

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0675.01 Thomas Morris

SENATE BILL 10-127

SENATE SPONSORSHIP

Cadman,

HOUSE SPONSORSHIP

Frangas,

Senate Committees
Business, Labor and Technology

House Committees

A BILL FOR AN ACT

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

Bill Summary

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

The bill prohibits a creditor of a consumer loan and a credit union, savings and loan association, state bank, industrial bank, or mortgage lender from attempting to collect its debt from a debtor's personal liability under a secured loan that is in default unless the lender has first attempted

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.

to collect its debt from the collateral and the proceeds from the collateral are insufficient to fully repay the sum of the outstanding loan balance and the lender's allowable costs of collection, if any.

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

2 **SECTION 1.** Part 2 of article 3 of title 5, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 **5-3-211. Limitation on secured lending.** (1) UNLESS A LOAN
6 ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THIS SECTION EXPLICITLY
7 PROVIDES OTHERWISE, IF A LOAN IS SECURED BY COLLATERAL AND IS IN
8 DEFAULT, THE CREDITOR SHALL NOT ATTEMPT TO COLLECT ITS DEBT FROM
9 THE DEBTOR'S PERSONAL LIABILITY UNLESS:

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

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

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

18 **11-30-116. Loans.** (1) A credit union may make loans to
19 members subject to the provisions of this article and the bylaws of the
20 credit union. A borrower may repay a loan in whole or in part any day the
21 office of the credit union is open for business. A credit union may make
22 loans to its own directors, credit officers, or members of its own
23 supervisory committee or credit committee, but no such loan or aggregate
24 of loans to any one director, credit officer, or committee member that

1 exceeds twenty thousand dollars plus pledged shares may be made unless
2 approved by the board of directors.

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

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

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

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

16 **11-41-119. Loans to members and other loans.** (14) UNLESS
17 A LOAN ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THIS SUBSECTION
18 (14) EXPLICITLY PROVIDES OTHERWISE, IF A LOAN MADE BY AN
19 ASSOCIATION IS SECURED BY COLLATERAL AND IS IN DEFAULT, THE
20 ASSOCIATION SHALL NOT ATTEMPT TO COLLECT ITS DEBT FROM THE
21 DEBTOR'S PERSONAL LIABILITY UNLESS:

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

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

1 **SECTION 4.** 11-105-302, Colorado Revised Statutes, is amended
2 to read:

3 **11-105-302. Loans, acceptances, investments, and letters of**
4 **credit.** (1) A state bank may make such loans, secured or unsecured,
5 accept such drafts, make such investments, and issue such letters of credit
6 as ~~shall be~~ IS permissible pursuant to rules promulgated by the banking
7 board or otherwise permitted by this code. In promulgating such rules the
8 banking board shall consider all relevant factors, including ~~without~~
9 ~~limitation~~ the policies set forth in section 11-101-102.

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

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

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

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

24 **11-108-702.5. Limitation on secured lending.** (1) UNLESS A
25 LOAN ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THIS SECTION
26 EXPLICITLY PROVIDES OTHERWISE, IF A LOAN MADE BY AN INDUSTRIAL
27 BANK IS SECURED BY COLLATERAL AND IS IN DEFAULT, THE INDUSTRIAL

1 BANK SHALL NOT ATTEMPT TO COLLECT ITS DEBT FROM THE DEBTOR'S
2 PERSONAL LIABILITY UNLESS:

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

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

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

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

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

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

25 **SECTION 7. Act subject to petition - effective date -**
26 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
27 following the expiration of the ninety-day period after final adjournment

1 of the general assembly (August 11, 2010, if adjournment sine die is on
2 May 12, 2010); except that, if a referendum petition is filed pursuant to
3 section 1 (3) of article V of the state constitution against this act or an
4 item, section, or part of this act within such period, then the act, item,
5 section, or part shall not take effect unless approved by the people at the
6 general election to be held in November 2010 and shall take effect on the
7 date of the official declaration of the vote thereon by the governor.

8 (2) The provisions of this act shall apply to loan collection efforts
9 occurring on or after the applicable effective date of this act.