

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0182.02 Duane Gall x4335

HOUSE BILL 14-1109

HOUSE SPONSORSHIP

Ginal,

SENATE SPONSORSHIP

(None),

House Committees

Business, Labor, Economic, & Workforce Development

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE PROTECTION OF CONSUMERS FROM LIABILITY
102 RESULTING FROM THE USE OF UNSOLICITED CHECKS.

Bill Summary

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

Section 1 of the bill specifies that a consumer is not liable on the debt resulting from the use of an unsolicited check unless the consumer accepted the check by using it. Section 1 also requires a credit card issuer who sends an unsolicited check to a consumer to conspicuously disclose the interest rate and finance charges associated with use of the check and

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

prohibits the use of terms such as "pre-approved" on the outside of the envelope.

Section 2 makes a violation of section 1 a deceptive trade practice, enforceable through a private lawsuit for treble damages or through action by the attorney general.

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

SECTION 1. In Colorado Revised Statutes, **add** 5-3.7-102 as follows:

5-3.7-102. Unsolicited checks - limit on consumer liability - disclosures required - severability - definitions. (1) A CONSUMER IN WHOSE NAME AN UNSOLICITED CHECK IS ISSUED IS NOT LIABLE FOR ANY DEBT RESULTING FROM USE OF THAT CHECK, OR FROM USE OF THE ACCOUNT ON WHICH THE UNSOLICITED CHECK IS DRAWN, UNLESS THE CONSUMER HAS ACCEPTED THE CHECK BY NEGOTIATING IT. FAILURE TO DESTROY OR RETURN AN UNSOLICITED CHECK DOES NOT CONSTITUTE ACCEPTANCE OF THE CHECK OR ACCOUNT.

(2) A CREDIT CARD ISSUER THAT EXTENDS CREDIT TO A CARDHOLDER THROUGH THE USE OF AN UNSOLICITED CHECK SHALL CONSPICUOUSLY DISCLOSE, ON THE CHECK OR ON AN ACCOMPANYING ATTACHMENT OR INSERT, ALL OF THE FOLLOWING INFORMATION:

(a) THAT USE OF THE CHECK WILL CONSTITUTE A CHARGE AGAINST THE CONSUMER'S CREDIT ACCOUNT;

(b) THE ANNUAL PERCENTAGE RATE AND THE CALCULATION OF FINANCE CHARGES ASSOCIATED WITH THE USE OF THE CHECK, IF DIFFERENT FROM THOSE ASSOCIATED WITH THE CONSUMER'S EXISTING CREDIT ACCOUNT; AND

(c) WHETHER THE FINANCE CHARGES ARE TRIGGERED IMMEDIATELY UPON THE USE OF THE CHECK.

1 (3) A CREDIT CARD ISSUER THAT EXTENDS CREDIT TO A
2 CARDHOLDER THROUGH THE USE OF AN UNSOLICITED CHECK SHALL
3 ENCLOSE THE CHECK IN AN ENVELOPE THAT DOES NOT REVEAL ANY PART
4 OF THE CHECK AND IS NOT PRINTED WITH THE WORDS "PRE-APPROVED",
5 "INSTANT CASH", OR ANY SIMILAR INDICATION THAT THE ENVELOPE
6 CONTAINS A NEGOTIABLE INSTRUMENT.

7 (4) ANY AGREEMENT ENTERED INTO BY A CONSUMER THAT
8 WAIVES, LIMITS, OR DISCLAIMS THE RIGHTS SET FORTH IN THIS SECTION IS
9 HEREBY DECLARED CONTRARY TO PUBLIC POLICY AND IS VOID.

10 (5) AS USED IN THIS SECTION:

11 (a) "CHECK" MEANS A NEGOTIABLE INSTRUMENT, AS DEFINED BY
12 SECTION 4-3-104, C.R.S., THAT HAS IMPRINTED ON IT THE CONSUMER'S
13 NAME.

14 (b) "UNSOLICITED", IN REFERENCE TO A CHECK, MEANS SENT OR
15 DELIVERED TO A PERSON WHO HAS NOT SPECIFICALLY ORDERED,
16 SOLICITED, REQUESTED, OR ARRANGED TO RECEIVE THE CHECK. THE FACT
17 THAT A CHECK MAY HAVE BEEN SENT BY A PERSON WITH WHOM THE
18 RECIPIENT HAS AN EXISTING BUSINESS RELATIONSHIP OR HAS HAD PRIOR
19 CONTACT DOES NOT ALTER ITS STATUS AS AN UNSOLICITED CHECK.

20 (6) IF ANY PROVISION OF THIS SECTION OR THE APPLICATION
21 THEREOF TO ANY PERSON OR CIRCUMSTANCES IS HELD INVALID, SUCH
22 INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF
23 THIS SECTION WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID
24 PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS
25 SECTION ARE DECLARED TO BE SEVERABLE.

26 **SECTION 2.** In Colorado Revised Statutes, 6-1-105, **add** (1) (fff)
27 as follows:

1 **6-1-105. Deceptive trade practices.** (1) A person engages in a
2 deceptive trade practice when, in the course of the person's business,
3 vocation, or occupation, the person:

4 (ff) VIOLATES SECTION 5-3.7-102, C.R.S.

5 **SECTION 3. Safety clause.** The general assembly hereby finds,
6 determines, and declares that this act is necessary for the immediate
7 preservation of the public peace, health, and safety.