16a-3-405. (UCCC) Lender subject to defenses arising from sales and leases. (1) A lender, other than the issuer of a lender credit card, who, with respect to a particular transaction, makes a consumer loan for the purpose of enabling a consumer to buy or lease from a particular seller or lessee goods or services is subject to all claims and defenses of the consumer against the seller or lessor arising from that sale or lease of the goods and services if:

(a) The lender knows that the seller or lessor arranged, for a commission, brokerage, or referral fee, for the extension of credit by the lender;

(b) the lender is a person related to the seller or lessor unless the relationship is remote or is not a factor in the transaction;

(c) the seller or lessor guarantees the loan or otherwise assumes the risk or loss by the lender upon the loan;

(d) the lender directly supplies the seller or lessor with the contract document used by the consumer to evidence the loan, and the seller or lessor significantly participates in the preparation of the document; or

(e) the loan is 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.

(2) Claims or defenses of a buyer or lessee specified in subsection (1) may be asserted against the lender only:

(a) If the buyer or lessee has attempted in good faith to obtain reasonable satisfaction from the seller or lessor with respect to the claims or defenses;

(b) if the buyer or lessee, when requested in writing to do so by the seller, lessor or the lender, has given notice in writing to the seller or lessee and the lender stating the claims or defenses,

(c) to the extent of the amount owing to the lender with respect to the sale or lease at the time the lender has notice of the claims or defenses. Such notice, generally stating the claims or defenses, must be in writing and shall be sent to the seller (or lessor), and to the lender if the buyer or lessee has received written notice of the name and address of the lender; and

(d) as a matter of defense to or setoff against claims by the lender except that the buyer or lessee shall not be prohibited from bringing an action to rescind an obligation against which it has a defense or setoff.

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

(a) Payments received by the lender after the consolidation of two or more consumer loans, other than pursuant to open end credit, are deemed to have been first applied to the payment of the loans first made; if the loans consolidated arose from loans made on the same day, payments are deemed to have been first applied to the smaller or smallest loan or loans; and

(b) payments received upon an open end 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 provide greater rights for a lender than this section permits.

(5) Notwithstanding any of the foregoing, the participation of the lender or lessor in any of the arrangements between seller and buyer to insure the perfection of the lender or lessor's security interest shall not in itself establish a relationship described and controlled by subsection (1).

History: L. 1973, ch. 85, § 60; L. 1975, ch. 127, § 2; L. 1981, ch. 93, § 14; July 1.