90: Entire article added, p. 378, § 1, effective January 1, 1991.

INTEREST RATES

ARTICLE 12

Interest - General Provisions

Editor's note: This title was repealed and reenacted in 1971. This article was numbered as article 12 of chapter 73, C.R.S. 1963. For historical information concerning the repeal and reenactment of this title in 1971, see the editor's note immediately following the title heading for this title.

5-12-101. Legal rate of interest. If there is no agreement or provision of law for a different rate, the interest on money shall be at the rate of eight percent per annum, compounded annually.

Source: L. 71: R&RE, p. 852, § 1. **C.R.S. 1963:** § 73-12-101. **L. 75:** Entire section amended, p. 257, § 1, effective July 1. **L. 79:** Entire section amended, p. 315, § 1, effective June 20.

Cross references: For interest on damages for personal injuries, see § 13-21-101.

5-12-102. Statutory interest. (1) Except as provided in section 13-21-101, C.R.S., when there is no agreement as to the rate thereof, creditors shall receive interest as follows:

(a) When money or property has been wrongfully withheld, interest shall be an amount which fully recognizes the gain or benefit realized by the person withholding such money or property from the date of wrongful withholding to the date of payment or to the date judgment is entered, whichever first occurs; or, at the election of the claimant,

(b) Interest shall be at the rate of eight percent per annum compounded annually for all moneys or the value of all property after they are wrongfully withheld or after they become due to the date of payment or to the date judgment is entered, whichever first occurs.

(2) When there is no agreement as to the rate thereof, creditors shall be allowed to receive interest at the rate of eight percent per annum compounded annually for all moneys after they become due on any bill, bond, promissory note, or other instrument of writing, or money due on mutual settlement of accounts from the date of such settlement and on money due on account from the date when the same became due.

(3) Interest shall be allowed as provided in subsection (1) of this section even if the amount is unliquidated at the time of wrongful withholding or at the time when due.

(4) Except as provided in section 5-12-106, creditors shall be allowed to receive interest on any judgment recovered before any court authorized to enter the same within this state from the date of entering said judgment until satisfaction thereof is made either:

(a) At the rate specified in a contract or instrument in writing which provides for

payment of interest at a specified rate until the obligation is paid; except that if the contract or instrument provides for a variable rate, at the rate in effect under the contract or instrument on the date judgment enters; or

(b) In all other cases where no rate is specified, at the rate of eight percent per annum compounded annually.

Source: L. 71: R&RE, p. 852, § 1. **C.R.S. 1963:** § 73-12-102. **L. 75:** Entire section amended, p. 257, § 2, effective July 1. **L. 79:** Entire section R&RE, p. 315, § 2, effective June 20. **L. 82:** (4) amended, p. 227, § 2, effective January 1, 1983. **L. 83:** (4) amended, p. 394, § 1, effective July 1. **L. 84:** (4)(a) amended, p. 286, § 1, effective July 1.

5-12-103. Greater rate may be stipulated. (1) The parties to any bond, bill, promissory note, or other instrument of writing may stipulate therein for the payment of a greater or higher rate of interest than eight percent per annum, but not exceeding forty-five percent per annum, and any such stipulation may be enforced in any court of competent jurisdiction in the state, except as otherwise provided in articles 1 to 6 of this title. The rate of interest shall be deemed to be excessive of the limit under this section only if it could have been determined at the time of the stipulation by mathematical computation that such rate would exceed an annual rate of forty-five percent when the rate of interest was calculated on the unpaid balances of the debt on the assumption that the debt is to be paid according to its terms and will not be paid before the end of the agreed term.

(2) The term "interest" as used in this section means the sum of all charges payable directly or indirectly by a debtor and imposed directly or indirectly by a lender as an incident to or as a condition of the extension of credit to the debtor, whether paid or payable by the debtor, the lender, or any other person on behalf of the debtor to the lender or to a third party.

(3) The public policy of this state does not limit or prohibit contracting, agreeing, or stipulating in advance for the payment of interest on interest or compound interest.

(4) No law or public policy of this state limiting interest on interest, the adding of deferred interest to principal, or the compounding of interest shall apply to any promissory note secured by any mortgage or deed of trust or to one secured by a mortgage or deed of trust where periodic disbursement of part of the loan proceeds is made by a lender over a period of time as established by the mortgage or deed of trust, or over an expressed period of time, or ending with the death of the debtor, including, but not limited to, promissory notes secured by mortgages or deeds of trust having provisions for adding deferred interest to principal or otherwise providing for the charging of interest on interest.

(5) This section shall not apply to a commercial credit plan as defined in section 5-12-107 (8) and extensions of credit made pursuant thereto, unless the bond, bill, promissory note, instrument, or other written agreement evidencing the plan expressly states that it is subject to this section.

Source: L. 71: R&RE, p. 852, § 1. **C.R.S. 1963:** § 73-12-103. **L. 72:** p. 292, § 6. **L. 75:** (1) amended, p. 257, § 3, effective July 1. **L. 79:** (2) amended and (3) and (4) added, p. 317, § 1, effective July 1. **L. 81:** (4) amended, p. 396, § 33, effective June 8. **L. 96:** (5) added, p. 407, § 12,

effective July 1.

5-12-104. Warrants to bear six percent. County orders and warrants, town and city and school orders and warrants, and other like evidences or certificates of municipal indebtedness, shall bear interest at the rate of six percent per annum from the date of the presentation thereof for payment at the treasury where the same may be payable, until there is money in the treasury for the payment thereof, except when otherwise specially provided by law. Every county treasurer, town treasurer, and city treasurer to whom any such county, town, city, or school order or warrant is presented for payment, and who shall not have on hand the funds to pay the same, shall endorse thereon the rate of interest said order or warrant will draw, and the date of such presentation, and subscribe such endorsement with his official signature; however, all such orders and warrants may be made to bear a lower rate of interest than above specified, by special agreement between such counties, towns, and cities issuing the same, and the person to whom such orders or warrants are issued.

Source: L. 71: R&RE, p. 852, § 1. **C.R.S. 1963:** § 73-12-104.

5-12-105. Interest upon foreclosure. In all cases where real estate shall be sold under execution or by virtue of the foreclosure of any mortgage, deed of trust, or other lien, the indebtedness and costs for which any certificate of purchase may issue shall bear interest at the rate specified in the original instrument.

Source: L. 71: R&RE, p. 852, § 1. **C.R.S. 1963:** § 73-12-105.

5-12-106. Rate of interest on judgments which are appealed. (1) Except as provided in section 13-21-101, C.R.S., where there is no written agreement as to the rate of interest, creditors shall receive interest as follows:

(a) If a judgment for money in a civil case is appealed by a judgment debtor and the judgment is affirmed, interest, as set out in subsections (2) and (3) of this section, shall be payable from the date of entry of judgment in the trial court until satisfaction of the judgment and shall include compounding of interest annually.

(b) If a judgment for money in a civil case is appealed by a judgment debtor and the judgment is modified or reversed with a direction that a judgment for money be entered in the trial court, interest, as set out in subsections (2) and (3) of this section, shall be payable from the date a judgment was first entered in the trial court until the judgment is satisfied and shall include compounding of interest annually. This interest shall be payable on the amount of the final judgment.

(2) (a) The rate of interest shall be certified on each January 1 by the secretary of state to be two percentage points above the discount rate, which discount rate shall be the rate of interest a commercial bank pays to the federal reserve bank of Kansas City using a government bond or other eligible paper as security, and shall be rounded to the nearest full percent. Such annual rate of interest shall be so established as of December 31, 1982, to become effective January 1, 1983. Thereafter, as of December 31 of each year, the annual rate of interest shall be established in the

same manner, to become effective on January 1 of the following year.

(b) Notwithstanding any other provision of this subsection (2), the rate of interest shall be no lower than the percentage authorized in section 5-12-102 (4)(b).

(3) The rate at which interest shall accrue during each year shall be the rate which the secretary of state has certified as the annual interest rate under subsection (2) of this section.

Source: L. 82: Entire section added, p. 226, § 1, effective January 1, 1983. **L. 84:** (1) and (2) amended, p. 287, § 1, effective July 1.

5-12-107. Commercial credit plans - definitions. (1) Any creditor may offer and extend credit to the debtor under a commercial credit plan. Without limitation, credit may be extended under a commercial credit plan by the creditor's acquisition of obligations including, without limitation, obligations arising out of the honoring by a seller or another person of a credit device made available to the debtor under a commercial credit plan. A creditor may take such security in connection with a commercial credit plan as may be acceptable to the creditor and may, if the agreement governing the commercial credit plan allows, establish separate accounts for different types of purchases or loans, or both, and impose different terms for credit extended with respect to each account.

(2) (a) A creditor may charge and collect periodic interest under a commercial credit plan on the outstanding unpaid indebtedness at a periodic percentage rate or rates not exceeding forty-five percent per annum. If the applicable periodic percentage rate under the agreement governing the plan is other than daily, periodic interest may be calculated on an amount not in excess of the average outstanding unpaid indebtedness for the applicable billing period. If the applicable periodic percentage rate under the agreement governing the plan is daily, periodic interest may be calculated for each day in the billing period on an amount not in excess of either:

(I) The outstanding unpaid indebtedness on that day; or

(II) The average outstanding unpaid indebtedness for the applicable billing period. If the applicable periodic percentage rate under the agreement governing the plan is monthly, a billing period shall be deemed to be a month or monthly if the last day of each billing period is on the same day of each month or does not vary by more than four days therefrom.

(b) The rate limitation established by this subsection (2) for periodic interest shall not apply to the additional interest charges authorized by subsection (3) of this section regardless of whether such additional interest charges are imposed in addition to or in lieu of periodic interest.

(3) (a) In addition to or in lieu of interest at a periodic rate or rates, a creditor may, if the agreement governing the commercial credit plan so provides, either initially or pursuant to a change in the terms of the agreement made in the manner prescribed by subsection (5) of this section, charge and collect, in such manner, form, percentages, or amounts as the agreement governing the plan may provide, one or more of the following fees or charges:

(I) A fee for participation in the commercial credit plan, whether assessed on an annual or other periodic basis;

(II) A transaction charge for each separate purchase or loan under the plan;

(III) An automated teller machine charge or similar electronic or interchange fee or charge;

(IV) A minimum charge for each scheduled billing period under the commercial credit plan during any portion of which there is an outstanding unpaid indebtedness;

(V) A late payment charge for each required payment not made on or before its scheduled due date;

(VI) Fees for services rendered or for reimbursement of expenses incurred by the creditor or other persons in connection with the commercial credit plan, or other fees incidental to the application, opening, administration, maintenance, or termination of a commercial credit plan;

(VII) Returned payment charges;

(VIII) Documentary evidence charges including without limitation charges for furnishing copies of sales slips, invoices, monthly statements, or other documents; and

(IX) Any similar fees or charges provided for in the agreement governing the commercial credit plan, whether initially or pursuant to a change in the terms of the agreement made in the manner prescribed by subsection (5) of this section; except that in no event shall this authorization to charge and collect any similar fees or charges be construed to authorize the imposition of periodic interest on the outstanding unpaid indebtedness in addition to the periodic interest authorized by subsection (2) of this section.

(b) Notwithstanding the fact that they are not subject to the rate limitation established by subsection (2) of this section for periodic interest, all of the fees and charges permitted by this subsection (3) are interest.

(4) The agreement governing a commercial credit plan may provide for the payment by the debtor of reasonable attorney's fees of the creditor if the account of the debtor is referred for collection to an attorney not a salaried employee of the creditor. The agreement also may provide for the payment by the debtor of all court and other collection costs actually incurred by the debtor.

(5) (a) Upon written notice furnished at least fifteen days prior to the effective date of the change, a creditor may change the terms of the agreement governing the commercial credit plan including, without limitation, periodic interest and additional interest charges so long as the debtor does not, prior to the effective date of the change set forth in the notice, furnish written notice to the creditor that the debtor does not agree to abide by the change. The change may be made effective with respect to existing balances if so provided in the written notice.

(b) Upon receipt by the creditor of a timely written notice stating that the debtor does not agree to abide by the change, the debtor shall have the remainder of the time under the existing terms in which to pay all sums owed to the creditor as of the effective date of the change set forth in the notice. If there is an authorized charge to the account on or after the effective date of the change set forth in the notice, the debtor shall be deemed to have accepted the new terms even if the debtor previously submitted to the creditor a timely written notice stating that the debtor does not agree to abide by the change.

(6) All terms, conditions, and other provisions of and relating to a commercial credit plan as contained in this section or in the agreement governing such plan, other than those fees and charges that are interest under this section, shall be and hereby are deemed to be material to the determination of interest applicable to a commercial credit plan under Colorado law, under the most favored lender doctrine, and under the "National Bank Act", 12 U.S.C. sec. 85 or section 521, 522, or 523 of the "Depository Institutions Deregulation and Monetary Control Act of

1980", 12 U.S.C. secs. 1463 (g), 1785 (g), and 1831d.

(7) A commercial credit plan established by a creditor and the extensions of credit made pursuant thereto shall be governed by Colorado law. Unless the agreement governing the commercial credit plan expressly states that it is subject to another law of this state, a commercial credit plan shall be governed exclusively by this section and shall not be subject to any other law of this state that otherwise would apply to the commercial credit plan including, but not limited to, laws limiting the amount or duration of credit or the rate or amount of interest or other charges that may be charged, taken, collected, received, or reserved.

(8) As used in this section:

(a) "Average outstanding unpaid indebtedness" means the amount determined by dividing the total of the amounts of the outstanding unpaid indebtedness for each day in the applicable billing period by the number of days in the billing period.

(b) "Commercial credit plan" or "plan" means a plan contemplating the extension of credit pursuant to an account governed by an agreement between a creditor and a debtor, whether or not providing for a security interest, pursuant to which:

(I) A creditor permits the debtor and, if allowed by a creditor, persons acting on behalf of or with authorization from the debtor, from time to time to make purchases on credit or obtain loans, or both, whether or not by use of a credit device;

(II) The purchases on credit are made or the loans are obtained primarily for business, commercial, investment, or agricultural purposes;

(III) The indebtedness of the debtor arising from such purchases or loans, or both, and other charges provided for in this section are debited to the account; and

(IV) (A) The debtor undertakes an obligation to pay the outstanding unpaid indebtedness at one time; or

(B) The debtor has the privilege of paying the outstanding unpaid indebtedness in one or more installments.

(c) "Credit" means the right granted by a creditor to the debtor to defer payment of debt or to incur debt and defer its payment.

(d) "Credit device" means any card, check, identification code, account number, or other means of identification contemplated by the agreement governing the plan.

(e) "Creditor" means any seller or any lender located or maintaining a place of business in this state that enters into a commercial credit plan agreement with a debtor wherever located, including, without limitation, sellers of goods or services, small loan companies, licensed lenders, commercial banks and trust companies, savings and loan associations, and savings banks. The term "creditor" includes any transferee, whether such transferee acquires its interest by assignment or otherwise.

(f) "Debtor" means any natural person or individual or any corporation, partnership, cooperative, association, government or governmental subdivision or agency, trust, estate, or other entity.

(g) "Interest" includes both periodic interest authorized by subsection (2) of this section and additional interest charges authorized by subsection (3) of this section.

(h) "Loans" means cash advances or loans to be paid to or for the account of the debtor.

(i) "Outstanding unpaid indebtedness" means on any day an amount not in excess of the

total amount of purchases, loans, and other debits charged to the debtor's account under the plan that is outstanding and unpaid at the end of the day, after adding the aggregate amount of any new purchases, loans, and other debits charged to the account as of that day, including, without limitation, the amount of any periodic interest, additional interest charges, and other charges permitted by this section that have accrued, or been charged, to the account as of that day, and deducting the aggregate amount of any payments and other credits applied to that indebtedness as of that day.

(j) "Purchases" means payment obligations for property of whatever nature, real or personal, tangible or intangible, and payment obligations for services including, without limitation, insurance, licenses, taxes, official fees, fines, private or governmental obligations, or any other thing of value.

Source: L. 96: Entire section added, p. 407, § 13, effective July 1. **L. 2013:** (8)(e) amended, (SB 13-154), ch. 282, p. 1468, § 21, effective July 1.

ARTICLE 13

Federal Preemption of Usury Laws - State Override

Law reviews: For article, "An Update of Appendices from Collecting Pre- and Post-Judgment Interest in Colorado", see 15 Colo. Law. 990 (1986); for article, "Colorado Usury: The Sequel - Part I", see 23 Colo. Law. 565 (1994).

5-13-101. Mortgages. In accordance with section 501 (b)(2) of Public Law 96-221, it is declared that the state of Colorado does not want the provisions of subsection 501 (a)(1) of Public Law 96-221 removing the limits on the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved with respect to loans, mortgages, credit sales, and advances made to apply in this state. The rates established in articles 1 to 9 of this title shall control consumer credit transactions in the state of Colorado.

Source: L. 81: Entire article added, p. 399, § 1, effective July 1.

5-13-102. Business and agricultural loans. In accordance with section 512 of Public Law 96-221, it is declared that the state of Colorado does not want the provisions of section 511 of Public Law 96-221 setting interest rates and preempting state interest rates on business and agricultural loans to apply in this state. The rates established in articles 1 to 9 of this title shall control consumer credit transactions in the state of Colorado.

Source: L. 81: Entire article added, p. 399, § 1, effective July 1.

5-13-103. Small business loans. In accordance with section 524 of Public Law 96-221, it is declared that the state of Colorado does not want the amendments to the "Small Business

Investment Act" made by section 524 of Public Law 96-221 prescribing interest rates for small business loans to apply in this state. The rates established in articles 1 to 9 of this title shall control consumer credit transactions in the state of Colorado.

Source: L. 81: Entire article added, p. 399, § 1, effective July 1.

5-13-104. Other loans. (Repealed)

Source: L. 81: Entire article added, p. 400, § 1, effective July 1. **L. 94:** Entire section repealed, p. 1612, § 12, effective July 1.

5-13-105. General override. (Repealed)

Source: L. 81: Entire article added, p. 400, § 1, effective July 1. **L. 94:** Entire section repealed, p. 1613, § 13, effective July 1.