

CHAPTER 260

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 17-1238

BY REPRESENTATIVE(S) Lee, Foote, Herod, Willett, Wist, Arndt, Hooton;
also SENATOR(S) Holbert, Cooke, Gardner, Guzman, Kagan, Scott.**AN ACT****CONCERNING THE NONSUBSTANTIVE RELOCATION OF LAWS RELATED TO DEBT MANAGEMENT AND COLLECTION SERVICES FROM TITLE 12, COLORADO REVISED STATUTES, AS PART OF THE ORGANIZATIONAL RECODIFICATION OF TITLE 12.***Be it enacted by the General Assembly of the State of Colorado:***SECTION 1.** In Colorado Revised Statutes, **add with amended and relocated provisions** article 16 to title 5 as follows:**ARTICLE 16**
Colorado Fair Debt Collection Practices Act**5-16-101. [Formerly 12-14-101] Short title.** ~~This article shall be known and may be cited as~~ THE SHORT TITLE OF THIS ARTICLE 16 IS the "Colorado Fair Debt Collection Practices Act".**5-16-102. [Formerly 12-14-102] Scope of article.** (1) This ~~article~~ ARTICLE 16 shall apply to any collection agency, solicitor, or debt collector that has a place of business located:

- (a) Within this state;
- (b) Outside this state and collects or attempts to collect from consumers who reside within this state for a creditor with a place of business located within this state;
- (c) Outside this state and regularly collects or attempts to collect from consumers who reside within this state for a creditor with a place of business located outside this state; or

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(d) Outside this state and solicits or attempts to solicit debts for collection from a creditor with a place of business located within this state.

~~(2) (Deleted by amendment, L. 95, p. 1224, § 1, effective July 1, 1995.)~~

5-16-103. [Formerly 12-14-103] Definitions. As used in this ~~article~~ ARTICLE 16, unless the context otherwise requires:

(1) "Administrator" means the administrator of the "Uniform Consumer Credit Code", articles 1 to 9 of THIS title 5, ~~C.R.S.~~, whose office is created in the department of law in section 5-6-103. ~~C.R.S.~~

~~(1.5)~~(2) "Board" means the collection agency board created in ~~section 12-14-116~~ SECTION 5-16-116.

~~(2)~~(a) (3) (a) "Collection agency" means any:

(I) Person who engages in a business the principal purpose of which is the collection of debts; or

(II) Person who:

(A) Regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another;

(B) Takes assignment of debts for collection purposes;

(C) Directly or indirectly solicits for collection debts owed or due or asserted to be owed or due another;

(D) Collects debt for the department of personnel, but only for the purposes specified in ~~paragraph (d) of this subsection~~ (2) SUBSECTION (3)(d) OF THIS SECTION;

(b) "Collection agency" does not include:

(I) Any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(II) Any person while acting as a collection agency for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a collection agency does so only for creditors to whom it is so related or affiliated and if the principal business of ~~such~~ THE person is not the collection of debts;

(III) Any officer or employee of the United States or any state to the extent that collecting or attempting to collect any debt is in the performance of ~~such~~ THE officer's or employee's official duties, except as otherwise provided in ~~subsection (7)~~ SUBSECTION (9) of this section;

(IV) Any person while serving or attempting to serve legal process on any other

person in connection with the judicial enforcement of any debt;

(V) Any debt-management services provider operating in compliance with or exempt from the "Uniform Debt-Management Services Act", ~~part 2 of article 14.5 of title 12, C.R.S.~~ PART 2 OF ARTICLE 19 OF THIS TITLE 5;

~~(VI) Repealed.~~

~~(VII) (VI)~~ (VI) Any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent that:

(A) ~~Such~~ THE activity is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;

(B) ~~Such~~ THE activity concerns a debt ~~which~~ THAT was extended by ~~such~~ THE person;

(C) ~~Such~~ THE activity concerns a debt ~~which~~ THAT was not in default at the time it was obtained by ~~such~~ THE person; or

(D) ~~Such~~ THE activity concerns a debt obtained by ~~such~~ THE person as a secured party in a commercial credit transaction involving the creditor;

~~(VIII) (VII)~~ (VII) Any person whose principal business is the making of loans or the servicing of debt not in default and who acts as a loan correspondent, or seller and servicer for the owner, or holder of a debt which is secured by a deed of trust on real property whether or not ~~such~~ THE debt is also secured by an interest in personal property;

~~(IX) (VIII)~~ (VIII) A limited gaming or racing licensee acting pursuant to part 6 of article 35 of title 24. ~~C.R.S.~~

(c) Notwithstanding the provisions of ~~subparagraph (VII) of paragraph (b) of this subsection (2)~~ SUBSECTION (3)(b)(VI) OF THIS SECTION, "collection agency" includes any person who, in the process of collecting his or her own debts, uses another name which would indicate that a third person is collecting or attempting to collect such debts.

(d) For the purposes of ~~section 12-14-108 (1) (f)~~ SECTION 5-16-108 (1)(f), "collection agency" includes any person engaged in any business the principal purpose of which is the enforcement of security interests. For purposes of ~~sections 12-14-104, 12-14-105, 12-14-106, 12-14-107, 12-14-108, and 12-14-109 only~~ SECTIONS 5-16-104, 5-16-105, 5-16-106, 5-16-107, 5-16-108, AND 5-16-109 ONLY, "collection agency" includes a debt collector for the department of personnel.

(e) Notwithstanding ~~paragraph (b) of this subsection (2)~~ SUBSECTION (3)(b) OF THIS SECTION, "collection agency" includes any person who engages in any of the following activities; except that ~~such~~ THE person shall be exempt from provisions of this ~~article~~ ARTICLE 16 that concern licensing and licensees:

~~(f) (Deleted by amendment, L. 2000, p. 935, § 2, effective July 1, 2000.)~~

~~(H)~~ (I) Is an attorney-at-law and regularly engages in the collection or attempted collection of debts in this state;

~~(HH)~~ (II) Is a person located outside this state whose collection activities are limited to collecting debts not incurred in this state from consumers located in this state and whose collection activities are conducted by means of interstate communications, including telephone, mail, or facsimile transmission, and who is located in another state that regulates and licenses collection agencies but does not require Colorado collection agencies to obtain a license to collect debts in their state if ~~such~~ THE agencies' collection activities are limited in the same manner.

~~(3)~~ (4) "Communication" means conveying information regarding a debt in written or oral form, directly or indirectly, to any person through any medium.

~~(4)~~ (5) "Consumer" means any natural person obligated or allegedly obligated to pay any debt.

~~(4.5)-(a)~~ (6) (a) "Consumer reporting agency" means any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(b) "Consumer reporting agency" shall not include any business entity that provides check verification or check guarantee services only.

(c) "Consumer reporting agency" shall include any persons defined in 15 U.S.C. sec. 1681a (f) or ~~section 12-14.3-102 (4)~~ SECTION 5-18-103 (4).

~~(5)~~ (7) "Creditor" means any person who offers or extends credit creating a debt or to which a debt is owed, but ~~such term~~ "CREDITOR" does not include any person to the extent ~~such~~ THE person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of ~~such~~ THE debt for another.

~~(6)-(a)~~ (8) (a) "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction, whether or not ~~such~~ THE obligation has been reduced to judgment.

(b) "Debt" does not include a debt for business, investment, commercial, or agricultural purposes or a debt incurred by a business.

~~(7)~~ (9) "Debt collector" means any person employed or engaged by a collection agency to perform the collection of debts owed or due or asserted to be owed or due to another, and includes any person employed by the department of personnel, or any division of ~~said~~ THAT department, when collecting debts due to the state on behalf of another state agency.

~~(8) (Deleted by amendment, L. 2000, p. 935, § 2, effective July 1, 2000.)~~

~~(9)~~ (10) "Location information" means a consumer's place of abode and his OR HER telephone number at such place or his OR HER place of employment.

~~(9.3)~~ (11) "Person" means a natural person, firm, corporation, limited liability company, or partnership.

~~(9.5)~~ (12) "Principal" means any individual having a position of responsibility in a collection agency, including but not limited to any manager, director, officer, partner, owner, or shareholder owning ten percent or more of the stock.

~~(10)~~ (13) "Solicitor" means any person employed or engaged by a collection agency who solicits or attempts to solicit debts for collection by ~~such~~ THE person or any other person.

~~(11)~~ (14) "State" means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of them.

5-16-104. [Formerly 12-14-104] Location information - acquisition. (1) Any debt collector or collection agency communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall:

(a) Identify himself OR HERSELF, state that he OR SHE is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his OR HER employer;

(b) Not state that ~~such~~ THE consumer owes any debt;

(c) Not communicate with any ~~such~~ person more than once unless requested to do so by ~~such~~ THE person or unless the debt collector or collection agency reasonably believes that the PERSON'S earlier response of ~~such person~~ is erroneous or incomplete and that ~~such~~ THE person now has correct or complete location information;

(d) Not communicate by postcard;

(e) Not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debtor collector or collection agency is in the debt collection business or that the communication relates to the collection of a debt; and

(f) After the debt collector or collection agency knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, ~~such~~ THE attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time, not less than thirty days, to communication from the debt collector or collection agency.

5-16-105. [Formerly 12-14-105] Communication in connection with debt collection - definition. (1) Without the prior consent of the consumer given directly to the debt collector or collection agency or the express permission of a court of competent jurisdiction, a debt collector or collection agency shall not communicate with a consumer in connection with the collection of any debt:

(a) At any unusual time, place, or manner known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector or collection agency shall assume that the convenient time for communicating with a consumer is after 8 a.m. and before 9 p.m. local time at the consumer's location.

(b) If the debt collector or collection agency knows the consumer is represented by an attorney with respect to ~~such~~ THE debt and has knowledge of, or can readily ascertain, ~~such~~ THE attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or collection agency or unless the attorney consents to direct communication with the consumer; or

(c) At the consumer's place of employment if the debt collector or collection agency knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(2) Except as provided in ~~section 12-14-104~~ SECTION 5-16-104, without the prior consent of the consumer given directly to the debt collector or collection agency or the express permission of a court of competent jurisdiction or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector or collection agency shall not communicate, in connection with the collection of any debt, with any person other than the consumer, his OR HER attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the collection agency.

(3) (a) If a consumer notifies a debt collector or collection agency in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector or collection agency to cease further communication with the consumer, the debt collector or collection agency shall not communicate further with the consumer with respect to ~~such~~ THE debt, except to:

(I) Advise the consumer that the debt collector's or collection agency's further efforts are being terminated;

(II) Notify the consumer that the collection agency or creditor may invoke specified remedies that are ordinarily invoked by ~~such~~ THE collection agency or creditor; or

(III) Notify the consumer that the collection agency or creditor intends to invoke a specified remedy.

(b) If ~~such~~ THE notice from the consumer is made by mail, notification shall be complete upon receipt.

(c) In its initial written communication to a consumer, a collection agency shall include the following statement: "FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.AGO.STATE.CO.US/CADC/CADCMAN.CFM." If the website address is changed, the notification shall be corrected to contain the correct address. If the notification is placed on the back of the written communication, there shall be a

statement on the front notifying the consumer of such fact.

~~(d) (Deleted by amendment, L. 2003, p. 1865, § 2, effective May 21, 2003.)~~

~~(e)~~ (d) In its initial written communication to a consumer, a collection agency shall include the following statement: "A consumer has the right to request in writing that a debt collector or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt." If the notification is placed on the back of the written communication, there shall be a statement on the front notifying the consumer of such fact.

(4) For the purpose of this section, "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

(5) It shall be an affirmative defense to any action based upon failure of a debt collector or collection agency to comply with this section that the debt collector or collection agency believed, in good faith, that the debtor was other than a natural person.

5-16-106. [Formerly 12-14-106] Harassment or abuse. (1) A debt collector or collection agency shall not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt, including, but not limited to, the following conduct:

(a) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person;

(b) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;

(c) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of 15 U.S.C. sec. 1681b (a) (3) and ~~section 12-14-3-103 (1) (c)~~ SECTION 5-18-104 (1)(c);

(d) The advertisement for sale of any debt to coerce payment of the debt or agreeing to do so for the purpose of solicitation of claims;

(e) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(f) Except as provided in ~~section 12-14-104~~ SECTION 5-16-104, the placement of telephone calls without meaningful disclosure of the caller's identity within the first sixty seconds after the other party to the call is identified as the debtor.

5-16-107. [Formerly 12-14-107] False or misleading representations. (1) A debt collector or collection agency shall not use any false, deceptive, or misleading representation or means in connection with the collection of any debt, including, but not limited to, the following conduct:

(a) The false representation or implication that the debt collector or collection agency is vouched for, bonded by, or affiliated with the United States government or any state government, including the use of any misleading name, badge, uniform, or facsimile thereof;

(b) The false representation of:

(I) The character, amount, or legal status of any debt; or

(II) Any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt;

(c) The false representation or implication that any individual is an attorney or that any communication is from an attorney;

(d) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or in the seizure, garnishment, attachment, or sale of any property or wages of any person unless ~~such~~ THE action is lawful and the debt collector, collection agency, or creditor intends to take such action;

(e) The threat to take any action that cannot legally be taken or that is not intended to be taken;

(f) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:

(I) Lose any claim or defense to payment of the debt; or

(II) Become subject to any practice prohibited by this ~~article~~ ARTICLE 16;

(g) The false representation or implication that the consumer committed any crime;

(h) The false representation or implication that the consumer has engaged in any disgraceful conduct;

(i) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed;

(j) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any state or which creates a false or misleading impression as to its source, authorization, or approval;

(k) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;

(l) Except as otherwise provided for communications to acquire location information under ~~section 12-14-104~~ SECTION 5-16-104, the failure to disclose clearly, in the initial written communication made to collect a debt or obtain

information about a consumer and also, if the initial communication with the consumer is oral, in the initial oral communication, that the debt collector or collection agency is attempting to collect a debt and that any information obtained will be used for that purpose, and, in subsequent communications, that the communication is from a debt collector or collection agency; except that this paragraph (h) SUBSECTION (1)(l) shall not apply to a formal pleading made in connection with a legal action;

(m) The false representation or implication that accounts have been turned over to innocent purchasers for value;

(n) The false representation or implication that documents are legal process;

(o) The use of any business, company, or organization name other than the true name of the collection agency's business, company, or organization;

(p) The false representation or implication that documents are not legal process forms or do not require action by the consumer;

(q) The false representation or implication that a debt collector or collection agency operates or is employed by a consumer reporting agency.

5-16-108. [Formerly 12-14-108] Unfair practices. (1) A debt collector or collection agency shall not use unfair or unconscionable means to collect or attempt to collect any debt, including, but not limited to, the following conduct:

(a) The collection of any amount, including any interest, fee, charge, or expense incidental to the principal obligation, unless ~~such~~ THE amount is expressly authorized by the agreement creating the debt or permitted by law;

(b) The acceptance by a debt collector or collection agency from any person of a check or other payment instrument postdated by more than five days unless ~~such~~ THE person is notified in writing of the debt collector's or collection agency's intent to deposit ~~such~~ THE check or instrument not more than ten nor less than three business days prior to ~~such~~ THE deposit;

(c) The solicitation by a debt collector or collection agency of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

(d) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on ~~such~~ THE check or instrument;

(e) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(f) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(l) There is no present right to possession of the property claimed as collateral

through an enforceable security interest;

(II) There is no present intention to take possession of the property; or

(III) The property is exempt by law from such dispossession or disablement;

(g) Communicating with a consumer regarding a debt by postcard;

(h) Using any language or symbol, other than the debt collector's or collection agency's address, on any envelope when communicating with a consumer by use of the mails or by telegram; except that a debt collector or collection agency may use his business name if ~~such~~ THE name does not indicate that he OR SHE is in the debt collection business;

(i) Failing to comply with the provisions of section 13-21-109 ~~C.R.S.~~, regarding the collection of checks, drafts, or orders not paid upon presentment;

(j) Communicating credit information to a consumer reporting agency earlier than thirty days after the initial notice to the consumer has been mailed, unless the consumer's last-known address is known to be invalid. This ~~paragraph (j)~~ SUBSECTION (1)(j) shall not apply to checks, negotiable instruments, or credit card drafts.

5-16-109. [Formerly 12-14-109] Validation of debts. (1) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector or collection agency shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice with the disclosures specified in ~~paragraphs (a) to (e) of this subsection (1)~~ SUBSECTIONS (1)(a) TO (1)(e) OF THIS SECTION. If ~~such~~ THE disclosures are placed on the back of the notice, the front of the notice shall contain a statement notifying consumers of that fact. ~~Such~~ THE disclosures shall state:

(a) The amount of the debt;

(b) The name of the creditor to whom the debt is owed;

(c) That, unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector or collection agency;

(d) That, if the consumer notifies the debt collector or collection agency in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector or collection agency will obtain verification of the debt or a copy of a judgment against the consumer and a copy of ~~such~~ THE verification or judgment will be mailed to the consumer by the debt collector or collection agency;

(e) That upon the consumer's written request within the thirty-day period, the debt collector or collection agency will provide the consumer with the name and address of the original creditor, if different from the current creditor.

~~(f) and (g) (Deleted by amendment, L. 2003, p. 1866, § 4, effective May 21,~~

2003-)

(2) If the consumer notifies the debt collector or collection agency in writing within the thirty-day period described in ~~paragraph (c) of subsection (1)~~ SUBSECTION (1)(c) of this section that the debt, or any portion thereof, is disputed or that the consumer requests the name and address of the original creditor, the debt collector or collection agency shall cease collection of the debt, or any disputed portion thereof, until the debt collector or collection agency obtains verification of the debt or a copy of a judgment or the name and address of the original creditor and mails a copy of ~~such~~ THE verification or judgment or name and address of the original creditor to the consumer.

(3) The failure of a consumer to dispute the validity of a debt under this section shall not be construed by any court as an admission of liability by the consumer.

(4) It shall be an affirmative defense to any action based upon failure of a debt collector or collection agency to comply with this section that the debt collector or collection agency believed, in good faith, that the debtor was other than a natural person.

5-16-110. [Formerly 12-14-110] Multiple debts. If any consumer owes multiple debts and makes any single payment to any collection agency with respect to such debts, ~~such~~ THE collection agency shall not apply ~~such~~ THE payment to any debt which is disputed by the consumer and when so informed shall apply ~~such~~ THE payment in accordance with the consumer's directions.

5-16-111. [Formerly 12-14-111] Legal actions by collection agencies. (1) Any debt collector or collection agency who brings any legal action on a debt against any consumer shall:

(a) In the case of an action to enforce an interest in real property securing the consumer's obligation, bring ~~such~~ THE action only in a judicial district or similar legal entity in which ~~such~~ THE real property is located; or

(b) In the case of an action not described in ~~paragraph (a) of this subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION, bring ~~such~~ THE action only in the judicial district or similar legal entity in which:

(I) ~~Such~~ THE consumer signed the contract sued upon;

(II) ~~Such~~ THE consumer resides at the commencement of the action; or

(III) ~~Such~~ THE action may be brought pursuant to article 13 or 13.5 of title 26, ~~C.R.S.~~, section 14-14-104, ~~C.R.S.~~, or article 4 or 6 of title 19, ~~C.R.S.~~, if the action is by a private collection agency acting on behalf of a delegate child support enforcement unit.

5-16-112. [Formerly 12-14-112] Deceptive forms. (1) It is unlawful for any person to design, compile, and furnish any form knowing that ~~such~~ THE form would be used to create the false belief in a consumer that a person other than the creditor of ~~such~~ THE consumer is participating in the collection or in the attempted collection

of a debt that ~~such~~ THE consumer allegedly owes ~~such~~ THE creditor, when in fact ~~such~~ THE person is not so participating.

(2) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector or collection agency under ~~section 12-14-113~~ SECTION 5-16-113 for failure to comply with this ~~article~~ ARTICLE 16.

(3) This section shall apply if the person supplying or using the forms or the consumer receiving the forms is located within this state.

5-16-113. [Formerly 12-14-113] Civil liability. (1) In addition to administrative enforcement pursuant to ~~section 12-14-114~~ SECTION 5-16-114 and subject to ~~section 12-14-134~~ SECTION 5-16-132 and the limitations provided by ~~subsection (9)~~ SUBSECTION (10) of this section, and except as otherwise provided by this section, any debt collector or collection agency who fails to comply with any provision of this ~~article~~ ARTICLE 16 or private child support collector, as defined in ~~section 12-14.1-102 (9)~~ SECTION 5-17-102 (9), who fails to comply with any provision of this ~~article~~ ARTICLE 16 or ~~article 14.1 of this title~~ ARTICLE 17 OF THIS TITLE 5, with respect to a consumer is liable to ~~such~~ THE consumer in an amount equal to the sum of:

(a) Any actual damage sustained by ~~such~~ THE consumer as a result of ~~such~~ THE failure;

(b) (I) In the case of any action by an individual, ~~such~~ additional damages as the court may allow, but not to exceed one thousand dollars;

(II) In the case of a class action, ~~such~~ THE amount for each named plaintiff as could be recovered under ~~subparagraph (I) of this paragraph (b)~~ SUBSECTION (1)(b)(I) OF THIS SECTION and ~~such~~ THE amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed five hundred thousand dollars or one percent of the net worth of the debt collector or collection agency, whichever is the lesser; and

(c) In the case of any successful action to enforce such liability, the costs of the action, together with ~~such~~ reasonable attorney fees as may be determined by the court.

~~(1.5)~~ (2) In the case of any unsuccessful action brought under this section, the plaintiff shall be liable to each defendant in an amount equal to that defendant's cost incurred in defending the action, together with ~~such~~ reasonable attorney fees as may be determined by the court.

~~(2)~~ (3) In determining the amount of liability in any action under subsection (1) of this section, the court shall consider, among other relevant factors:

(a) In any individual action under ~~subparagraph (I) of paragraph (b) of subsection (1)~~ SUBSECTION (1)(b)(I) of this section, the frequency and persistence of noncompliance by the debt collector or collection agency, the nature of ~~such~~ noncompliance, and the extent to which ~~such~~ noncompliance was intentional;

(b) In any class action under ~~subparagraph (II) of paragraph (b) of subsection (1)~~ SUBSECTION (1)(b)(II) of this section, the frequency and persistence of noncompliance by the debt collector or collection agency, the nature of ~~such~~ THE noncompliance, the resources of the debt collector or collection agency, the number of persons adversely affected, and the extent to which the debt collector's or collection agency's noncompliance was intentional.

~~(3)~~ (4) A debt collector, private child support collector, as defined in ~~section 12-14.1-102 (9)~~ SECTION 5-17-102 (9), or collection agency may not be held liable in any action brought pursuant to the provisions of this ~~article~~ ARTICLE 16 if the debt collector or collection agency shows by a preponderance of evidence that the violation was not intentional or grossly negligent and ~~which~~ THE violation resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

~~(4)~~ (5) An action to enforce any liability created by the provisions of this ~~article~~ ARTICLE 16 may be brought in any court of competent jurisdiction within one year from the date on which the violation occurs.

~~(5)~~ (6) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the administrator, notwithstanding that, after ~~such~~ THE act or omission has occurred, ~~such~~ THE opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

~~(6)~~ (7) The policy of this state is not to award double damages under this ~~article~~ ARTICLE 16 and the federal "Fair Debt Collection Practices Act", 15 U.S.C. sec. 1692 et seq. No damages under this section shall be recovered if damages are recovered for a like provision of said federal act.

~~(7)~~ (8) Notwithstanding subsection (1) of this section, harassment of the employer or the family of a consumer shall be considered an invasion of privacy and a civil action may be brought which is not subject to the damage limitations of ~~said~~ subsection (1) OF THIS SECTION.

~~(8)~~ (9) It shall be an affirmative defense to any action based upon failure of a debt collector, private child support collector, as defined in ~~section 12-14.1-102 (9)~~ SECTION 15-17-102 (9), or collection agency to comply with this section that the debt collector or collection agency believed, in good faith, that the debtor was other than a natural person.

~~(9)~~ (10) There shall be no private cause of action under this section for any alleged violation of ~~section 12-14-128 (4) (a)~~ SECTION 5-16-125 (4)(a). Violations of ~~section 12-14-128 (4) (a)~~ SECTION 5-16-125 (4)(a) may be prosecuted only through administrative enforcement pursuant to ~~section 12-14-114~~ SECTION 5-16-114.

~~(10)(a)~~ (11) (a) No provision of this section imposing any liability shall apply to any efforts by a state agency or state employee to recover ~~moneys~~ MONEY owed to the state as provided in section 24-30-202.4. ~~C.R.S.~~

(b) If the state controller, or ~~such designee as~~ A PERSON he or she designates to recover ~~moneys~~ MONEY owed to the state, fails to comply with any provision of this ~~article~~ ARTICLE 16, the controller, or ~~such~~ HIS OR HER designee, shall be subject to disciplinary action as specified in the rules promulgated by the executive director of the department of personnel pursuant to article 4 of title 24. ~~C.R.S.~~

5-16-114. [Formerly 12-14-114] Administrative enforcement - rules. Compliance with this ~~article~~ ARTICLE 16 shall be enforced by the administrator. The administrator may make reasonable rules for the administration and enforcement of this ~~article~~ ARTICLE 16, including standards of conduct for licensees and collection notices and forms.

5-16-115. [Formerly 12-14-115] License - registration - unlawful acts. (1) It is unlawful for any person to:

(a) Conduct the business of a collection agency or advertise or solicit, either in print, by letter, in person, or otherwise, the right to make collection or obtain payment of any debt on behalf of another without having obtained a license under this ~~article~~ ARTICLE 16; or

(b) Conduct the business of a collection agency under any name other than that under which licensed.

~~(2) and (3) - Repealed.~~

~~(3.5) (2)~~ (2) It is unlawful for a person to act as a collections manager without having complied with ~~sections 12-14-119 and 12-14-122~~ SECTIONS 5-16-119 AND 5-16-122.

~~(4) (3)~~ (3) It is unlawful for any person to employ ~~any~~ A person as a solicitor, collections manager, or debt collector under this ~~article~~ ARTICLE 16 without complying with this section.

5-16-116. [Formerly 12-14-116] Collection agency board - created. (1) For the purpose of carrying out the provisions of this ~~article~~ ARTICLE 16 subject to ~~section 12-14-117(1)~~ SECTION 5-16-117(1), the governor shall appoint five members to the collection agency board, which board is hereby created. The members of the board serving on July 1, 2003, shall continue to serve their appointed terms, and their successors shall be appointed for three-year terms. Upon the death, resignation, or removal of any member of the board, the governor shall appoint a member to fill the unexpired term. Any member of the board may be removed by the governor for misconduct, neglect of duty, or incompetence. No member may serve more than two consecutive terms without first a lapse of at least one term before being appointed to any additional terms.

(2) No person shall be appointed as a member of ~~such~~ THE board unless ~~such~~ THE person is a bona fide resident of the state of Colorado. Effective July 1, 2000, board appointments shall ensure that three members of the board have been engaged in the collection business within the state of Colorado, either as a collections manager, owner, or part owner of a licensed collection agency. Two members of the board shall be representatives of the general public and not engaged in the collection business.

(3) Each member of the board shall be allowed a per diem compensation of fifty dollars and actual expenses for each day of active service, payable from the ~~moneys~~ MONEY appropriated to the board.

(4) The board shall meet annually for the purpose of organization by electing a chairman, a vice-chairman, and a secretary of the board for the ensuing year.

(5) The board shall meet regularly at such times and places as the business of the board may necessitate upon full and timely notice to each of the members of the board of the time and place of ~~such~~ THE meeting. A majority of ~~said~~ THE board shall constitute a quorum of ~~said~~ THE board.

5-16-117. [Formerly 12-14-117] Powers and duties of the administrator.

(1) Any provision of this ~~article~~ ARTICLE 16 to the contrary notwithstanding, the board, created by ~~section 12-14-116~~ SECTION 5-16-116, is under the supervision and control of the administrator, who may exercise any of the powers granted to the board.

~~(2) Repealed.~~

~~(3)~~ (2) The administrator is authorized to approve or deny any application submitted pursuant to this ~~article~~ ARTICLE 16 and to issue any license authorized by this ~~article~~ ARTICLE 16.

~~(4)~~ (3) Any complaint received by the administrator regarding violations of this ~~article~~ ARTICLE 16 by an attorney shall be forwarded to the supreme court's attorney regulation counsel.

~~(5)~~ (4) The administrator shall enforce the provisions of ~~article 14.1 of this title~~ pursuant to ~~section 12-14.1-111~~ ARTICLE 17 OF THIS TITLE 5 PURSUANT TO SECTION 5-17-111.

5-16-118. [Formerly 12-14-118] Collection agency license - required. Any person acting as a collection agency must possess a valid license issued by the administrator in accordance with this ~~article~~ ARTICLE 16 and any rules ~~and regulations~~ adopted pursuant thereto.

5-16-119. [Formerly 12-14-119] Collection agency license - requirements - application - fee - expiration. (1) As requisites for licensure, ~~the~~ AN applicant for a collection agency license shall:

(a) (I) Be owned by, or employ as collections manager or an executive officer of the agency, at least one individual who has been engaged in a responsible position in an established collection agency for a period of at least two years.

(II) Notwithstanding the requirements of ~~subparagraph (I) of this paragraph (a)~~ SUBSECTION (1)(a)(I) OF THIS SECTION, the administrator may substitute other business experience for ~~such~~ requirements where ~~such~~ THE business experience has provided comparable experience in collections.

(b) (I) Employ a collections manager who shall BE RESPONSIBLE FOR THE ACTIONS

OF THE DEBT COLLECTORS IN THAT OFFICE.

~~(A) (Deleted by amendment, L. 2008, p. 1729, § 7, effective July 1, 2008.)~~

~~(B) Be responsible for the actions of the debt collectors in that office.~~

(II) The collections manager may be the same individual specified in ~~paragraph (a) of this subsection~~ ~~(1) SUBSECTION (1)(a) OF THIS SECTION~~ if the collections manager also meets the qualifications of ~~said paragraph (a)~~ ~~SUBSECTION (1)(a) OF THIS SECTION~~.

(c) File a bond in the amount and manner specified in ~~section 12-14-124~~ SECTION 5-16-124;

(d) If a foreign corporation, comply fully with the laws of this state so as to entitle it to do business within the state.

(2) Each applicant for a collection agency license shall submit an application providing all information in the form and manner the administrator shall designate, including, but not limited to:

(a) The location, ownership, and, if applicable, the previous history of the business and the name, address, age, and relevant debt-collection experience of each of the principals of the business;

(b) A duly verified financial statement for the previous year;

(c) If a corporation, the name of the shareholder and the number of shares held by any shareholder owning ten percent or more of the stock; and

(d) For the principals and the collections manager of the applicant:

(I) The conviction of any felony or the acceptance by a court of competent jurisdiction of a plea of guilty or nolo contendere to any felony;

(II) The denial, revocation, or suspension of any license issued to any collection agency ~~which~~ THAT employed or was owned by such persons, in whole or in part, directly or indirectly, and a statement of their position and authority at ~~such~~ THE collection agency:

(A) For any license issued pursuant to this ~~article~~ ARTICLE 16; or

(B) For any comparable license issued by any other jurisdiction;

(III) The taking of any other disciplinary or adverse action or the existence of any outstanding complaints against any collection agency which employed or was owned in whole or in part, directly or indirectly, by such persons, and a statement of their position and authority at ~~such~~ THE collection agency:

(A) For any license issued pursuant to this ~~article~~ ARTICLE 16; or

(B) When ~~such~~ THE action was taken by any other jurisdiction or ~~such~~ THE complaint exists in any other jurisdiction, whether or not a license was issued by that jurisdiction;

(IV) The suspension or termination of approval of any collections manager under this ~~article~~ ARTICLE 16 or any other disciplinary or adverse action taken against the applicant, principal, or collections manager in any jurisdiction.

(3) At the time the application is submitted, the applicant shall pay a nonrefundable investigation fee in an amount to be determined by the administrator.

(4) When the administrator approves the application, the applicant shall pay a nonrefundable license fee in an amount to be determined by the administrator.

(5) The administrator shall establish procedures for the maintenance of license lists and the establishment of initial and renewal license fees and schedules. The administrator may change the renewal date of any license issued pursuant to this ~~article~~ ARTICLE 16 to the end that approximately the same number of licenses are scheduled for renewal in each month of the year. Where any renewal date is ~~so~~ changed, the fee for the license shall be proportionately increased or decreased, as the case may be. Every licensee shall pay the administrator a license fee to be determined and collected pursuant to ~~section 12-14-121~~ SECTION 5-16-121 and subsection (4) of this section, and shall obtain a license certificate for the current license period. Notwithstanding any other provision of this section, a licensee, at any time, may voluntarily surrender the license to the administrator to be cancelled, but such surrender shall not affect the licensee's liability for violations of this ~~article~~ ARTICLE 16 that occurred prior to the date of surrender.

~~(6) (Deleted by amendment, L. 2003, p. 1868, § 8, effective May 21, 2003.)~~

~~(7)~~ (6) A collection agency must obtain a license for its principal place of business, but its branch offices, if any, need not obtain separate licenses. A collection agency with branch offices must notify the administrator in writing of the location of each branch office within thirty days after the branch office commences business.

5-16-120. [Formerly 12-14-120] License - issuance - grounds for denial - appeal - contents. (1) Upon the approval of the license application by the administrator and the satisfaction of all application requirements, the administrator shall issue the applicant a license to operate as a collection agency.

(2) The administrator may deny any application for a license or its renewal if any grounds exist that would justify disciplinary action under ~~section 12-14-130~~ SECTION 5-16-127, for failure to meet the requirements of ~~section 12-14-119~~ SECTION 5-16-119, or if the applicant, the applicant's principals, or the applicant's collections manager have fraudulently obtained or attempted to obtain a license.

(3) If any application for a license or its renewal is denied, the applicant may appeal the decision pursuant to section 24-4-104. ~~C.R.S.~~

(4) The license shall state the name of the licensee, location by street and number

or office building and room number, city, county, and state where the licensee has his OR HER principal place of business, together with the number and date of ~~such~~ THE license and the date of expiration of the license, and shall further state that it is issued pursuant to this ~~article~~ ARTICLE 16 and that the licensee is duly authorized under this ~~article~~ ARTICLE 16.

~~(5) Repealed.~~

~~(6)~~ (5) The administrator may deny any application for a license or its renewal if the collection agency has failed to perform the duties enumerated in ~~section~~ 12-14-123 SECTION 5-16-123.

~~(7)~~ (6) The administrator may deny any application for a license or its renewal if the collection agency does not have a positive net worth.

5-16-121. [Formerly 12-14-121] Collection agency license - renewals. Each licensee shall make an application to renew its license in the form and manner prescribed by the administrator. The application shall be accompanied by a nonrefundable renewal fee in an amount determined by the administrator.

5-16-122. [Formerly 12-14-122] Collection agency license - notification of change and reapplication requirements. (1) (a) Upon any of the following changes, the licensee shall notify the administrator in writing of ~~such~~ THE change within thirty days after its occurrence:

(I) Change of business name or address;

(II) If a corporation or limited liability company, change in ownership of ten or more percent but less than fifty percent of the corporate stock or ownership interest.

(b) If the licensee fails to provide ~~such~~ written notification, the license shall automatically expire on the thirtieth day following ~~such~~ THE change.

(2) (a) Upon any of the changes specified in ~~paragraph (c) of this subsection (2)~~ SUBSECTION (2)(c) OF THIS SECTION, the licensee shall apply for a new license within thirty days of ~~said~~ THE change. The administrator shall have twenty-five days to review the application and issue or deny the new license. If the administrator denies the license, the administrator shall provide to the licensee a written statement stating why the application for the license was denied, and the licensee shall have fifteen days to cure any defects in ~~said~~ THE application. The administrator shall approve or deny the resubmitted application within fifteen days.

(b) If the licensee fails to file an application for a new license, the license shall expire on the thirtieth day following the change ~~which~~ THAT necessitated the new license application. If the application is denied and the licensee fails to resubmit the application within fifteen days of ~~said~~ THE denial, the license shall expire on the fifteenth day following the denial.

(c) The changes ~~which~~ THAT require a new license application are:

(I) In a sole proprietorship or partnership, any change in the persons owning the

collection agency;

(II) In a corporation or limited liability company, any change of ownership of fifty percent or more of the stock or ownership interest in any one transaction or a cumulative change of ownership of fifty percent or more from the date of the issuance of the license or from the date of the latest renewal of the license;

(III) Any change of ownership structure, including but not limited to a change to or from a sole proprietorship, partnership, limited liability company, or corporation. No investigation fee shall be required in the event of ~~such~~ a change and the application required may be more abbreviated than that required for an initial license, as determined by the administrator.

(3) (a) Upon a change of collections manager, the licensee shall notify the administrator in the form and manner designated by the administrator. The licensee shall appoint a new collections manager within thirty days of ~~such~~ THE change.

(b) The administrator, within fifteen days, shall approve or disapprove the qualifications of the new collections manager.

(c) The licensee may continue to operate as a collection agency unless and until the administrator disapproves the qualifications of the new collections manager.

(4) Any licensee which has submitted an application for a new license may continue to operate as a collection agency until the final decision of the administrator.

(5) The licensee may appeal the final decision of the administrator pursuant to section 24-4-104. ~~C.R.S.~~

5-16-123. [Formerly 12-14-123] Duties of collection agencies. (1) A licensee shall:

(a) Maintain, at all times, liquid assets in the form of deposit accounts in the total sum of not less than two thousand five hundred dollars more than all sums due and owing to all of its clients;

(b) (I) (A) Maintain, at all times, an office within this state that is open to the public during normal business hours, is staffed by at least one full-time employee, keeps a record of all ~~moneys~~ MONEY collected and remitted by the agency for residents of Colorado, and accepts payments physically made at the office for any debt the agency is attempting to collect.

(B) Notify, in each written communication, the consumer from whom the agency is attempting to collect a debt of the address and telephone number of the local office required by this ~~subparagraph (I)~~ SUBSECTION (1)(b)(I).

(II) Maintain, at all times, a toll-free telephone number that shall be available to any consumer who needs to make a toll call to reach the licensee in connection with a debt.

(c) Maintain, at all times, a trust account for the benefit of its clients that contains, at all times, sufficient funds to pay all sums due or owing to all of its clients. The licensee shall maintain the trust account in a commercial bank or savings and loan association account in this state or accessible in a branch in this state until disbursed to the creditor. The account must be clearly designated as a trust account and shall be used only for such purposes and not as an operating account. A deposit of all funds received to a trust account followed by a transfer of the agency share of the collection to an operating account is not a violation of this section.

(d) Within thirty days after the last day of the month in which any collections are made for a client, account to the client for all collections made during that month and remit to the client all ~~moneys~~ MONEY owed to the client pursuant to the agreement between the client and the collection agency;

(e) Upon written demand of the administrator, within five days of receipt of ~~such~~ THE demand, produce a complete set of all form notices or form letters used by the licensee in the collection of accounts;

(f) Be responsible, pursuant to this ~~article~~ ARTICLE 16, for violations of this ~~article~~ ~~that are~~ ARTICLE 16 caused by its collections manager, debt collectors, or solicitors.

(2)(a) No collection agency shall employ any collections manager, debt collector, or solicitor who has been convicted of or who has entered a plea of guilty or nolo contendere to any crime specified in part 4 of article 4, in part 1, 2, 3, 5, 7, or 9 of article 5, or in article 5.5 of title 18, ~~C.R.S.~~, or any similar crime under the jurisdiction of any federal court or court of another state.

(b) No collection agency shall be owned or operated by the following persons who have been convicted of or who have entered a plea of guilty or nolo contendere to any crime specified in part 4 of article 4, in part 1, 2, 3, 5, 7, or 9 of article 5, or in article 5.5 of title 18, ~~C.R.S.~~, or any similar crime under the jurisdiction of any federal court or court of another state:

- (I) The owner of a sole proprietorship;
- (II) A partner of a partnership;
- (III) A member of a limited liability company; or
- (IV) An officer or director of a corporation.

(3) ~~Paragraphs (a), (c), and (d) of subsection (1)~~ SUBSECTIONS (1)(a), (1)(c), AND (1)(d) of this section do not apply to a person collecting or attempting to collect a debt owned by the person collecting or attempting to collect ~~such~~ THE debt.

5-16-124. [Formerly 12-14-124] Bond - definition. (1) Each licensee shall maintain at all times and each applicant shall file, prior to the issuance of any license to ~~such~~ THE applicant, a bond in the sum of twelve thousand dollars plus an additional two thousand dollars for each ten thousand dollars or part thereof by which the average monthly sums remitted or owed to all of its clients during the previous year exceed fifteen thousand dollars; or, in the alternative, an applicant or

licensee shall present evidence of a savings account, deposit, or certificate of deposit of the same sum and meeting the requirements of section 11-35-101. ~~C.R.S.~~ The total amount of the bond shall not exceed twenty thousand dollars and shall be in favor of the attorney general of the state of Colorado for use of the people of the state of Colorado and the administrator. ~~Such~~ THE bond shall be executed by the applicant or licensee as principal and by a corporation that is licensed by the commissioner of insurance to transact the business of fidelity and surety insurance as surety. If any such surety, during the life of the bond, cancels the bond or reduces the penal sum of the bond, the surety immediately shall notify the administrator in writing. The administrator shall give notice to the licensee that the bond has been cancelled or reduced and that the licensee's license shall automatically expire unless a new or increased bond with proper sureties is filed within thirty days after the date the administrator received the notice, or on ~~such~~ A later date as is stated in the surety's notice.

(2) The bond shall include a condition that the licensee shall, upon demand in writing made by the administrator, pay over to the administrator for the use of any client from whom any debt is taken or received for collection by the licensee the proceeds of ~~such~~ THE collection, less the charges for collection in accordance with the terms of the agreement made between the licensee and the client.

(3) A client may file with the administrator a duly verified claim as to money due ~~such~~ THE client for money collected by a licensee. If the administrator makes a preliminary determination that a claim meets the requirements of this section, the administrator shall make a demand for the amount claimed. ~~Such~~ THE demand may be made on the licensee, the surety, or both.

(4) If a receiver has been appointed by any court of competent jurisdiction in the state of Colorado to take charge of the assets of any licensee, ~~such~~ THE receiver, upon the written consent of the administrator, may demand and receive payment on the bond from the surety and, upon order of the court, may bring suit upon the bond in the name of ~~such~~ THE receiver, without joining the administrator as a party to the action.

(5) If a client has filed a duly verified claim with the administrator, who has refused to make demand upon the licensee or surety, the client may bring suit against the licensee or surety on the bond for the recovery of money due from ~~such~~ THE licensee without assignment of ~~such~~ THE bond to the client. Nothing in this section shall preclude a client from making a demand on both the licensee and the surety.

(6) (a) ~~Said~~ THE bond shall include a condition that the licensee shall, upon written demand, turn over to the client any and all notes, valuable papers, or evidence of indebtedness which may have been deposited with ~~said~~ THE licensee by the client, but ~~such~~ THE licensee shall not be required to return any such papers, notes, or evidence of indebtedness on debts in process of collection, unless reimbursed by the client for the services performed on the debt so evidenced.

(b) "Debts in process of collection" means any debts ~~which~~ THAT have been in ~~said~~ THE licensee's hands for less than nine months, debts on which payments are being made, or on which payments have been promised, debts on which suit has

been brought, and claims ~~which~~ THAT have been forwarded to any other collection agency or attorney.

(7) ~~Such~~ THE bond shall cover all matters placed with the licensee during the term of the license granted and any renewal, except as provided in this section. Such bond may be enforced in the manner described in this section, by a receiver appointed to take charge of the assets of any licensee, or by any client if the administrator refuses to act. The aggregate liability of the surety, for any and all claims that may arise under ~~such~~ THE bond, shall not exceed the penalty of ~~such~~ THE bond.

(8) Any licensee, at any time, may file a new bond with the administrator. Any surety may file with the administrator notice of withdrawal as surety on the bond of any licensee. Upon filing of ~~such~~ A new bond or on expiration of thirty days after the filing of notice of withdrawal as surety by the surety, the liability of the former surety for all future acts of the licensee shall terminate, except as provided in subsection (9) of this section. The administrator shall cancel the bond given by any surety company upon being advised its license to transact the business of fidelity and surety insurance has been revoked by the commissioner of insurance and shall notify the licensee.

(9) No action shall be brought upon any bond required to be given and filed, after the expiration of two years from the surrender, revocation, or expiration of the license issued thereunder. After the expiration of ~~said period~~ of two years, all liability of the surety upon the ~~said~~ bond shall cease if no action has been commenced upon ~~said~~ bond before the expiration of the period.

(10) In lieu of an individual surety bond, the administrator may authorize a blanket bond covering qualifying licensees in the sum of two million dollars in favor of the attorney general of the state of Colorado for use of the people of the state of Colorado and the administrator. Each new and renewal applicant shall pay a fee in an amount determined by the administrator to offset the applicant's share of the blanket bond. Conditions and procedures regarding the bond shall be as set forth in this section for individual bonds.

(11) This section does not apply to a person collecting or attempting to collect a debt owned by the person collecting or attempting to collect ~~such~~ debt.

5-16-125. [Formerly 12-14-128] Unlawful acts. (1) In addition to the unlawful acts specified in ~~sections 12-14-112 and 12-14-115~~ SECTIONS 5-16-112 AND 5-16-115, it is unlawful and a violation of this ~~article~~ ARTICLE 16 for any person:

(a) To refuse or fail to comply with ~~section 12-14-104, 12-14-105, 12-14-106, 12-14-107, 12-14-108, 12-14-109, 12-14-110, 12-14-118, 12-14-119 (1), or 12-14-123 (1)(b) to (1)(e) or (2)~~ SECTION 5-16-104, 5-16-105, 5-16-106, 5-16-107, 5-16-108, 5-16-109, 5-16-110, 5-16-118, 5-16-119 (1), OR 5-16-123 (1)(b) TO (1)(e) OR (2);

(b) To aid or abet any person operating or attempting to operate in violation of this ~~article~~ ARTICLE 16, including but not limited to ~~section 12-14-115~~ SECTION 5-16-115; except that nothing in this ~~article~~ ARTICLE 16 shall prevent any licensed

collection agency from accepting, as forwarder, claims for collection from any collection agency or attorney whose place of business is outside this state;

(c) To recover or attempt to recover treble damages for any check, draft, or order not paid on presentment without complying with the provisions of section 13-21-109. ~~C.R.S.~~

(2) It is unlawful and a violation of this ~~article~~ ARTICLE 16 for any licensee or any attorney representing a licensee to invoke a cognovit clause in any note so as to confess judgment.

(3) It is unlawful and a violation of this ~~article~~ ARTICLE 16 for any licensee to render or to advertise that it will render legal services; except that a licensee may solicit claims for collection and take assignments and pursue the collection thereof subject to the provisions of law concerning the unauthorized practice of law.

(4) It is unlawful and a violation of this ~~article~~ ARTICLE 16 for any licensee, collections manager, debt collector, or solicitor TO:

(a) ~~To~~ Refuse or fail to comply with a rule adopted pursuant to this ~~article~~ ARTICLE 16 or any lawful order of the administrator; or

(b) ~~To~~ Aid or abet any person in such refusal or failure.

(5) It is unlawful and a violation of this ~~article~~ ARTICLE 16 for any person to falsify any information or make any misleading statements in any application authorized under this ~~article~~ ARTICLE 16.

(6) Any officer or agent of a corporation who personally participates in any violation of this ~~article~~ ARTICLE 16 shall be subject to the penalties prescribed in ~~section 12-14-129~~ SECTION 5-16-126 for individuals.

5-16-126. [Formerly 12-14-129] Criminal penalties. Any person who violates any provision of ~~section 12-14-128 (1), (2), (3), or (4)~~ SECTION 5-16-125 (1), (2), (3), OR (4) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501. ~~C.R.S.~~

5-16-127. [Formerly 12-14-130] Complaint - investigations - powers of administrator - sanctions. (1) Upon ~~the~~ filing with the administrator by any interested person of a written complaint charging any person with a violation of this ~~article~~ ARTICLE 16, any rule adopted pursuant to this ~~article~~ ARTICLE 16, or any lawful order of the administrator, the administrator shall conduct an investigation. ~~thereof.~~

(2) For reasonable cause, the administrator may, on its own motion, conduct an investigation of the conduct of any person concerning compliance with this ~~article~~ ARTICLE 16. The administrator may also issue subpoenas to require the attendance of witnesses or the production of documents. ~~which~~ THE 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~~; ARTICLE 16. THE ADMINISTRATOR MAY ALSO administer oaths; conduct hearings in aid of any investigation or inquiry

necessary to administer the provisions of this ~~article~~ ARTICLE 16; and apply to the appropriate court for an appropriate order to effect the purposes of this ~~article~~ ARTICLE 16.

(3) If any licensee or one of its principals or collections managers is convicted of or enters a plea of guilty or nolo contendere to any crime specified in part 4 of article 4, in part 1, 2, 3, 5, 7, or 9 of article 5, or in article 5.5 of title 18, ~~C.R.S.~~; or any similar crime under the jurisdiction of any federal court or court of another state, the conviction or plea shall constitute grounds for disciplinary action under this section.

(4) In any proceeding held under this section, the administrator may accept as prima facie evidence of grounds for disciplinary or adverse action any disciplinary or adverse action taken against a licensee, the licensee's principals, debt collector, solicitor, or collections manager by another jurisdiction that issues professional, occupational, or business licenses, if the conduct that prompted the disciplinary or adverse action by that jurisdiction would be grounds for disciplinary action under this section.

(5) For reasonable cause, the administrator or the administrator's designee has the right, during normal business hours without resort to subpoena, to examine the books, records, and files of any licensee. If the books, records, and files are located outside Colorado, the licensee shall bear all expenses in making them available.

(6)(a) For reasonable cause, the administrator may require the making and filing, by any licensee, at any time, of a written, verified statement of the licensee's assets and liabilities, including, if requested, a detailed statement of amounts due claimants. The administrator may also require an audited statement when cause has been shown that an audited statement is needed.

(b) Any financial statement of any applicant or licensee required to be filed with the administrator shall not be a public record but may be introduced in evidence in any court action or in any administrative action involving the applicant or licensee.

(7) For the purpose of any proceeding under this ~~article~~ ARTICLE 16, the administrator may subpoena witnesses and compel them to give testimony under oath. If any subpoenaed witness fails or refuses to appear or testify, the subpoenaing authority may petition the district court, and, upon proper showing, the court may order the witness to appear and testify. Disobedience of the order of court may be punished as a contempt of court.

(8) The administrator may appoint an administrative law judge pursuant to part 10 of article 30 of title 24 ~~C.R.S.~~, to conduct any proceedings authorized under this ~~article~~ ARTICLE 16.

(9) If the administrator finds cause to believe a licensee or collections manager has violated this ~~article~~ ARTICLE 16, the rules adopted pursuant to this ~~article~~ ARTICLE 16, or any lawful order of the administrator, the administrator shall ~~so~~ notify the licensee or collections manager and hold a hearing. Any proceedings conducted pursuant to this section shall be in accordance with article 4 of title 24. ~~C.R.S.~~

(10) (a) If the administrator or the administrative law judge finds that the licensee or collections manager has violated this ~~article~~ ARTICLE 16, the rules adopted pursuant to this ~~article~~ ARTICLE 16, or any lawful order of the administrator, or if the licensee fraudulently obtained a license, the administrator may issue letters of admonition; deny, revoke, or suspend the license of ~~such~~ THE licensee or approval of the collections manager; place ~~such~~ THE licensee or collections manager on probation; or impose administrative fines in an amount up to one thousand five hundred dollars per violation on the licensee or collections manager.

(b) The administrator may issue letters of admonition pursuant to ~~paragraph (a) of this subsection (10)~~ SUBSECTION (10)(a) OF THIS SECTION without a hearing; except that the licensee or collections manager receiving the letter of admonition may request a hearing before the administrator to appeal the issuance of the letter.

(c) A letter of admonition may be issued to a licensee or collections manager whether or not a license or approval has been surrendered prior to ~~said~~ issuance.

(d) No person whose license has been revoked shall be licensed again under the terms of this ~~article~~ ARTICLE 16 for five years. No person hired as a collections manager whose approval has been terminated by the administrator for a violation of this ~~article~~ ARTICLE 16 shall be hired again as a collections manager for five years.

(11) The court of appeals shall have jurisdiction to review all final actions and orders that are subject to judicial review of the administrator. ~~Such~~ Proceedings shall be conducted in accordance with section 24-4-106 (11). ~~C.R.S.~~

(12) Members of the collection agency board, the administrator, expert witnesses, and consultants shall be immune from civil suit when they perform IN GOOD FAITH any duties in connection with any proceedings authorized under this section. ~~in good faith~~. Any person who files a complaint in good faith under this section shall be immune from civil suit.

5-16-128. [Formerly 12-14-130.1] Debt collectors for the department of personnel - complaint - disciplinary procedures. (1) Any interested person may file a written complaint with the executive director of the department of personnel charging a debt collector in the employ of the department of personnel with a violation of:

(a) This ~~article~~ ARTICLE 16 or a rule promulgated pursuant ~~thereto~~ TO THIS ARTICLE 16;

(b) A lawful order of the state board of ethics; or

(c) The standards of conduct set forth in the code of conduct developed by the department of personnel for such debt collectors.

(2) Each complaint filed pursuant to this section shall be referred to the executive director of the department of personnel who shall conduct an investigation to determine if a violation of subsection (1) of this section occurred. If the executive director makes a determination that a violation did occur, the debt collector who is

the subject of the complaint shall be subject to the disciplinary procedures set forth in rules adopted by the state personnel board. If a determination made pursuant to this subsection (2) is unsatisfactory to any party, an appeal may be made to the board of ethics for the executive branch of state government in the office of the governor.

(3) If the executive director of the department of personnel, or the board of ethics in the case of an appeal, makes a determination that a debt collector in the employ of the department of personnel has acted in violation of this ~~article~~ ARTICLE 16 or a rule promulgated pursuant ~~thereto~~ TO THIS ARTICLE 16, a lawful order of the state board of ethics, or the code of conduct described in ~~paragraph (c) of subsection (1)~~ SUBSECTION (1)(c) of this section, ~~such~~ THE determination shall be made a part of the personnel file of the debt collector against whom the complaint was filed.

5-16-129. [Formerly 12-14-131] Records. The administrator shall keep a suitable record of all license applications and bonds required to be filed. ~~Such~~ THE record shall state whether a license has been issued under ~~such~~ THE application and bond and, if revoked, the date of the filing of the order of revocation. The administrator shall keep a list of each person who has had a license revoked or has been terminated as a collections manager for a violation of this ~~article~~ ARTICLE 16. In ~~such~~ THE record, all licenses issued shall be indicated by their serial numbers and the names and addresses of the licensees. This section shall apply to renewal applications and renewal licenses. ~~Such~~ THE record shall be open for inspection as a public record in the office of the administrator.

5-16-130. [Formerly 12-14-132] Jurisdiction of courts. County courts shall have concurrent jurisdiction with the district courts of this state in all criminal prosecutions for violations of this ~~article~~ ARTICLE 16.

5-16-131. [Formerly 12-14-133] Duty of district attorney. It is the duty of the district attorney to prosecute all violations of the provisions of this ~~article~~ ARTICLE 16 occurring within his OR HER district.

5-16-132. [Formerly 12-14-134] Remedies. The remedies provided in this ~~article~~ ARTICLE 16 are in addition to and not exclusive of any other remedies provided by law.

5-16-133. [Formerly 12-14-135] Injunction - receiver. The district court in and for the city and county of Denver, upon application of the administrator, may issue an injunction or other appropriate order restraining any person from a violation of this ~~article~~ ARTICLE 16 and may appoint a receiver or award other relief to effectuate the provisions of this ~~article~~ ARTICLE 16; order restitution for consumers or creditors for violations of this ~~article~~ ARTICLE 16; impose civil penalties up to one thousand five hundred dollars per violation of this ~~article~~ ARTICLE 16; and award reasonable costs and attorney fees to the administrator if the administrator prevails in an action brought under this ~~article~~ ARTICLE 16. This provision shall be in addition to any other remedy and shall not prohibit the enforcement of any other law. The administrator shall not be required to show irreparable injury or to post a bond.

5-16-134. [Formerly 12-14-136] Disposition of fees and fines. (1) (a) All revenue, except fines, collected pursuant to this ~~article~~ ARTICLE 16 shall be collected

by the administrator and transmitted to the state treasurer, who shall credit the same to the collection agency cash fund, which fund is hereby created AND REFERRED TO IN THIS SECTION AS THE "FUND". The general assembly shall make annual appropriations from ~~such~~ THE fund for the uses and purposes of this ~~article~~ ARTICLE 16. All revenue credited to ~~such~~ THE fund, including earned interest, shall be used for the administration and enforcement of this ~~article~~ ARTICLE 16.

(b) Notwithstanding any provision of ~~paragraph (a) of this subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION to the contrary, on March 27, 2002, the state treasurer shall deduct four hundred sixty-two thousand dollars from the ~~collection agency cash fund~~ and transfer such sum to the general fund.

(c) Notwithstanding any provision of ~~paragraph (a) of this subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION to the contrary, on March 5, 2003, the state treasurer shall deduct one hundred twenty thousand dollars from the ~~collection agency cash fund~~ and transfer such sum to the general fund.

(2) All fines collected pursuant to this ~~article~~ ARTICLE 16, including but not limited to fines collected pursuant to ~~section 12-14-130~~ SECTION 5-16-127, shall be collected by the administrator and transmitted to the state treasurer, who shall credit the same to the general fund.

5-16-135. [Formerly 12-14-137] Repeal of article. This ~~article~~ ARTICLE 16 is repealed, effective July 1, 2017.

SECTION 2. In Colorado Revised Statutes, **add with amended and relocated provisions** article 17 to title 5 as follows:

ARTICLE 17
Colorado Child Support Collection
Consumer Protection Act

5-17-101. [Formerly 12-14.1-101] Legislative declaration. The general assembly ~~hereby~~ finds and determines that, to ensure that families receive the maximum amount of child support established by court or administrative order, additional consumer protections are needed for parents entitled to receive child support who contract with private collection agencies for the collection of child support.

5-17-102. [Formerly 12-14.1-102] Definitions. AS used in this ~~article~~ ARTICLE 17, unless the context otherwise requires:

(1) "Arrears" or "arrearages" shall have the same meaning as provided in section 26-13.5-102 (2). ~~C.R.S.~~

(2) "Child support" means any amount required to be paid pursuant to a judicial or administrative child support order.

(3) "Child support debt" shall have the same meaning as provided in section 26-13.5-102 (3). ~~C.R.S.~~

(4) "Child support enforcement service" means a service, including related financial accounting services, performed directly or indirectly for the purpose of causing a payment required, or allegedly required, by a child support order to be made to the obligee to whom the payment is owed or to an agent of that individual.

(5) "Child support order" means any judgment, decree, order, or administrative order of support in favor of an obligee, whether temporary, permanent, final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered, requiring the payment of current child support, child support arrears, child support debt, retroactive support, or medical support, whether or not ~~such~~ THE order is combined with an order for maintenance.

(6) "Current child support" means the ongoing periodic support obligation that an obligor is required to pay pursuant to a child support order.

(7) "Obligee" means an individual who is owed child support under a child support order and who has entered or may enter into a contract with a collector.

(8) "Obligor" means any person owing or alleged to owe a duty of child support or against whom a proceeding for the establishment or enforcement of a duty to pay child support is commenced.

(9) (a) "Private child support collector" or "collector", except as provided in ~~paragraph (b) of this subsection~~ (9) SUBSECTION (9)(b) OF THIS SECTION, means a person or entity who performs, or offers to perform, a child support enforcement service for an obligee under one or more of the following conditions:

(I) The obligee lives in Colorado at the time the contract is signed;

(II) The collector has a place of business or is licensed to conduct business in Colorado; or

(III) The collector contacts more than twenty-five obligors per year who live in Colorado.

(b) The term "private child support collector" does not include:

(I) A person or entity described in ~~section 12-14-103 (2) (b)~~ SECTION 5-16-103 (3)(b);

(II) A nonprofit organization that is exempt from taxation under section 501(c)(3) of the federal "Internal Revenue Code of 1986" and charges no more than a nominal fee for providing assistance to any obligee with regard to the collection of child support;

(III) An attorney licensed to practice law in the state of Colorado;

(IV) An entity operating as an independent contractor with a county government agency that contracts to provide services that a delegate child support enforcement unit is required by law to provide; or

(V) A delegate child support enforcement unit acting pursuant to article 13.5 of title 26. ~~C.R.S.~~

(10) "Private child support enforcement service contract" or "contract" means a contract or agreement, as described in ~~section 12-14.1-106~~ SECTION 5-17-106, pursuant to which a collector agrees to perform a child support enforcement service for an obligee for a fee.

(11) "State agency" means a government agency or its contractual agent administering a state plan approved under Title IV-D of the federal "Social Security Act", as amended.

5-17-103. [Formerly 12-14.1-103] Application of the "Colorado Fair Debt Collection Practices Act". (1) Except as otherwise provided by the particular provisions of this ~~article~~ ARTICLE 17, this ~~article~~ ARTICLE 17 supplements the requirements of the "Colorado Fair Debt Collection Practices Act", ~~article 14 of this title~~ ARTICLE 16 OF THIS TITLE 5, including but not limited to prohibited practices, licensing, and administrative and legal enforcement as it is applied to private child support collectors.

(2) ~~Article 14 of this title~~ ARTICLE 16 OF THIS TITLE 5 also applies to private child support collectors.

5-17-104. [Formerly 12-14.1-104] Prohibited practices. (1) A collector may not engage in any fraudulent, unfair, deceptive, or misleading act or practice in soliciting an obligee to enter into a contract for the provision of child support enforcement services or in offering or performing a service pursuant to such a contract, including but not limited to the following:

(a) Imposing a fee or charge, including costs, for any payment collected through the efforts of or as a result of actions taken by a federal, state, or county agency, including but not limited to support collected from federal or state income tax refunds, unemployment benefits, or social security benefits. If the collector discovers, or is notified by the obligee or the federal, state, or county agency, that a payment was collected through the efforts of a federal, state, or county agency, the collector shall not assess fees on the payment. Any fees improperly retained shall be refunded to the obligee within seven business days.

(b) Designating a current child support payment as arrears, interest, or other amount owed;

(c) Intercepting or redirecting from the obligor, the obligor's employer, or on the behalf of the obligor to the collector any child support paid to the obligee if payment is ordered to be made through a central payment registry;

(d) Intercepting, redirecting, or collecting any amounts owed to a government agency under an assignment of rights resulting from the payment of public assistance to the obligee or owed to a state agency;

(e) When a child support order directs that payment be made through a central payment registry, suggesting or instructing that the obligor or the obligor's employer

send the payment to the collector;

(f) Making a misleading representation or omitting a material disclosure that, as a result, is misleading with respect to the identity of any entity that has performed or may perform a child support enforcement service for any obligee;

(g) Requiring an obligee to sign a private child support enforcement contract that does not conform to the provisions of ~~section 12-14.1-106~~ SECTION 5-17-106;

(h) Sending an income-withholding order to an entity, unless the collector is authorized by state law to send the income-withholding order;

(i) Accepting a settlement offer made by an obligor before:

(I) The collector has reviewed all settlement offers with the obligee; and

(II) The obligee has expressly authorized the collector to accept the settlement offer;

(j) Requesting or requiring an obligee to waive the right of the obligee to accept a settlement offer; or

(k) Collecting or attempting to collect child support after the obligor notifies the collector pursuant to the procedure provided in ~~section 12-14.1-108 (1)(a)(III) and (1)(a)(IV)~~ SECTION 5-17-108 (1)(a)(III) AND (1)(a)(IV) that the obligor disputes the existence or amount of the child support obligation and the collector has not obtained written verification of the existence or amount of the obligation or a copy of the judgment against the obligor and mailed the obligor a copy of the verification of judgment.

5-17-105. [Formerly 12-14.1-105] Fees. (1) A private child support collector may not charge an obligee a fee unless:

(a) Before the obligee authorizes the fee, the amount of the fee, including the basis upon which the amount of the fee is calculated, is described accurately to the obligee in simple, easy-to-understand language; and

(b) Before the obligee incurs the fee, the obligee has authorized the fee in writing.

(2) A collector's contract with an obligee shall be for a specific dollar amount of child support to be collected. The contract shall explain in easy-to-understand language how the amount is to be calculated and may include any statutory interest to which the obligee is entitled and other amounts ordered by the court.

(3) A collector may charge a contingency fee for the collection of child support that is based on a percentage of the total child support collected.

(4) The maximum fee that may be charged by a collector as specified in subsection (3) of this section shall not exceed thirty-five percent of any amount collected.

(5) No other fees, charges, or costs may be assessed against the obligee, including an application fee.

5-17-106. [Formerly 12-14.1-106] Requirements relating to private child support enforcement service contracts. (1) In order to perform a child support enforcement service for an obligee, a collector shall enter into a written private child support enforcement service contract that:

- (a) Meets the requirements of this section;
- (b) Has been delivered to the obligee in a form that the obligee may keep;
- (c) Is dated and signed by the obligee and an authorized representative of the collector;
- (d) Fully discloses each term of the contract, any fees that may be imposed pursuant to the contract, and any amount that the obligee would be required to pay to the collector for services performed under ~~section 12-14.1-109~~ SECTION 5-17-109 if the contract were to be canceled or terminated by the obligee; and
- (e) Includes a copy of any other document the collector requires the obligee to sign.

(2) Before a collector offers or proposes to perform a child support enforcement service for an obligee, the collector shall deliver to the obligee the notice developed pursuant to the rule-making described in ~~section 12-14.1-113~~ SECTION 5-17-113 and shall obtain signed verification from the obligee that the obligee received the notice described in ~~section 12-14.1-113~~ SECTION 5-17-113.

(3) A private child support enforcement service contract shall contain the following:

- (a) A clear and accurate explanation of the amount of child support that will be collected;
- (b) A clear description of the child support enforcement services that may be provided pursuant to the contract;
- (c) A clear and accurate explanation of the fees that will be deducted and an example of how they are deducted;
- (d) A good-faith estimate of the total amount of fees that will be charged pursuant to the contract;
- (e) The full legal name, principal business address, and telephone number of the collector and any agents who assist the collector in providing a child support enforcement service and any separate name, address, and telephone number that the obligee may need for communication about the case;
- (f) A complete and accurate copy of each disclosure and notice required by this ~~article~~ ARTICLE 17 to be provided to the obligee before the obligee signs the

contract;

(g) A conspicuous statement in bold-faced type, in immediate proximity to and on the same page as the space reserved for the signature of the obligee, which shall read as follows:

You may cancel this contract at any time within thirty days of signing the contract or after any twelve consecutive months in which the collector fails to make a collection.

(h) An explanation that the contract may be in effect for an extended period of time because of the difficulty in estimating how long it will take to collect the full amount of child support due under the contract; and

(i) A statement that a collector may not assess fees on collections attributable to a federal, state, or county agency. Fees improperly retained shall be refunded within seven business days.

(4) A private child support enforcement service contract shall not include:

(a) A mandatory arbitration clause that limits the rights of a person to seek judicial relief for a claim arising under the contract or this ~~article~~ ARTICLE 17;

(b) A clause that requires the obligee to change the payee or redirect child support payments that would otherwise be payable to the obligee, a state agency administering a state plan approved under Title IV-D of the federal "Social Security Act", as amended, or a central payment registry, if payment is ordered to be made through a central payment registry;

(c) A clause that requires the obligee to close, or not open, a child support case with a county delegate child support enforcement unit or state agency administering a state plan approved under Title IV-D of the federal "Social Security Act", as amended; and

(d) A clause that requires the obligee to waive his or her rights to review and consent to any modification of a contract entered into by the obligee.

(5) A private child support enforcement contract may not be modified by subsequent agreement unless the obligee has signed the subsequent agreement after receiving a written copy of the modifications.

(6) A private child support enforcement service contract shall be accompanied by a form, in duplicate, that has the heading "notice of cancellation" and contains a description of, in easy-to-understand language, the cancellation and termination provisions contained in ~~section 12-14.1-109~~ SECTION 5-17-109, the cancellation rights of the consumer obligee contained in ~~section 12-14.1-109~~ SECTION 5-17-109, and the principal business address of the collector.

(7) A collector who enters into a contract with an obligee shall retain a copy of the signed contract and the statement signed by the obligee acknowledging receipt of the preliminary notice required by subsection (2) of this section for a period of

five years after the completion or settlement of the collection efforts by the collector or termination of the contract, whichever event occurs first.

5-17-107. [Formerly 12-14.1-107] Accounting for collections. (1) A collector shall, on a monthly basis, provide to the obligee an accurate and up-to-date accounting that meets the requirements of rules promulgated by the administrator under ~~section 12-14.1-113~~ SECTION 5-17-113. The accounting shall be provided to the obligee by mail, telephone, or secure internet connection. The obligee shall request in writing the preferred method that the collector should use to provide the accounting to the obligee.

(2) In addition to the monthly accounting required pursuant to subsection (1) of this section, on request of the obligee at any time, the collector shall provide the obligee with any information pertaining to the case of the obligee, including the information described in this section, not more than five business days after the date the collector receives the request.

5-17-108. [Formerly 12-14.1-108] Verification of account information. (1) In lieu of ~~section 12-14-109~~ SECTION 5-16-109, the following verification provisions shall apply to the collection of child support by a collector:

(a) Not later than five days after a collector initially communicates with an obligor on behalf of an obligee with respect to the collection of child support due, unless the obligor has paid the child support, the collector shall send the obligor a written notice containing the following:

(I) The name of the obligee;

(II) A statement of the amount of the child support arrears, including any associated interest, late payment fee, or other charge authorized by law, and of the amount of the current child support owed by the obligor to the obligee;

(III) A statement that the collector assumes that the obligor owes child support to the obligee and that the amounts owed as described in the statement pursuant to ~~subparagraph (II) of this paragraph (a)~~ SUBSECTION (1)(a)(II) OF THIS SECTION are correct, unless the obligor disputes the existence or amount of the child support obligation within thirty days after receipt of the notice;

(IV) A statement that if, within the thirty-day period described in ~~subparagraph (III) of this paragraph (a)~~ SUBSECTION (1)(a)(III) OF THIS SECTION, the obligor notifies the collector in writing that the obligor disputes the existence or amount of the child support obligation, the collector will cease efforts to collect the child support, subject to ~~paragraph (b) of this subsection (1)~~ SUBSECTION (1)(b) OF THIS SECTION, until the collector:

(A) Obtains written verification of the existence or amount of the obligation or a copy of the judgment against the obligor; and

(B) Mails to the obligor a copy of the verification or judgment; and

(V) A statement that the arrears balance reflected does not include any amounts

owed to a county delegate child support enforcement unit or state agency administering a state plan approved under Title IV-D of the federal "Social Security Act", as amended.

(b) A statement made by a collector pursuant to ~~subparagraph (IV) of paragraph (a) of this subsection (1)~~ SUBSECTION (1)(a)(IV) OF THIS SECTION shall not affect the enforceability of a valid income-withholding order or assignment issued by an appropriate authority under state law for child support collection purposes.

(c) The failure of an obligor to dispute the amount or existence of child support pursuant to ~~subparagraph (IV) of paragraph (a) of this subsection (1)~~ SUBSECTION (1)(a)(IV) OF THIS SECTION shall not be construed as an admission of liability by the obligor.

5-17-109. [Formerly 12-14.1-109] Cancellation or termination of private child support enforcement service contract. (1) An obligee may cancel a private child support enforcement service contract with a collector at any time within thirty days of signing the contract or after any twelve consecutive months in which the collector fails to make a collection. The notification of cancellation shall be in writing and shall be effective upon receipt of the notice by the collector. If the notification of cancellation is received by the collector subsequent to the thirty-day time period following the signing of the contract, the notification shall be valid if post-marked within the thirty-day time period.

(2) Subject to the provisions of subsection (3) of this section, a private child support enforcement service contract may provide that, notwithstanding the cancellation of the contract by the obligee, the collector shall have the right to receive a fee for arrears collected under the contract if, as a result of the efforts of the collector, the obligee subsequently receives child support arrears or interest subject to collection pursuant to the contract. No other fees or costs shall be assessed for the cancellation of the contract.

(3) An obligee shall have no obligation pursuant to the private child support enforcement service contract if:

(a) The obligee cancels the contract:

(I) At any time before midnight of the thirtieth business day after signing the contract; or

(II) After any twelve consecutive months in which the private child support collector fails to make a collection; or

(b) The collector violates this ~~article~~ ARTICLE 17 with respect to the contract.

(4) A contract shall terminate without action by either party when the contract amount has been collected.

5-17-110. [Formerly 12-14.1-110] Civil liability. The provisions of ~~section 12-14-113~~ SECTION 5-16-113, with the exception of the statute of limitations set forth in ~~subsection (4) of said section~~ SECTION 5-16-113 (5), shall apply to any

violation of this ~~article~~ ARTICLE 17 and are in addition to and not exclusive of any other remedies provided by law.

5-17-111. [Formerly 12-14.1-111] Administrative enforcement. This ~~article~~ ARTICLE 17 shall be enforced by the administrator, as defined in ~~section 12-14-103~~ ~~(1)~~ SECTION 5-16-103 (1), and may be enforced as provided in ~~article 14 of this title~~ ARTICLE 16 OF THIS TITLE 5. Except as otherwise provided in or limited by this ~~article~~ ARTICLE 17, all rules adopted pursuant to ~~section 12-14-114~~ SECTION 5-16-114 shall apply to this ~~article~~ ARTICLE 17.

5-17-112. [Formerly 12-14.1-112] Statute of limitations. (1) An action to enforce any liability under this ~~article~~ ARTICLE 17 may be brought before the later of:

(a) The end of the five-year period beginning on the date of the occurrence of the violation involved; or

(b) In a case in which a collector willfully misrepresents any information that the collector is required by any provision of this ~~article~~ ARTICLE 17 to disclose to an obligee and the misrepresentation is material to the establishment of the liability of the collector to the obligee under this ~~article~~ ARTICLE 17, five years after the date the obligee discovers the misrepresentation.

5-17-113. [Formerly 12-14.1-113] Notice - rules. (1) The administrator shall promulgate rules related to the notice required to be provided to the obligee in ~~section 12-14.1-106 (2)~~ SECTION 5-17-106 (2) and the accounting required to be provided in ~~section 12-14.1-107~~ SECTION 5-17-107.

(2) The notice required by ~~section 12-14.1-106 (2)~~ SECTION 5-17-106 (2) shall, at a minimum, address the following:

(a) The option that child support collection services are offered at minimal or no cost through government child support collection services in every county in Colorado and in every state;

(b) A statement that the collector cannot require a government child support collection service to send payments to any person but the obligee;

(c) A statement that the collector will not provide legal advice or act as legal counsel for the obligee;

(d) A statement related to the rights the obligee has pursuant to this ~~article~~ ARTICLE 17; and

(e) A statement that the obligee may have the private child support enforcement service contract reviewed by an attorney.

SECTION 3. In Colorado Revised Statutes, **add with amended and relocated provisions** article 18 to title 5 as follows:

ARTICLE 18
Colorado Consumer Credit Reporting Act

5-18-101. [Formerly 12-14.3-101] Short title. ~~This article shall be known and may be cited as~~ THE SHORT TITLE OF THIS ARTICLE 18 IS THE "Colorado Consumer Credit Reporting Act".

5-18-102. [Formerly 12-14.3-101.5] Legislative declaration. The general assembly finds and declares that the use of consumer reporting agencies is increasing rapidly as consumer credit transactions become the rule rather than the exception in every-day consumer purchasing. Consumer credit reports by consumer reporting agencies may report on a consumer's credit worthiness, credit standing, credit capacity, debts, character, general reputation, personal characteristics, or mode of living as factors to establish a consumer's eligibility for credit insurance or employment. When a consumer reporting agency undertakes a business that has the potential to profoundly affect an individual consumer's life, whether for good or ill, it is incumbent upon such agencies to ensure that the information they are providing is accurate. Inaccurate consumer credit reports directly impair the efficiency of the banking system and unfair credit reporting methods undermine the public confidence in the banking system. There is a need to ensure that consumer reporting agencies exercise their responsibilities with fairness, impartiality, and respect for the consumer's rights. The general assembly further finds and declares that, in the event the information provided by a consumer reporting agency in a consumer credit report is inaccurate, the consumer has the right to have that information corrected in a swift and uncomplicated way.

5-18-103. [Formerly 12-14.3-102] Definitions. As used in this ~~article~~ ARTICLE 18, unless the context otherwise requires:

(1) "Adverse action" includes:

(a) The denial of, increase in any charge for, or reduction in the amount of insurance for personal, family, or household purposes;

(b) The denial of employment or any other decision for employment purposes that adversely affects a current or prospective employee; and

(c) An action or determination with respect to a consumer's application for credit under a credit arrangement that is adverse to the consumer's interests.

(2) "Consumer" means a natural person residing in the state of Colorado.

(3)(a) "Consumer report" means any written, oral, or other communication or any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, debts, character, general reputation, personal characteristics, or mode of living, ~~which~~ THAT is used or expected to be used or collected, in whole or in part, as a factor to establish a consumer's eligibility for credit or insurance to be used for personal, family, or household purposes, employment purposes, or any other purpose authorized pursuant to applicable provisions of the federal "Fair Credit Reporting Act", 15 U.S.C. secs. 1681a and 1681b, as amended.

(b) "Consumer report" does not include:

(I) Any report containing information solely as to a transaction between the consumer and the person making the report;

(II) Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(III) Any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys a decision with respect to the request, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures that must be made to the consumer pursuant to the provisions of the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681m, as amended, in the event of adverse action.

(4) "Consumer reporting agency" means any person ~~which~~ THAT, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties. "Consumer reporting agency" shall not include any business entity that provides check verification or check guarantee services only.

~~(4.3)~~ (5) "Credit scoring" means the practice of quantifying the credit risk a person presents using ~~such~~ THE person's history, characteristics, or attributes in a formula designed to objectively rate credit risk or insurance risk of loss.

~~(4.5)~~ (6) "Creditworthiness" means any entry in a consumer's credit file that impacts the ability of a consumer to obtain and retain credit, employment, business or professional licenses, investment opportunities, or insurance. Entries contained in a consumer file or in a consumer report that affect creditworthiness shall include, but not be limited to, payment information, defaults, judgments, liens, bankruptcies, collections, records of arrest and indictments, and multiple-credit inquiries.

~~(4.7)~~ (7) "Dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes any individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence.

~~(5)~~ (8) "Employment purposes", when used in connection with a consumer report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

~~(6)~~ (9) "File" means all of the information on the consumer ~~which~~ THAT is recorded and retained by a consumer reporting agency regardless of how the information is stored.

~~(7)~~ (10) "Investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer, reported on or with others with

whom the consumer is acquainted or who may have knowledge concerning any ~~such~~ OF THE items of information. The term does not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when ~~such~~ THE information was obtained directly from a creditor of the consumer or from the consumer.

~~(7.5)~~ (11) "Key factors" means all relevant elements or reasons adversely affecting a specific credit score assigned to a consumer, listed in the order of ~~their~~ importance, based on ~~their~~ THE respective effects on the credit score.

~~(8)~~ (12) "Person" means any natural person, firm, corporation, or partnership.

~~(9)~~ (13) "Proper identification" means information generally deemed sufficient to identify a person. If the consumer is unable to reasonably identify himself or herself with the information described above, a consumer reporting agency may require additional information concerning the consumer's employment and personal or family history in order to verify his or her identity.

~~(10)~~ (14) "Reviewing the account" means activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

~~(11)~~ (15) "Security freeze" or "freeze" means a notice placed in a consumer report, at the request of a consumer and subject to certain exemptions, that prohibits the consumer reporting agency from releasing the consumer report or any information from it without the express authorization of the consumer.

5-18-104. [Formerly 12-14.3-103] Permissible purposes - prohibition. (1) A consumer reporting agency may furnish a consumer report only under the following circumstances:

- (a) In response to an order of a court having jurisdiction to issue such an order;
- (b) In accordance with the written instructions of the consumer to whom it relates; and
- (c) To a person which the consumer reporting agency has reason to believe:
 - (I) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving an extension of credit to, or review or collection of an account of, the consumer and if the consumer chooses to provide ~~their~~ HIS OR HER social security number to the user, the user shall include the social security number with, or as a supplement to, a request for a consumer report, and include the social security number when transmitting subsequent credit information to a consumer reporting agency; or
 - (II) Intends to use the information for employment purposes only if an applicant or employee is first informed that a credit report may be requested in connection with his or her application for employment and the consumer consents in writing to the same; or

(III) Intends to use credit scoring information in connection with the underwriting or rating of insurance involving the consumer and ~~such~~ THE person establishes that the consumer has received written notification, or notification in the same medium as the application for insurance, that a credit report may be requested in connection with his or her application for insurance, and that credit scoring information may be used to determine either the consumer's eligibility for insurance or the premium to be charged to the consumer; or

(IV) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(V) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer; or

(VI) Intends to use the information for any purpose allowed under the federal "Fair Credit Reporting Act" and rules promulgated pursuant to ~~such~~ THAT act.

(2) A consumer reporting agency may not, by contract or otherwise, prohibit a user of any consumer report or investigative consumer report from, upon request of the consumer, disclosing and explaining the contents of ~~such~~ THE report or providing a copy of the report to the consumer to whom it relates if adverse action against the consumer has been taken or is contemplated by the user of the consumer report or investigative consumer report, based in whole or in part on ~~such~~ THE report. No user or consumer reporting agency shall be held liable or otherwise responsible for a disclosed or copied report when acting pursuant to this subsection (2) nor shall ~~such~~ disclosure or provision of a copy of the report, by themselves, make the user a consumer reporting agency.

5-18-105. [Formerly 12-14.3-103.5] Consumer reports - accuracy of information. Whenever a consumer reporting agency prepares a consumer report, the agency shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the consumer about whom the report relates, including the use of the consumer's social security number if, in accordance with ~~section 12-14.3-103 (1) (c) (I)~~ SECTION 5-18-104 (1)(c)(I), the consumer's social security number is provided to the consumer reporting agency by a person intending to use the information contained in a consumer report in connection with a credit transaction involving the consumer and the social security number was initially provided to the user by the consumer in connection with ~~such~~ THAT transaction.

5-18-106. [Formerly 12-14.3-104] Disclosures to consumers. (1) A consumer reporting agency shall, upon written or verbal request and proper identification of any consumer, clearly, accurately, and in a manner that is understandable to the consumer, disclose to the consumer, in writing, all information in its files at the time of the request pertaining to the consumer, including but not limited to:

(a) The names of all persons requesting credit information pertaining to the consumer during the prior twelve-month period and the date of each request;

(b) A set of instructions, presented in a manner that is understandable to the

consumer, describing how information is presented on its written disclosure of the file; and

(c) A toll-free number for use in resolving the dispute if the consumer submitted a written dispute to the consumer reporting agency, which operates on a nationwide basis.

(2) (a) A consumer reporting agency shall notify a consumer, by letter sent by first-class mail, that the consumer reporting agency will provide the consumer with a disclosure copy of his or her consumer file at no charge and a toll-free telephone number to call to provide the consumer reporting agency with the information necessary to request ~~such~~ A copy, when one of the following events occurs within a twelve-month period:

(I) The consumer reporting agency has received eight credit inquiries pertaining to the consumer; or

(II) The consumer reporting agency has received a report that would add negative information to a consumer's file.

(b) A consumer reporting agency need only send one letter to a consumer per twelve-month period pursuant to ~~paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION even if more than one ~~such~~ event occurs in that period.

(c) Any letter mailed to a consumer pursuant to ~~paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION shall not contain any identifying information particular to that consumer including, but not limited to, social security number, place of employment, date of birth, or mother's maiden name.

(d) Any letter mailed to a consumer pursuant to ~~paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION may be a form letter; except that each letter shall advise the consumer of the number and type of events that occurred relating to the consumer that initiated the letter. ~~Such~~ THE letter shall also include a notice or separate form the consumer may complete and return to the consumer reporting agency to request a free copy of ~~such~~ THE consumer's credit report.

(e) Each consumer reporting agency shall, upon request of a consumer, provide the consumer with one disclosure copy of his or her file per year at no charge whether or not the consumer has made the request in response to the notification required in ~~paragraph (a) of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION. If the consumer requests more than one disclosure copy of his or her file per year pursuant to this ~~paragraph (e)~~ SUBSECTION (2)(e), the consumer reporting agency may charge the consumer up to eight dollars for each additional disclosure copy.

5-18-107. [Formerly 12-14.3-104.3] Credit scoring related to the extension of credit secured by a dwelling - definition. (1) In connection with an application for an extension of credit for a consumer purpose that is to be secured by a dwelling, the consumer reporting agency shall, upon the written request of the consumer, contained either in the application for an extension of credit or in a separate document, disclose to the consumer the following:

(a) The consumer's current credit score or the most recent credit score of the consumer that was previously calculated by the consumer reporting agency;

(b) The range of possible credit scores under the model used;

(c) The key factors, if any, not to exceed four, that adversely affected the credit score of the consumer in the model used;

(d) The date on which the credit score was created; and

(e) The name of the person or entity that provided the credit score or the credit file on the basis of which the credit score was created.

(2) (a) Nothing in subsection (1) of this section shall be construed to compel a consumer reporting agency to develop or disclose a credit score if the agency does not:

(I) Distribute scores that are used in connection with extensions of credit secured by residential real estate; or

(II) Develop credit scores that assist creditors in understanding the general credit behavior of the consumer and predicting future credit behavior.

(b) Nothing in subsection (1) of this section shall be construed to require a consumer reporting agency that distributes credit scores developed by another person or entity to provide further explanation of those scores or to process a dispute that may arise about information; except that the consumer reporting agency shall be required to provide to the consumer the name of, and current contact information for, the person or entity that developed the score or developed the methodology for the score.

(c) Nothing in subsection (1) of this section shall be construed to require a consumer reporting agency to maintain credit scores in its files.

(d) Nothing in subsection (3) of this section shall be construed to compel disclosures of a credit score except upon specific request of a consumer. If a consumer requests a credit file and not the credit score, then the consumer shall be provided with the credit file together with a statement that the consumer may request and obtain a credit score.

(3) Pursuant to subsection (1) of this section, a consumer reporting agency shall supply to a consumer:

(a) A credit score that is derived from a credit scoring model that is widely distributed to users of credit scores by that consumer reporting agency in connection with any extension of credit secured by a dwelling; or

(b) A credit score accompanied by information specifically required to be disclosed pursuant to subsection (1) of this section that assists the consumer in understanding the credit scoring assessment of the credit behavior of the consumer and predictions about future credit behavior.

(4) For purposes of this section, "credit score" means a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default. The numerical value or the categorization derived from this analysis may also be referred to as a "risk predictor" or "risk score". "Credit score" does not include any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including, but not limited to, the loan value ratio, the amount of down payment, or a consumer's financial assets. "Credit score" does not include other elements of the underwriting process or underwriting decision.

(5) Notwithstanding any other provision of this ~~article~~ ARTICLE 18 to the contrary, a consumer reporting agency may charge a reasonable fee for disclosing a credit score.

5-18-108. [Formerly 12-14.3-105] Charges for certain disclosures. (1) A consumer reporting agency shall not impose a charge for:

(a) A request for a copy of the consumer's file made within sixty days after adverse action is taken; or

(b) Notifying any person designated by the consumer, pursuant to the applicable provisions of the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681i, as amended, of the deletion of information ~~which~~ THAT is found to be inaccurate or ~~which~~ THAT can no longer be verified; or

(c) A set of instructions for understanding the information presented on the consumer report and a toll free telephone number that consumers may utilize to obtain additional assistance concerning the consumer report; or

(d) The first copy of a consumer disclosure provided to a consumer each calendar year pursuant to ~~section 12-14.3-104 (2) (a)~~ SECTION 15-18-106 (2)(a).

(2) For all other disclosures to consumers of information pertaining to the consumer, the consumer reporting agency may impose a reasonable charge, not to exceed the retail price of a written report rendered in the normal course of business to the customers of ~~such~~ THE agency for each request for information.

5-18-109. [Formerly 12-14.3-105.3] Reporting of information prohibited.

(1) Except as authorized under subsection (2) of this section, no consumer reporting agency shall make any consumer report containing any of the following items of information:

(a) Cases under title 11 of the United States Code, or under the federal bankruptcy act that, from the date of entry of the order for relief or the date of adjudication, predate the report by more than ten years;

(b) Suits and judgments that, from the date of entry, predate the report by more than seven years or by more than the governing statute of limitations, whichever is the longer period;

(c) Paid tax liens that, from the date of payment, predate the report by more than seven years;

(d) Accounts placed for collection or charged to profit and loss that predate the report by more than seven years;

(e) Records of arrest, indictment, or conviction of a crime that, from the date of disposition, release, or parole, predate the report by more than seven years;

(f) Any other adverse item of information that predates the report by more than seven years.

(2) The provisions of subsection (1) of this section do not apply to the case of any consumer report to be used in connection with:

(a) A credit transaction involving, or that may reasonably be expected to involve, a principal amount of one hundred fifty thousand dollars or more;

(b) The underwriting of life insurance involving, or that may reasonably be expected to involve, a face amount of one hundred fifty thousand dollars or more; or

(c) The employment of an individual at an annual salary that equals or is reasonably expected to equal seventy-five thousand dollars or more.

(3) A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction or a direct marketing transaction, a consumer report that contains medical information about a consumer unless the consumer consents to the furnishing of the report.

(4) A consumer reporting agency shall not include, in a consumer report made to a person requesting credit information pertaining to a consumer, the names of any other persons who have requested credit information pertaining to that consumer or the number of such inquiries made more than one year preceding the date of the consumer report; except that such information shall be retained for two years and provided to the consumer as provided in this ~~article~~ ARTICLE 18.

(5) Notwithstanding the provisions of subsection (4) of this section, a consumer reporting agency shall not furnish to any person, including a developer of credit scoring, a record of inquiries in connection with a credit or insurance transaction that is not initiated by the consumer. The term "credit or insurance transaction that is not initiated by the consumer" does not include inquiries resulting from the collection of an account or for purposes of reviewing an account.

5-18-110. [Formerly 12-14.3-106] Procedure for disputed information. (1) If the completeness or accuracy of any item of information contained in the consumer's file is disputed by the consumer and the consumer notifies the consumer reporting agency directly of ~~such~~ THE dispute, the agency shall reinvestigate the item free of charge and record the current status of the disputed information on or before thirty business days after the date the agency receives notice conveyed by the consumer. The consumer reporting agency shall provide the consumer with the option of

speaking directly to a representative of the agency to notify the agency of disputed information contained in the consumer's file.

(2) On or before five business days after the date a consumer reporting agency receives notice of a dispute from a consumer in accordance with subsection (1) of this section, the agency shall provide notice of the dispute to all persons who provided any item of information in dispute.

(3) Notwithstanding subsection (1) of this section, a consumer reporting agency may terminate a reinvestigation of information disputed by a consumer under ~~such~~ subsection (1) if the agency reasonably determines that ~~such~~ THE CONSUMER'S dispute ~~by the consumer~~ is frivolous or irrelevant. Upon making such a determination, a consumer reporting agency shall promptly notify the consumer of ~~such~~ ITS determination and the reasons, ~~therefor~~, by mail, or if authorized by the consumer for that purpose, by telephone. The presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for determining the dispute is frivolous or irrelevant.

(4) If, after a reinvestigation under subsection (1) of this section of any information disputed by a consumer, the information is ~~found to be~~ inaccurate or cannot be verified, the consumer reporting agency shall promptly delete ~~such~~ THE information from the consumer's file, revise the file, provide the consumer and, at the request of the consumer, any person that, within the last twelve months, requested the disputed information with a revised consumer report indicating that it is a revised consumer report, and refrain from reporting the information in subsequent reports. The consumer reporting agency shall advise the consumer that he or she has the right to have a copy of the revised consumer report sent by the consumer reporting agency to any person that requested the disputed information within the last twelve months.

(5) Information deleted pursuant to subsection (4) of this section may not be reinserted in the consumer's file unless the person who furnishes the information reinvestigates and states in writing or by electronic record to the consumer reporting agency that the information is complete and accurate.

(6) A consumer reporting agency shall provide written notice of the results of any reinvestigation or reinsertion made pursuant to this section within five business days of the completion of the reinvestigation or reinsertion. ~~Such~~ THE notice shall include:

- (a) A statement that the reinvestigation is complete;
- (b) A statement of the determination of the consumer reporting agency on the completeness or accuracy of the disputed information;
- (c) A copy of the consumer's file or consumer report and a description of the results of the reinvestigation;
- (d) A notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the consumer reporting agency, including the name,

business address, and, if available, the telephone number of any person contacted in connection with ~~such~~ THAT information;

(e) A notification that the consumer has the right, pursuant to the applicable provisions of the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681i, as amended, to add a statement to the consumer's file disputing the accuracy or completeness of the information; and

(f) A notification of the consumer's rights to dispute resolution under ~~section 12-14.3-107~~ SECTION 5-18-116, which are available after the consumer has followed all dispute procedures described in this section and has received the notice specified under this subsection (6).

(7) Nothing in this section shall be construed to require a person who obtains a consumer report for resale to alter or correct any inaccuracy in ~~such~~ THE consumer report if the consumer report was not assembled or prepared by ~~such~~ THE person.

(8) The consumer reporting agency shall provide a person who provides credit information to the agency with the option to speak directly with a representative of the agency or to submit corrections to previously reported information by facsimile or other automated means when inaccurate information that was reported by ~~such~~ THE credit information provider appears on a consumer's file. The consumer reporting agency shall, in a period not to exceed five business days from the receipt of ~~such~~ THE faxed or automated information regarding ~~such~~ THE corrections, correct ~~such~~ THE inaccuracies on the consumer's file and, upon request, communicate ~~such~~ THE corrections to the person who submitted the initial request for corrections. The credit information provider's communication shall include information established by the consumer reporting agency that identifies him or her as the credit information provider who provided the original inaccurate information. Nothing in this subsection (8) shall be construed to prohibit a consumer reporting agency from correcting inaccurate information in a consumer's file or a consumer report at any time.

5-18-111. [Formerly 12-14.3-106.5] Consumer report information block.

(1) (a) A consumer reporting agency shall, within thirty days after the receipt of a police report or order pursuant to this ~~paragraph (a)~~ SUBSECTION (1)(a), permanently block the reporting of any information that a consumer identifies on his or her consumer report as being subject to either a police report or a court order referenced in ~~subparagraph (I) or (II) of this paragraph (a)~~ SUBSECTION (1)(a)(I) OR (1)(a)(II) OF THIS SECTION if the consumer provides a consumer reporting agency with proof of the consumer's identification and a copy of:

(I) A police report that alleges that a person other than the consumer obtained or recorded, by means of fraud, theft, or other violation of the "Colorado Criminal Code", personal identifying information of the consumer without authorization from the consumer and that the person used the information to obtain, or attempt to obtain, credit, goods, services, or ~~moneys~~ MONEY in the name of the consumer without the consumer's consent; or

(II) A certified court order issued pursuant to section 18-1.3-603 (7). ~~C.R.S.~~

(b) The consumer reporting agency shall promptly notify the person who furnished the information that a police report or court order has been filed, that a block has been requested, and of the effective date of the block.

(2) (a) A consumer reporting agency may decline to block or may rescind any block of consumer information if, in the exercise of good faith and reasonable judgment, the consumer reporting agency believes:

(I) The information was blocked due to a misrepresentation of fact by the consumer relevant to the request to block under this section;

(II) The consumer agrees that the blocked information or portions of the blocked information were blocked in error;

(III) The consumer knowingly obtained possession of goods, services, or ~~moneys~~ MONEYS as a result of the blocked transaction or transactions or the consumer should have known that he or she obtained possession of goods, services, or ~~moneys~~ MONEY as a result of the blocked transaction or transactions; or

(IV) The consumer so requests in writing and presents proof of the consumer's identity.

(b) A consumer reporting agency shall decline to block or shall rescind any block of consumer information if, in the case of a block or block request based upon the filing of an order, the sentencing court amends, dismisses, or withdraws its prior order to correct records issued pursuant to section 18-1.3-603 (7), ~~C.R.S.~~, and the consumer provides ~~such~~ documentation from the court and proof of the consumer's identity.

(3) If a block of credit information is declined or rescinded pursuant to this section, the consumer reporting agency shall promptly notify the consumer in the same manner as consumers are notified of the reinsertion of information pursuant to ~~section 12-14.3-106~~ SECTION 5-18-110. The prior presence of the blocked information in the consumer reporting agency's file on the consumer is not evidence of whether the consumer knew or should have known that he or she obtained possession of any goods, services, or ~~moneys~~ MONEY.

(4) This section does not apply to a consumer reporting agency that acts as a reseller of information by assembling and merging information contained in the data base of one or more other consumer reporting agencies and that does not maintain a data base of the assembled or merged information from which new consumer reports are produced.

5-18-112. [Formerly 12-14.3-106.6] Security freeze - timing - covered entities - cost. (1) (a) A consumer may elect to place a security freeze on his or her consumer report by making a request in writing by certified mail to a consumer reporting agency.

(b) Except as provided in ~~subsection (11) and paragraph (b) of subsection (6)~~ SUBSECTIONS (6)(b) AND (11) of this section, if a security freeze is in place, information from a consumer report may not be released to a third party without

prior, express authorization from the consumer.

(c) This section does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer report.

(2) (a) A consumer reporting agency shall place a security freeze on a consumer report no later than five business days after receiving the request from the consumer.

(b) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within ten business days and, with the confirmation, shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his or her consumer report to a specific party or for a specific period of time.

(3) If a consumer wishes to allow his or her consumer report to be accessed by a specific party or for a specific period of time while a freeze is in place, he or she shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:

(a) Proper identification;

(b) The unique personal identification number or password provided by the consumer reporting agency pursuant to paragraph (b) of subsection (2) SUBSECTION (2)(b) of this section; and

(c) The proper information regarding the third party who is to receive the consumer report or the time period that the report shall be available to users of the consumer report.

(4) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a consumer report pursuant to subsection (3) of this section, shall comply with the request no later than three business days after receiving the request.

(5) A consumer reporting agency may develop procedures involving the use of telephone, fax, internet, or other electronic media to receive and process a request from a consumer to place a freeze or to temporarily lift a freeze on a consumer report pursuant to subsection (3) of this section in an expedited manner.

(6) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer report only in the following cases:

(a) Upon consumer request, pursuant to subsection (3) or (9) of this section; or

(b) If the consumer report was frozen due to a material misrepresentation of fact by the consumer or somebody purporting to be the consumer. If a consumer reporting agency intends to remove a freeze on a consumer report pursuant to this paragraph (b) SUBSECTION (6)(b), the consumer reporting agency shall notify the consumer in writing prior to removing the freeze placed on the consumer report.

(7) If a third party requests access to a consumer report on which a security freeze

is in effect, and the request is in connection with an application for credit or other use, and the consumer does not allow his or her consumer report to be accessed by that specific party or during that period of time, the third party may treat the application as incomplete.

(8) If a consumer requests a security freeze, the consumer reporting agency shall disclose the process of placing and temporarily lifting a freeze and the process for allowing access to information from the consumer report to a specific party or for a specific period of time while the freeze is in place.

(9) Except as otherwise provided pursuant to ~~paragraph (b) of subsection (6)~~ SUBSECTION (6)(b) of this section, a security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides both of the following:

(a) Proper identification; and

(b) The unique personal identification number or password provided by the consumer reporting agency pursuant to ~~paragraph (b) of subsection (2)~~ SUBSECTION (2)(b) of this section.

(10) A consumer reporting agency shall require proper identification of the person making a request to place a security freeze in a manner consistent with the requirements of this section.

(11) The provisions of this section shall not apply to the use of a consumer report by or for any of the following:

(a) A person or entity, or a subsidiary, affiliate, or agent of that person or entity that owns a financial obligation owing by the consumer to that person or entity, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, debt, or negotiable instrument, and lawful associated costs;

(b) An assignee or a prospective assignee of a financial obligation owing by the consumer to a person or entity in ~~paragraph (a) of this subsection (11)~~ SUBSECTION (11)(a) OF THIS SECTION;

(c) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (3) of this section for purposes of facilitating the extension of credit or other permissible use;

(d) A state or local agency, law enforcement agency, trial court, private collection agency, or person acting pursuant to a court order, warrant, or subpoena authorizing the use of the consumer report;

(e) A child support enforcement agency acting to enforce child support obligations;

(f) The department of health care policy and financing or its agents or assigns acting to investigate fraud;

(g) The department of human services or its agents or assignees acting to investigate fraud;

(h) The department of revenue or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities or exercise any of its statutory authority;

(i) The use of credit information for the purposes of prescreening as provided for by the FEDERAL "Fair Credit Reporting Act", 15 U.S.C. sec. 1681 et seq.;

(j) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed;

(k) Any person or entity for the purpose of providing a consumer with a copy of his or her consumer report upon the consumer's request;

(l) Any person or entity for use in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes;

(m) A pension plan acting to determine the consumer's eligibility for plan benefits or payments authorized by law or to investigate fraud;

(n) A person conducting a pre-sentence investigation in a criminal matter or a probation officer using this information for supervision of an offender;

(o) A collections investigator or other person engaged in the collecting of fees, fines, or restitution assessed in a court proceeding;

(p) A licensed hospital with which the consumer has or had a contract, or a debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the contract, account, or debt;

(q) A law enforcement agency or its agents acting to investigate a crime or conducting a criminal background check.

(12)(a) Fees for requesting a security freeze, temporarily lifting a security freeze, and permanently removing a security freeze from consumer reports may be charged only in accordance with this subsection (12).

(b) A consumer reporting agency may not charge a fee for a consumer's first request to place a security freeze on his or her consumer report.

(c) Except as provided for in ~~paragraphs (a) and (b) of this subsection (12)~~ SUBSECTIONS (12)(a) AND (12)(b) OF THIS SECTION, a consumer reporting agency may charge a consumer a reasonable fee of no more than ten dollars for:

(l) A temporary lift for a period of time or permanent removal of a security freeze from the consumer report; or

(II) A subsequent request for a security freeze of the consumer report after the consumer's first request for a security freeze has been permanently removed from his or her consumer report.

(d) Except as provided for in ~~paragraphs (a) and (b) of this subsection (12)~~ SUBSECTIONS (12)(a) AND (12)(b) OF THIS SECTION, a consumer reporting agency may charge a fee not to exceed twelve dollars for temporarily lifting a security freeze on the consumer report for a specific party.

5-18-113. [Formerly 12-14.3-106.7] Notice of rights. (1) At any time that a consumer is required to receive a summary of rights required under section 609 of the FEDERAL "Fair Credit Reporting Act" or under state law, the following notice shall be included:

State Consumers Have the Right to Obtain a Security Freeze

You may obtain a security freeze on your consumer report to protect your privacy and ensure that credit is not granted in your name without your knowledge, except as provided by law. You have a right to place a security freeze on your consumer report to prohibit a consumer reporting agency from releasing any information in your consumer report without your express authorization or approval, except as the law allows.

You will not be initially charged to place a security freeze on your consumer report. However, you will be charged a fee of no more than ten dollars to temporarily lift the freeze for a period of time, to permanently remove the freeze from your consumer report, or when you make a subsequent request for a freeze to be placed on your consumer report. As well, you may be charged a fee of no more than twelve dollars to temporarily lift the freeze for a specific party.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your consumer report, within five business days you will be provided procedures for the temporary release of your consumer report to a specific party or parties or for a period of time after the security freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide the proper information regarding the third party or parties who are to receive the consumer report or the period of time for which the report shall be available to users of the consumer report.

A consumer reporting agency that receives a request from a consumer to temporarily lift a security freeze on a consumer report shall comply with the request no later than three business days after receiving the request.

A security freeze does not apply to circumstances where you have an existing account relationship, and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

You should be aware that using a security freeze to take control over

who gains access to the personal and financial information in your consumer report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding new loans, credit, mortgage, insurance, government services or payments, rental housing, employment, investment, license, cellular phone, utilities, digital signature, internet credit card transaction, or other services, including an extension of credit at the point of sale. You should plan ahead and lift a security freeze either completely if you are shopping around, or specifically for a certain creditor a few days before actually applying for new credit.

You have the right to bring a civil action or submit to binding arbitration against a consumer reporting agency to enforce an obligation under the security freeze law after following specified dispute procedures and having received the necessary notice.

5-18-114. [Formerly 12-14.3-106.8] Security freeze - prohibition of changing official information in credit report. If a security freeze is in place, a consumer reporting agency shall not change any of the following official information in a consumer report without sending a written notice of the change to the consumer within thirty days of the change being posted to the consumer's file: Name, date of birth, social security number, and address. Written notice is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written notice shall be sent to both the new address and the former address.

5-18-115. [Formerly 12-14.3-106.9] Security freeze - exemptions. (1) ~~Sections 12-14.3-106.6 to 12-14.3-106.8~~ SECTIONS 5-18-112 TO 5-18-114 shall not apply to a consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer reporting agencies, and that does not maintain a permanent database of credit information from which new consumer reports are produced. However, a consumer reporting agency shall honor any security freeze placed on a consumer report by another consumer reporting agency.

(2) The following entities are not required to place in a consumer report a security freeze:

(a) A check service or company or fraud prevention service or company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments;

(b) A deposit account information service or company that issues reports regarding account closures due to fraud, substantial overdrafts, or automatic teller machine abuse or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution;

(c) A fraud prevention service or company issuing reports to prevent or investigate fraud.

5-18-116. [Formerly 12-14.3-107] Consumer's right to file action in court or arbitrate disputes. An action to enforce any obligation of a consumer reporting agency to a consumer under this ~~article~~ ARTICLE 18 may be brought in any court of competent jurisdiction as provided by the federal "Fair Credit Reporting Act" or submitted to binding arbitration after the consumer has followed all dispute procedures in ~~section 12-14.3-106~~ SECTION 5-18-110 and has received the notice specified in ~~subsection (6) of said section~~ SECTION 5-18-110(6), or has followed all of the block procedures in ~~section 12-14.3-106.5~~ SECTION 5-18-111, or has followed all of the freeze procedures in ~~section 12-14.3-106.6~~ SECTION 5-18-112, in the manner set forth in the rules of the American arbitration association to determine whether the consumer reporting agency met its obligations under this ~~article~~ ARTICLE 18. No decision by an arbitrator pursuant to this section shall affect the validity of any obligations or debts owed to any party. A successful party to any ~~such~~ arbitration proceeding shall be compensated for the costs and attorney fees of the proceeding as determined by the court or arbitration. No consumer may submit more than one action to arbitration against any consumer reporting agency during any one-hundred-twenty-day period. The results of an arbitration action brought against a consumer reporting agency doing business in this state shall be communicated in a timely manner with all other consumer reporting agencies doing business in this state. If, as a result of an arbitration a determination is made in favor of the consumer, any adverse information in ~~such~~ THE consumer's file or record shall be blocked, removed, or stricken in a timely manner, or the consumer report shall be frozen within five days of receipt of ~~such~~ THE determination by the consumer reporting agency. If ~~such~~ THE adverse information is not ~~so~~ blocked, removed, or stricken, or the file is not frozen, the consumer may bring an action against the noncomplying agency pursuant to this section notwithstanding the one-hundred-twenty-day waiting period.

5-18-117. [Formerly 12-14.3-108] Violations. (1) Any consumer reporting agency that willfully violates any provision of this ~~article~~ ARTICLE 18, or the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681c, as amended, shall be liable for three times the amount of actual damages or one thousand dollars for a violation of ~~section 12-14.3-106.6~~ SECTION 5-18-112, or for each inaccurate or unblocked entry in the consumer's file that was disputed or alleged to be unauthorized in accordance with ~~section 12-14.3-106.5~~ SECTION 5-18-111 by the consumer, whichever is greater, reasonable attorney fees, and costs.

(2) (a) Any consumer reporting agency that negligently violates this ~~article~~ ARTICLE 18, or the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681c, as amended, shall be liable for the greater of actual damages or one thousand dollars for each violation of ~~section 12-14.3-106.6~~ SECTION 5-18-112, or for each inaccurate or unblocked entry in the consumer's file that was disputed or alleged to be unauthorized in accordance with ~~section 12-14.3-106.5~~ SECTION 5-18-111 by the consumer that affects the consumer's creditworthiness, as defined in ~~section 12-14.3-102 (4.5)~~ SECTION 5-18-103 (6), plus reasonable attorney fees, and costs, if within thirty days after receiving notice of dispute from a consumer, in accordance with ~~section 12-14.3-106~~ SECTION 5-18-110, the consumer reporting agency does not correct the complained of items or activities and does not send the consumer and, upon request of the consumer, any person who has requested the consumer information, written notification of ~~such~~ THE corrective action, in accordance with ~~section 12-14.3-106 (6), or section 12-14.3-106.6~~ SECTION 5-18-110(6) OR SECTION

5-18-112, or if, within thirty days after receiving a copy of a police report alleging, or a certified court order finding, unauthorized activity, the consumer reporting agency does not block the information in accordance with ~~section 12-14.3-106.5~~ SECTION 5-18-111.

(b) Any consumer reporting agency that negligently violates this ~~article~~ ARTICLE 18, or the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681c, as amended, shall be liable for the greater of actual damages or one thousand dollars for all violations of ~~section 12-14.3-106.6~~ SECTION 5-18-112 or all inaccurate or unblocked entries in the consumer's file that were disputed or alleged to be unauthorized in accordance with ~~section 12-14.3-106.5 or section 12-14.3-106.6~~ SECTION 5-18-111 OR SECTION 5-18-112 by the consumer that did not affect the consumer's creditworthiness, plus reasonable attorney fees, and costs, if within thirty days after receiving notice of dispute from a consumer, in accordance with ~~section 12-14.3-106~~ SECTION 5-18-110, the consumer reporting agency does not correct the complained of items or activities and does not send the consumer and, if requested by the consumer, any person who has requested the consumer information, written notification of ~~such~~ THE corrective action, in accordance with ~~section 12-14.3-106 (6) or section 12-14.3-106.6~~ SECTION 5-18-110(6) OR SECTION 5-18-112 or if, within thirty days after receiving a copy of a police report alleging, or a certified court order finding, unauthorized activity, the consumer reporting agency does not block the information in accordance with ~~section 12-14.3-106.5~~ SECTION 5-18-111.

(3) In addition to the damages assessed under subsections (1) and (2) of this section, if, ten days after the entry of any judgment for damages, the consumer's file is still not corrected, blocked, or frozen by the consumer reporting agency, ~~such~~ THE assessed damages shall be increased to one thousand dollars per day per unfrozen consumer report or inaccurate or unblocked entry that remains in the consumer's file until the inaccurate entry is corrected or blocked, or the consumer report is frozen.

5-18-118. [Formerly 12-14.3-109] Provisions of article cumulative. The provisions of this ~~article~~ ARTICLE 18 are cumulative, and any action taken under the provisions of this ~~article~~ ARTICLE 18 shall not constitute an election to take any such action to the exclusion of any other action authorized by law; except that a credit reporting agency shall not be subject to suit with respect to any issue that was the subject of an arbitration proceeding brought pursuant to ~~section 12-14.3-107~~ SECTION 5-18-116.

SECTION 4. In Colorado Revised Statutes, **add with amended and relocated provisions** article 19 to title 5 as follows:

ARTICLE 19
Debt-Management Services

PART 1
COLORADO CREDIT SERVICES
ORGANIZATION ACT

5-19-101. [Formerly 12-14.5-101] Short title. ~~This part 1 shall be known and may be cited as~~ THE SHORT TITLE OF THIS PART 1 IS the "Colorado Credit Services Organization Act".

5-19-102. [Formerly 12-14.5-102] Legislative declaration. (1) The general assembly finds and declares that:

(a) The ability to obtain and use credit has become of great importance to consumers, who have a vital interest in establishing and maintaining their creditworthiness and credit standing. The extension or receipt of credit has value and should be protected. As a result, consumers who have experienced credit problems may seek assistance from credit services organizations ~~which~~ THAT offer to obtain credit or improve the credit standing of ~~such~~ consumers.

(b) Certain advertising and business practices of some credit services organizations have worked a financial hardship upon the people of this state, often those who are of limited economic means and inexperienced in credit matters. Credit services organizations have significant impact upon the economy and well-being of this state and its people.

(c) The purposes of this part 1 are to provide prospective buyers of services of credit services organizations with the information necessary to make an intelligent decision regarding the purchase of those services and to protect the public from unfair or deceptive advertising and business practices;

(d) This part 1 shall be construed liberally to achieve these purposes; and

(e) It is the intent of the general assembly to further regulate the conduct of persons who provide credit services in accordance with this part 1 by adopting the regulatory requirements contained in part 2 of this ~~article~~ ARTICLE 19.

5-19-103. [Formerly 12-14.5-103] Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Buyer" means any individual who is solicited to purchase or who purchases the services of a credit services organization.

(2) "Credit services organization" means any person, including a nonprofit organization exempt from taxation under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", who, with respect to the extension of credit by others, represents that ~~such~~ THE person can or will, in return for the payment of money or other valuable consideration by the buyer, improve or attempt to improve a buyer's credit record, history, or rating. The term "credit services organization" does not include ~~the following~~: ANY PERSON LICENSED TO PRACTICE LAW IN THIS STATE IF HE OR SHE RENDERS CREDIT SERVICES WITHIN THE COURSE AND SCOPE OF HIS OR HER PRACTICE AS AN ATTORNEY.

~~(a) (Deleted by amendment, L. 2009, (HB 09-1141), ch. 41, p. 159, § 7, effective July 1, 2009.)~~

~~(b) Any person licensed to practice law in this state if such person renders such credit services within the course and scope of said person's practice as an attorney.~~

(3) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family, or household

purposes.

(4) "Person" includes any individual, corporation, partnership, joint venture, or any business entity.

~~(5) Repealed.~~

5-19-104. [Formerly 12-14.5-104] Prohibited acts. (1) A credit services organization; its salespersons, agents, and representatives; and independent contractors who sell or attempt to sell the services of a credit services organization shall not:

(a) Charge or receive any money or other valuable consideration prior to full and complete performance of the services the credit services organization has agreed to perform for the buyer;

(b) Make, counsel, or advise any buyer to make any statement that is untrue or misleading to a credit reporting agency or to any person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit with respect to a buyer's creditworthiness, credit standing, or credit capacity;

(c) Make or use any untrue or misleading representations in the offer or sale of the services of a credit services organization or engage, directly or indirectly, in any act, practice, or course of business that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a credit services organization; or

(d) Make, counsel, or advise any buyer to make a request to a credit reporting agency to verify information contained in a consumer credit report, unless the buyer states in writing to the credit services organization that the buyer believes the information to be verified is incorrect or inaccurate, and states specifically the basis of the inaccuracy or incorrectness of each disputed item of information.

5-19-105. [Formerly 12-14.5-106] Written disclosure required. Before the execution of a contract or agreement between the buyer and a credit services organization or before the receipt by the credit services organization of any money or other valuable consideration, whichever occurs first, the credit services organization shall provide the buyer with a statement in writing containing all the information required by ~~section 12-14.5-107~~ SECTION 5-19-106. The credit services organization shall maintain on file for a period of two years an exact copy of the statement, personally signed by the buyer, acknowledging receipt of a copy of the statement.

5-19-106. [Formerly 12-14.5-107] Content of written disclosure. (1) The information statement required pursuant to ~~section 12-14.5-106~~ SECTION 5-19-105 shall be printed in at least ten-point type and shall include:

(a) The following statements concerning consumer credit reports and consumer credit agencies:

**RIGHTS UNDER COLORADO
AND FEDERAL LAW**

You have a right to obtain a copy of your credit report from a credit bureau at no charge once per year with additional copies available for a small fee. You have a right to dispute inaccurate information by contacting the credit bureau directly. However, you have no right to have accurate information removed from your credit bureau report. Under the federal "Fair Credit Reporting Act", the credit bureau must remove accurate negative information from your report only if it is over 7 years old. Bankruptcy can be reported for 10 years. Even when a debt has been completely repaid, your report can show that it was paid late if that is accurate. You have a right to sue a credit repair company that violates the "Colorado Credit Services Organization Act". This law prohibits deceptive practices by repair companies. The "Colorado Credit Services Organization Act" also gives you a right to cancel your contract for any reason within 5 working days from the date you sign it.

The Federal Trade Commission enforces the federal "Fair Credit Reporting Act". For more information, call or write the Federal Trade Commission. The administrator of the "Uniform Consumer Credit Code" enforces the "Colorado Credit Services Organization Act". For more information, call or write the Colorado attorney general's office.

(b) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total amount the buyer will have to pay, or become obligated to pay, for the services.

~~(c) and (d) (Deleted by amendment, L. 2003, p. 1897, § 18, effective July 1, 2003.)~~

5-19-107. [Formerly 12-14.5-108] Written contracts required. (1) Each contract between the buyer and a credit services organization for the purchase of the services of the credit services organization shall be in writing, dated, signed by the buyer, and include the following:

(a) A conspicuous statement in bold-faced type, in immediate proximity to the space reserved for the signature of the buyer, as follows: "You, the buyer, may cancel this contract at any time prior to midnight of the fifth working day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right."

(b) The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to some other person;

(c) A full and detailed description of the services to be performed by the credit services organization for the buyer, including:

(I) All guarantees and all promises of full or partial refunds;

(II) The estimated date by which the services are to be performed, or the

estimated length of time for performing the services;

(III) A list of the adverse information appearing on the buyer's credit report that is to be modified and a description of the precise nature of each modification. A copy of the consumer's current credit report issued by a consumer credit reporting agency shall be annexed to the contract with the adverse entries and proposed modifications clearly marked.

(d) The credit services organization's principal business address which shall be the actual office location of the organization and the name and address of its agent in the state authorized to receive service of process.

(2) The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation", that shall be attached to the contract, shall be easily detachable, and shall contain in bold-faced type the following statement written in the same language as used in the contract:

Notice of Cancellation

You may cancel this contract, without any penalty or obligation, within five (5) working days from the date the contract is signed.

If you cancel any payment made by you under this contract, it will be returned within ten (10) days following receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed, dated copy of this cancellation notice, or any other written notice to (name of seller) at (address of seller) (place of business) not later than midnight (date) .

I hereby cancel this transaction,
 (date)
 (purchaser's signature) .

(3) The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit services organization requires the buyer to sign at the time they are signed.

5-19-108. [Formerly 12-14.5-109] Waivers and exemptions. (1) Any waiver by a buyer of any part of this part 1 is void as against public policy. Any attempt by a credit services organization to have a buyer waive rights given by this part 1 is a violation of this part 1.

(2) In any proceeding involving this part 1, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

5-19-109. [Formerly 12-14.5-110] Criminal penalties and injunctive relief. (1) Any person who violates any provision of this part 1 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501. ~~C.R.S.~~ Violating any provision of this part 1 with respect to any buyer shall constitute a class 1 public nuisance subject to the provisions of part 3 of article 13 of title 16.

~~C.R.S.~~

(2) The administrator of the uniform consumer credit code, designated pursuant to section 5-6-103, ~~C.R.S.~~, or the district attorney of any judicial district may maintain an action to enjoin violations of this part 1 and for restitution and penalties in an amount not to exceed one thousand five hundred dollars per violation. The state treasurer shall transfer the penalties collected pursuant to this subsection (2) to the general fund.

(3) Costs and reasonable attorney fees shall be awarded to the administrator of the uniform consumer credit code or a district attorney in all injunctive actions where the administrator of the uniform consumer credit code or district attorney successfully enforces this part 1.

5-19-110. [Formerly 12-14.5-110.5] Powers of administrator of the uniform consumer credit code and district attorney - subpoenas - hearings. (1) When the administrator of the uniform consumer credit code or district attorney has cause to believe that any person, whether located in this state or elsewhere, has violated or is violating any provision of this part 1, the administrator or district attorney may, in addition to the other powers conferred upon the administrator or district attorney by this part 1:

(a) Request ~~such~~ THE person to file a statement or report in writing under oath or otherwise, on forms prescribed by him OR HER, as to all facts and circumstances concerning the sale or advertisement of goods, property, or services by any credit services organization and any other data and information he OR SHE deems necessary;

(b) Prior to the filing of a complaint, issue subpoenas to require the attendance of witnesses or the production of documents; conduct hearings in aid of any investigation or inquiry; administer oaths; examine under oath any person in connection with the sale or advertisement of goods, property, or services by any credit services organization; and apply to the appropriate court for an appropriate order to effect the purposes of this ~~article~~ ARTICLE 19.

(2) Service of any notice or subpoena may be made in the manner prescribed by law or under the Colorado rules of civil procedure.

5-19-111. [Formerly 12-14.5-111] Damages. (1) Any buyer injured by a violation of this part 1 or by a credit services organization's breach of contract subject to this part 1 may maintain an action in a court of competent jurisdiction for recovery of actual damages, plus cost of suit and reasonable attorney fees. In case of an action brought by a buyer, actual damages shall not be less than the amount paid by the buyer to the credit services organization.

(2) In the event of a willful violation by a credit services organization of this part 1 or of a contract subject to this part 1, a person who is injured thereby shall be awarded, in addition to the damages allowable under subsection (1) of this section, an additional amount equal to twice the actual damages awarded under subsection (1) of this section.

~~(3) Repealed.~~

5-19-112. [Formerly 12-14.5-112] Aiding or assisting violation. Any individual who, as a director, officer, partner, member, salesperson, agent, or representative of a credit services organization that violates this part 1, assists or aids, directly or indirectly, in such violation shall be responsible therefor and subject to the criminal penalties, injunctive relief, and damages provided for in ~~section 12-14.5-111 and~~ this section AND SECTION 5-19-111.

5-19-113. [Formerly 12-14.5-113] Remedies cumulative. The remedies provided for in this part 1 are cumulative and in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

5-19-114. [Formerly 12-14.5-114] Relation between parts of article. In the event of a conflict between part 2 of this ~~article~~ ARTICLE 19 and this part 1, the provisions of part 2 of this ~~article~~ ARTICLE 19 shall control. A credit service organization that also performs debt-management services shall comply with the requirements of part 2 of this ~~article~~ ARTICLE 19.

PART 2
UNIFORM DEBT-MANAGEMENT SERVICES ACT

5-19-201. [Formerly 12-14.5-201] Short title. ~~This part 2 shall be known and may be cited as~~ THE SHORT TITLE OF THIS PART 2 IS the "Uniform Debt-Management Services Act".

5-19-202. [Formerly 12-14.5-202] Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Administrator" means the assistant attorney general designated by the attorney general pursuant to section 5-6-103. ~~C.R.S.~~

(2) "Affiliate":

(A) With respect to an individual, means:

(i) The spouse of the individual;

(ii) A sibling of the individual or the spouse of a sibling;

(iii) An individual or the spouse of an individual who is a lineal ancestor or lineal descendant of the individual or the individual's spouse;

(iv) An aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew, whether related by the whole or the half blood or adoption, or the spouse of any of them; or

(v) Any other individual occupying the residence of the individual; and

(B) With respect to an entity, means:

(i) A person that directly or indirectly controls, is controlled by, or is under common control with, the entity;

(ii) An officer of, or an individual performing similar functions with respect to, the entity;

(iii) A director of, or an individual performing similar functions with respect to, the entity;

(iv) A person that receives or received more than twenty-five thousand dollars from the entity in either the current year or the preceding year or a person that owns more than ten percent of, or an individual who is employed by or is a director of, a person that receives or received more than twenty-five thousand dollars from the entity in either the current year or the preceding year;

(v) An officer or director of, or an individual performing similar functions with respect to, a person described in ~~sub-subparagraph (i) of this subparagraph (B)~~ SUBSECTION (2)(B)(i) OF THIS SECTION;

(vi) The spouse of, or an individual occupying the residence of, an individual described in ~~sub-subparagraphs (i) to (v) of this subparagraph (B)~~ SUBSECTIONS (2)(B)(i) TO (2)(B)(v) OF THIS SECTION; or

(vii) An individual who has the relationship specified in ~~sub-subparagraph (iv) of subparagraph (A) of this paragraph (2)~~ SUBSECTION (2)(A)(iv) OF THIS SECTION to an individual or the spouse of an individual described in ~~sub-subparagraphs (i) to (v) of this subparagraph (B)~~ SUBSECTIONS (2)(B)(i) TO (2)(B)(v) OF THIS SECTION.

(3) "Agreement" means an agreement between a provider and an individual for the performance of debt-management services.

(4) "Bank" means a financial institution, including a commercial bank, savings bank, savings and loan association, credit union, mortgage bank, and trust company, engaged in the business of banking, chartered under federal or state law, and regulated by a federal or state banking regulatory authority.

(5) "Business address" means the physical location of a business, including the name and number of a street.

~~(6) and (7) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p. 348, § 1, effective July 1, 2011.)~~

~~(8)~~ (6) "Concessions" means assent to repayment of a debt on terms more favorable to an individual than the terms of the contract between the individual and a creditor.

~~(9)~~ (7) "Day" means calendar day.

~~(10)(A)~~ (8) (A) "Debt-management services" means services as an intermediary between an individual and one or more creditors of the individual for the purpose of obtaining concessions, but does not include:

(i) Legal services provided in an attorney-client relationship by an attorney licensed to practice law in this state;

(ii) Accounting services provided in an accountant-client relationship by a certified public accountant certified or authorized by the state board of accountancy to provide accounting services in this state; or

(iii) Representative services provided before the internal revenue service, the department of revenue, or the department of labor and employment in an enrolled agent-client relationship for tax purposes by an enrolled agent who is authorized by and in good standing with the United States department of treasury, if the enrolled agent is not engaging in other debt management services.

~~(B)~~ The exemptions in ~~subparagraph (A) of this paragraph (10)~~ SUBSECTION (8)(A) OF THIS SECTION do not apply to any person who directly or indirectly provides any debt management services on behalf of a licensed attorney, certified public accountant, or enrolled agent if that person is not an employee of the licensed attorney, certified public accountant, or enrolled agent.

~~(H)~~ (9) "Entity" means a person other than an individual.

~~(I)~~ (10) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.

~~(J.5)~~ (11) "Individual" means a natural person.

~~(K)~~ (12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a public corporation, government, or governmental subdivision, agency, or instrumentality.

~~(L)~~ (13) "Plan" means a program or strategy in which a provider furnishes debt-management services to an individual and that includes a schedule of payments to be made by or on behalf of the individual and used to pay debts owed by the individual.

~~(M)~~ (14) "Principal amount of the debt" means the amount of a debt at the time of an agreement.

~~(N)~~ (15) "Provider" means a person that provides, offers to provide, or agrees to provide debt-management services directly or through others.

~~(O)~~ (16) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~(P)~~ (17) "Settlement fee" means a charge imposed on or paid by an individual in connection with a creditor's assent to accept in full satisfaction of a debt an amount less than the principal amount of the debt.

~~(Q)~~ (18) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic sound, symbol, or process.

~~(20)~~ (19) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

~~(21)~~(A) (20) (A) "Trust account" means an account held by a provider that is:

(i) Established in an insured bank;

(ii) Separate from other accounts of the provider or its designee;

(iii) Designated as a trust account or other account designated to indicate that the money in the account is not the money of the provider; and

(iv) Used to hold money of one or more individuals for disbursement to creditors of the individuals.

(B) For a plan under which creditors will settle debts for less than the principal amount of the debt, nothing in this ~~act~~ PART 2 prohibits a provider from requesting or requiring an individual to place funds in an account, separate from the individual's then-existing bank account, to be used for the provider's fees and for payments to creditors or debt collectors in connection with the debt management services, if:

(i) The funds are held in an account at an insured financial institution;

(ii) The individual owns the funds held in the account and is paid accrued interest on the account, if any;

(iii) The entity administering the account is not owned, controlled by, or in any way affiliated with the provider;

(iv) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business involving the debt management provider or plan; and

(v) The individual may withdraw from the debt management plan at any time without penalty, and immediately receives all funds in the account, other than fees earned in compliance with ~~section 12-14.5-223~~ SECTION 5-19-223, as required by ~~section 12-14.5-226~~ SECTION 5-19-226.

5-19-203. [Formerly 12-14.5-203] Exempt agreements and persons. (a) This part 2 does not apply to an agreement with an individual who the provider has no reason to know resides in this state at the time of the agreement.

(b) This part 2 does not apply to a provider to the extent that the provider:

(1) Provides or agrees to provide debt-management, educational, or counseling services to an individual who the provider has no reason to know resides in this state at the time the provider agrees to provide the services;

(2) Receives no compensation for debt-management services from or on behalf of the individuals to whom it provides the services or from their creditors;

(3) Provides debt-management services only to persons that have incurred debt in the conduct of business; or

(4) Is subject to the "Colorado Foreclosure Protection Act", part 11 of article 1 of title 6. ~~C.R.S.~~

(c) This part 2 does not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person's business or profession:

(1) A judicial officer, a person acting under an order of a court or an administrative agency, or an assignee for the benefit of creditors;

(2) A bank;

(3) An affiliate, as defined in ~~section 12-14.5-202 (2) (B) (i)~~ SECTION 5-19-202 (2)(B)(i), of a bank if the affiliate is regulated by a federal or state banking regulatory authority; or

(4) A title insurer, escrow company, or other person that provides bill-paying services if the provision of debt-management services is incidental to the bill-paying services.

5-19-204. [Formerly 12-14.5-204] Registration required. (a) Except as otherwise provided in subsection (b) of this section, on or after July 1, 2008, a provider may not provide debt-management services to an individual who it reasonably should know resides in this state at the time it agrees to provide the services, unless the provider is registered under this part 2.

(b) If a provider is registered under this part 2, subsection (a) of this section does not apply to an employee or agent of the provider.

(c) The administrator shall maintain and publicize a list of the names of all registered providers.

5-19-205. [Formerly 12-14.5-205] Application for registration - form, fee, and accompanying documents. (a) An application for registration as a provider shall be in a form prescribed by the administrator.

(b) An application for registration as a provider shall be accompanied by:

(1) The fee established by the administrator. The administrator shall transmit the fee to the state treasurer, who shall deposit it in the uniform consumer credit code cash fund, created in section 5-6-204 (1). ~~C.R.S.~~

(2) The bond required by ~~section 12-14.5-213~~ SECTION 5-19-213;

(3) Identification of all trust accounts required by ~~section 12-14.5-222~~ SECTION 5-19-222 and an irrevocable consent authorizing the administrator to review and examine the trust accounts;

~~(4) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p. 350, § 2, effective July 1, 2011.)~~

~~(5)~~ (4) Proof of compliance with the requirements of title 7 C.R.S., that specify the prerequisites for an entity to do business in this state; and

~~(6)~~ (5) If the applicant is organized as a not-for-profit entity or is exempt from taxation, evidence of not-for-profit and tax-exempt status applicable to the applicant under the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501, as amended.

5-19-206. [Formerly 12-14.5-206] Application for registration - required information. An application for registration shall be signed under penalty of false statement and include:

(1) The applicant's name, principal business address and telephone number, and all other business addresses in this state, electronic-mail addresses, and internet website addresses;

(2) All names under which the applicant conducts business;

(3) The address of each location in this state at which the applicant will provide debt-management services or a statement that the applicant will have no such location;

(4) The name and home address of each officer and director of the applicant and each person that owns at least ten percent of the applicant;

(5) Identification of every jurisdiction in which, during the five years immediately preceding the application:

(A) The applicant or any of its officers or directors has been licensed or registered to provide debt-management services; or

(B) Individuals have resided when they received debt-management services from the applicant;

(6) A statement describing, to the extent it is known or should be known by the applicant, any material civil or criminal judgment or litigation and any material administrative or enforcement action by a governmental agency in any jurisdiction against the applicant, any of its officers, directors, owners, or agents, or any person who is authorized to initiate transactions to the trust account required by ~~section 12-14.5-222~~ SECTION 5-19-222;

(7) The applicant's financial statements, audited by an accountant licensed to conduct audits, for each of the two years immediately preceding the application or,

if it has not been in operation for the two years preceding the application, for the period of its existence;

~~(8) and (9) Repealed.~~

~~(10)~~ (8) A description of the three most commonly used educational programs that the applicant provides or intends to provide to individuals who reside in this state and a copy of any materials used or to be used in those programs;

~~(11)~~ (9) A description of the applicant's financial analysis and initial plan, including any form or electronic model, used to evaluate the financial condition of individuals. The description shall be deemed to be confidential commercial data under section 24-72-204 (3)(a)(IV). ~~C.R.S.~~

~~(12)~~ (10) A copy of each form of agreement that the applicant will use with individuals who reside in this state;

~~(13)~~ (11) The schedule of fees and charges that the applicant will use with individuals who reside in this state;

~~(14)~~ (12) At the applicant's expense, the results of a state and national fingerprint-based criminal history records check, conducted within the immediately preceding twelve months, covering every officer of the applicant and every employee or agent of the applicant who is authorized to initiate transactions to the trust account required by ~~section 12-14.5-222~~ SECTION 5-19-222. The administrator shall be the authorized agency to receive information regarding the result of the national criminal history records check.

~~(15)~~ (13) The names and addresses of all employers of each director during the five years immediately preceding the application; except that if a director receives no compensation from the provider, the applicable period shall be two years. The names and addresses shall be deemed to be confidential.

~~(16)~~ (14) A description of any ownership interest of at least ten percent by a director, owner, or employee of the applicant in:

(A) Any affiliate of the applicant; or

(B) Any entity that provides products or services to the applicant or any individual relating to the applicant's debt-management services;

~~(17)~~ (15) For not-for-profit providers, a statement of the amount of compensation of the applicant's five most highly compensated employees for each of the three years immediately preceding the application or, if it has not been in operation for the three years immediately preceding the application, for the period of its existence;

~~(18)~~ (16) The identity of each director who is an affiliate, as defined in ~~section 12-14.5-202 (2) (A) or (2) (B) (i), (2) (B) (ii), (2) (B) (iv), (2) (B) (v), (2) (B) (vi), or (2) (B) (vii)~~ SECTION 5-19-202 (2)(A) OR (2)(B)(i), (2)(B)(ii), (2)(B)(iv), (2)(B)(v), (2)(B)(vi), OR (2)(B)(vii), of the applicant; and

~~(19)~~ (17) Any other information that the administrator reasonably requires to perform the administrator's duties under ~~section 12-14.5-209~~ SECTION 5-19-209.

5-19-207. [Formerly 12-14.5-207] Application for registration - obligation to update information. An applicant or registered provider shall notify the administrator within fifteen days after a change in the information specified in ~~section 12-14.5-205 (b) (6) or section 12-14.5-206 (1), (3), (6), (12), or (13)~~ SECTION 5-19-205 (b)(5) OR SECTION 5-19-206 (1), (3), (6), (10), OR (11).

5-19-208. [Formerly 12-14.5-208] Application for registration - public information. Except for the information required by ~~section 12-14.5-206 (7), (11), (14), (15), and (17)~~ SECTION 5-19-206 (7), (9), (12), (13), AND (15), and the addresses required by ~~section 12-14.5-206 (4)~~ SECTION 5-19-206 (4), the administrator shall make the information in an application for registration as a provider available to the public.

5-19-209. [Formerly 12-14.5-209] Certificate of registration - issuance or denial. (a) Except as otherwise provided in subsections (b) and (c) of this section, the administrator shall issue a certificate of registration as a provider to a person that complies with ~~sections 12-14.5-205 and 12-14.5-206~~ SECTIONS 5-19-205 AND 5-19-206.

(b) The administrator may deny registration if:

(1) The application contains information that is materially erroneous or incomplete;

(2) An officer, director, or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving dishonesty or the violation of state or federal securities laws;

(3) The applicant or any of its officers, directors, or owners has defaulted in the payment of money collected for others; or

(4) The administrator, upon reasonable belief, finds that the financial responsibility, experience, character, or general fitness of the applicant or its owners, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this part 2.

(c) The administrator shall deny registration if:

(1) The application is not accompanied by the fee established by the administrator; or

(2) With respect to an applicant that is organized as a not-for-profit entity or has obtained tax-exempt status under the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501, as amended, the applicant's board of directors is not independent of the applicant's employees and agents.

(d) A board of directors is not independent for purposes of subsection (c) of this section if more than one-fourth of its members:

(1) Are affiliates of the applicant, as defined in ~~section 12-14.5-202 (2)(A), (2)(B)(i), (2)(B)(ii), (2)(B)(iv), (2)(B)(v), (2)(B)(vi), or (2)(B)(vii)~~ SECTION 5-19-202 (2)(A), (2)(B)(i), (2)(B)(ii), (2)(B)(iv), (2)(B)(v), (2)(B)(vi), OR (2)(B)(vii); or

(2) After the date ten years before first becoming a director of the applicant, were employed by or directors of a person that received from the applicant more than twenty-five thousand dollars in either the current year or the preceding year.

(e) The administrator may temporarily approve a certificate of registration in the event an applicant has made a timely effort to obtain a criminal records check as required in ~~section 12-14.5-206 (14)~~ SECTION 5-19-206 (12), but for which a timely return of information has not occurred, for a reasonable period of time but no longer than one hundred twenty days, provided that the applicant has provided all other required information in the application for registration and the administrator finds no reason to believe from the information that has been provided that the applicant may not provide fair and honest services to debtors under this part 2.

5-19-210. [Formerly 12-14.5-210] Certificate of registration - timing. (a) The administrator shall approve or deny an initial registration as a provider within ninety days after an application is filed. In connection with a request pursuant to ~~section 12-14.5-206 (19)~~ SECTION 5-19-206 (17) for additional information, the administrator may extend the ninety-day period for not more than thirty days. Within seven days after denying an application, the administrator, in a record, shall inform the applicant of the reasons for the denial.

(b) If the administrator denies an application for registration as a provider or does not act on an application within the time prescribed in subsection (a) of this section, the applicant may appeal and request a hearing pursuant to article 4 of title 24. C.R.S.

~~(c) Repealed.~~

5-19-211. [Formerly 12-14.5-211] Renewal of registration. (a) A provider shall obtain a renewal of its registration annually before the expiration date of the registration to be renewed, as specified in this section.

~~(b) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p. 351, § 7, effective July 1, 2011.)~~

~~(c)~~ (b) An application for renewal of registration as a provider shall be in a form prescribed by the administrator, signed under penalty of false statement, and:

(1) Be filed before the registration expires;

(2) Be accompanied by the fee established by the administrator and the bond required by ~~section 12-14.5-213~~ SECTION 5-19-213;

(3) Contain a financial statement, reviewed by an accountant licensed to conduct audits, for the applicant's fiscal year immediately preceding the application; except that the third renewal after initial registration and every fourth renewal thereafter

shall be audited rather than reviewed;

(4) Disclose any changes in the information contained in the applicant's application for registration or its immediately previous application for renewal, as applicable;

~~(5) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p. 351, § 7, effective July 1, 2011.)~~

~~(6)~~ (5) Disclose the total amount of money received by the applicant pursuant to plans during the preceding twelve months from or on behalf of individuals who reside in this state and the total amount of money distributed to creditors of those individuals during that period;

~~(7)~~ (6) If the applicant does not hold money on behalf of any debtor, disclose for business done with debtors in the state of Colorado during the preceding twelve months, the number of debtors with whom the applicant has had agreements, the number of fully settled debt agreements with creditors that applicant concluded for debtors, and an estimate of the total amount of debt under contract between applicant and debtors; and

~~(8)~~ (7) Provide any other information that the administrator reasonably requires to perform the administrator's duties under this section.

~~(d)~~ (c) Except for the information required by ~~section 12-14.5-206 (7), (11), (14), (15), and (17)~~ SECTION 5-19-206 (7), (9), (12), (13), AND (15) and the addresses required by ~~section 12-14.5-206 (4)~~ SECTION 5-19-206 (4), the administrator shall make the information in an application for renewal of registration as a provider available to the public.

~~(e)~~ (d) If a registered provider files a timely and complete application for renewal of registration, the registration remains effective until the administrator, in a record, notifies the applicant of a denial and states the reasons for the denial.

~~(f)~~ (e) If the administrator denies an application for renewal of registration as a provider, the applicant, within thirty days after receiving notice of the denial, may appeal and request a hearing pursuant to article 4 of title 24, C.R.S. Subject to ~~section 12-14.5-234~~ SECTION 5-19-234, while the appeal is pending, the applicant shall continue to provide debt-management services to individuals with whom it has agreements. If the denial is affirmed, subject to the administrator's order and ~~section 12-14.5-234~~ SECTION 5-19-234, the applicant shall continue to provide debt-management services to individuals with whom it has agreements until, with the approval of the administrator, it transfers the agreements to another registered provider or returns to the individuals all unexpended money that is under the applicant's control.

~~(g)~~ (f) If a registered provider fails to file by July 1 a complete application for renewal of registration and the required renewal fee, the registration shall automatically expire on that date.

5-19-212. [Formerly 12-14.5-212] Registration in another state. If a provider

holds a license or certificate of registration in another state authorizing it to provide debt-management services, the provider may submit a copy of that license or certificate and the application for it instead of an application in the form prescribed by ~~section 12-14.5-205 (a), 12-14.5-206, or 12-14.5-211 (c)~~ SECTION 5-19-205 (a), 5-19-206, OR 5-19-211 (b). The administrator shall accept the application and the license or certificate from the other state as an application for registration as a provider or for renewal of registration as a provider, as appropriate, in this state if:

(1) The application in the other state contains information substantially similar to, or more comprehensive than, that required in an application submitted in this state;

(2) The applicant provides the information required by ~~section 12-14.5-206 (1), (3), (10), (12), and (13)~~ SECTION 5-19-206 (1), (3), (8), (10), AND (11);

(3) The applicant, under penalty of false statement, certifies that the information contained in the application is current or, to the extent it is not current, supplements the application to make the information current; and

(4) The application is accompanied by the items required in ~~section 12-14.5-205 (b)~~ SECTION 5-19-205 (b).

5-19-213. [Formerly 12-14.5-213] Bond required. (a) Except as otherwise provided in ~~section 12-14.5-214~~ SECTION 5-19-214, a provider that is required to be registered under this part 2 shall file a surety bond with the administrator, which shall:

(1) Be in effect during the period of registration and for two years after the provider ceases providing debt-management services to individuals in this state; and

(2) Run to this state for the benefit of this state and of individuals who reside in this state when they agree to receive debt-management services from the provider, as their interests may appear.

(b) A surety bond filed pursuant to subsection (a) of this section shall:

(1) Be in the amount of fifty thousand dollars or other larger or smaller amount that the administrator determines is warranted by the financial condition and business experience of the provider, the history of the provider in performing debt-management services, the risk to individuals, and any other factor the administrator considers appropriate;

(2) Be issued by a bonding, surety, or insurance company authorized to do business in this state and rated at least A by a nationally recognized rating organization; and

(3) Have payment conditioned upon noncompliance of the provider or its agent with this part 2.

(c) If the principal amount of a surety bond is reduced by payment of a claim or a judgment, the provider and the surety shall notify the administrator immediately

and, within thirty days after notice by the administrator, the provider shall file a new or additional surety bond in an amount set by the administrator. The amount of the new or additional bond shall be at least the amount of the bond immediately before payment of the claim or judgment. If for any reason a surety terminates a bond, the surety shall provide written notice of the termination to the administrator immediately, and the provider shall immediately file a new surety bond in the amount of fifty thousand dollars or other amount determined pursuant to subsection (b) of this section.

(d) The administrator or an individual may obtain satisfaction out of the surety bond procured pursuant to this section if:

(1) The administrator assesses expenses under ~~section 12-14.5-232 (b) (1)~~ SECTION 5-19-232 (b)(1), issues a final order under ~~section 12-14.5-233 (a) (2)~~ SECTION 5-19-233 (a)(2), or recovers a final judgment under ~~section 12-14.5-233 (a) (4), (a) (5), or (d)~~ SECTION 5-19-233 (a)(4), (a)(5), OR (d); or

(2) An individual recovers a final judgment pursuant to ~~section 12-14.5-235 (a), (b), (c) (1), (c) (2), or (c) (4)~~ SECTION 5-19-235 (a), (b), (c)(1), (c)(2), OR (c)(4).

(e) If claims against a surety bond exceed or are reasonably expected to exceed the amount of the bond, the administrator, on the initiative of the administrator or on petition of the surety, shall, unless the proceeds are adequate to pay all costs, judgments, and claims, distribute the proceeds in the following order:

(1) To satisfaction of a final order or judgment under ~~section 12-14.5-233 (a) (2), (a) (4), (a) (5), or (d)~~ SECTION 5-19-233 (a)(2), (a)(4), (a)(5), OR (d);

(2) To final judgments recovered by individuals pursuant to ~~section 12-14.5-235 (a), (b), (c) (1), (c) (2), or (c) (4)~~ SECTION 5-19-235 (a), (b), (c)(1), (c)(2), OR (c)(4), pro rata;

(3) To claims of individuals established to the satisfaction of the administrator, pro rata; and

(4) If a final order or judgment is issued under ~~section 12-14.5-233 (a)~~ SECTION 5-19-233 (a), to the expenses charged pursuant to ~~section 12-14.5-232 (b) (1)~~ SECTION 5-19-232 (b)(1).

5-19-214. [Formerly 12-14.5-214] Bond required - substitute. (a) Instead of the surety bond required by ~~section 12-14.5-213~~ SECTION 5-19-213, a provider may deliver to the administrator, in the amount required by ~~section 12-14.5-213 (b)~~ SECTION 5-19-213 (b), and, except as otherwise provided in ~~paragraph (2) of this subsection (a)~~ SUBSECTION (a)(1) OF THIS SECTION, payable or available to this state and to individuals who reside in this state when they agree to receive debt-management services from the provider, as their interests may appear, if the provider or its agent does not comply with this part 2:

~~(1) Repealed.~~

~~(2)~~ (1) With the approval of the administrator, an irrevocable letter of credit,

issued or confirmed by a bank approved by the administrator, payable upon presentation of a certificate by the administrator stating that the provider or its agent has not complied with this part 2.

(b) If a provider furnishes a substitute pursuant to subsection (a) of this section, the provisions of ~~section 12-14.5-213 (a), (c), (d), and (e)~~ SECTION 5-19-213 (a), (c), (d), AND (e) apply to the substitute.

5-19-215. [Formerly 12-14.5-215] Good faith requirement. A provider shall act in good faith in all matters under this part 2.

5-19-216. [Formerly 12-14.5-216] Customer service. A provider that is required to be registered under this part 2 shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a counselor, debt specialist, or customer-service representative, as appropriate, during ordinary business hours.

5-19-217. [Formerly 12-14.5-217] Prerequisites for providing debt-management services. (a) Before providing or contracting to provide debt-management services, a registered provider shall give the individual an itemized list of goods and services and the charges for each. The list shall be clear and conspicuous, be in a record the individual may keep whether or not the individual assents to an agreement, and describe the goods and services the provider offers:

- (1) Free of additional charge if the individual enters into an agreement;
- (2) For a charge if the individual does not enter into an agreement; and
- (3) For a charge if the individual enters into an agreement, using the following terminology, as applicable, and format:

Set-up fee _____ *dollar amount of fee*

Monthly service fee _____ *dollar amount of fee or method of determining amount*

Settlement fee _____ *dollar amount of fee or method of determining amount*

Goods and services in addition to those provided in connection with a plan:

(item) dollar amount or method of determining amount

(item) dollar amount or method of determining amount.

(b) A provider may not furnish or contract to furnish debt-management services unless the provider, through the services of a counselor or debt specialist:

(1) Provides the individual with reasonable education about the management of personal finance;

(2) Has prepared a financial analysis; and

(3) If the individual is to make regular, periodic payments:

(A) Has prepared a plan for the individual;

(B) Has made a determination, based on the provider's analysis of the information provided by the individual and otherwise available to it, that the plan is suitable for the individual and the individual will be able to meet the payment obligations under the plan; and

(C) Believes that each creditor of the individual listed as a participating creditor in the plan will accept payment of the individual's debts as provided in the plan.

(c) Before an individual assents to an agreement to engage in a plan, a provider shall:

(1) Provide the individual with a copy of the analysis and plan required by subsection (b) of this section in a record that identifies the provider and that the individual may keep whether or not the individual assents to the agreement;

(2) Inform the individual of the availability, at the individual's option, of assistance by a toll-free communication system or in person to discuss the financial analysis and plan required by subsection (b) of this section; and

(3) With respect to all creditors identified by the individual or otherwise known by the provider to be creditors of the individual, provide the individual with a list of:

(A) Creditors that the provider expects to participate in the plan and grant concessions;

(B) Creditors that the provider expects to participate in the plan but not grant concessions;

(C) Creditors that the provider expects not to participate in the plan; and

(D) All other creditors.

(d) Before an individual assents to an agreement to engage in a plan, the provider shall inform the individual, in a record that contains nothing else, that is given separately, and that the individual may keep whether or not the individual assents to the agreement:

(1) Of the name and business address of the provider;

(2) That plans are not suitable for all individuals and the individual may ask the provider about other ways, including bankruptcy, to deal with indebtedness;

(3) That establishment of a plan may adversely affect the individual's credit rating or credit scores;

(4) That nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including litigation;

(5) Unless it is not true, that the provider may receive compensation from the creditors of the individual; and

(6) That, unless the individual is insolvent, if a creditor settles for less than the full amount of the debt, the plan may result in the creation of taxable income to the individual, even though the individual does not receive any money.

(e) If a provider may receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may comply with subsection (d) of this section by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) Using a debt-management plan may hurt your credit rating or credit scores.

(3) We may receive compensation for our services from your creditors.

Name and business address of provider

(f) If a provider will not receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, a provider may comply with subsection (d) of this section by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) Using a debt-management plan may hurt your credit rating or credit scores.

Name and business address of provider

(g) If a plan contemplates that creditors will settle debts for less than the full principal amount of debt owed, a provider may comply with subsection (d) of this

section by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Our program is not right for all individuals, and you may ask us to provide information about bankruptcy and other ways to deal with your debts.

(2) Nonpayment of your debts under our program may:

Hurt your credit rating or credit scores;

Lead your creditors to increase finance and other charges; and

Lead your creditors to undertake activity, including lawsuits, to collect the debts.

(3) Reduction of debt under our program may result in taxable income to you, even though you will not actually receive any money.

Name and business address of provider

5-19-218. [Formerly 12-14.5-218] Communication by electronic or other means - definitions. (a) As used in this section, unless the context otherwise requires:

(1) "Consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.

(2) "Federal act" means the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., as amended.

(b) A provider may satisfy the requirements of ~~section 12-14.5-217, 12-14.5-219, or 12-14.5-227~~ SECTION 5-19-217, 5-19-219, OR 5-19-227 by means of the internet or other electronic means if the provider obtains a consumer's consent in the manner provided by section 101 (c) (1) of the federal act.

(c) The disclosures and materials required by ~~sections 12-14.5-217, 12-14.5-219, and 12-14.5-227~~ SECTIONS 5-19-217, 5-19-219, AND 5-19-227 shall be presented in a form that is capable of being accurately reproduced for later reference.

(d) With respect to disclosure by means of an internet website, the disclosure of the information required by ~~section 12-14.5-217 (d)~~ SECTION 5-19-217 (d) shall appear on one or more screens that:

(1) Contain no other information; and

(2) The individual must see before proceeding to assent to formation of a plan.

(e) At the time of providing the materials and agreement required by ~~sections 12-14.5-217 (c) and (d), 12-14.5-219, and 12-14.5-227~~ SECTIONS 5-19-217 (c) AND

(d), 5-19-219, AND 5-19-227, a provider shall inform the individual that upon electronic, telephonic, or written request, it will send the individual a written copy of the materials, and shall comply with a request as provided in subsection (f) of this section.

(f) If a provider is requested, before the expiration of ninety days after a plan is completed or terminated, to send a written copy of the materials required by ~~section 12-14.5-217(c) and (d), 12-14.5-219, or 12-14.5-227~~ SECTION 5-19-217 (C) AND (d), 5-19-219, OR 5-19-227, the provider shall send them at no charge within three business days after the request, but the provider need not comply with a request more than once per calendar month or if it reasonably believes the request is made for purposes of harassment. If a request is made more than ninety days after a plan is completed or terminated, the provider shall send within a reasonable time a written copy of the materials requested.

(g) A provider that maintains an internet website shall disclose on the home page of its website or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals its contents:

- (1) Its name and all names under which it does business;
- (2) Its principal business address, telephone number, and electronic mail address, if any; and
- (3) The names of its principal officers.

(h) Subject to subsection (i) of this section, if a consumer who has consented to electronic communication in the manner provided by section 101 of the federal act withdraws consent as provided in the federal act, a provider may terminate its agreement with the consumer.

(i) If a provider wishes to terminate an agreement with a consumer pursuant to subsection (h) of this section, it shall notify the consumer that it will terminate the agreement unless the consumer, within thirty days after receiving the notification, consents to electronic communication in the manner provided in section 101 (c) of the federal act. If the consumer consents, the provider may terminate the agreement only as permitted by ~~section 12-14.5-219 (a) (6) (G)~~ SECTION 5-19-219 (a)(6)(H).

5-19-219. [Formerly 12-14.5-219] Form and contents of agreement. (a) An agreement shall:

- (1) Be in a record;
- (2) Be dated and signed by the provider and the individual;
- (3) Include the name of the individual and the address where the individual resides;
- (4) Include the name, business address, and telephone number of the provider;
- (5) Be delivered to the individual immediately upon formation of the agreement;

and

(6) Disclose:

(A) The services to be provided;

(B) In a clear and conspicuous manner, the amount, percentage, or method of determining the amount, of all fees, individually itemized, to be paid by the individual, using only the terminology contained in ~~section 12-14.5-223~~ SECTION 5-19-223;

(C) The schedule of payments to be made by or on behalf of the individual, including the amount of each payment, the date on which each payment is due, an estimate of the date of the final payment, and an estimate of the total of all payments to be made under the plan;

~~(C.5)~~ (D) In a clear and conspicuous manner, the following information:

(i) The amount of time necessary to achieve the represented results;

(ii) If the plan includes a settlement offer to any of the individual's creditors or debt collectors, the time by which the provider will make a bona fide settlement offer to each of them and the amount of money or the percentage of each outstanding debt that the individual must accumulate before the provider will make a bona fide settlement offer to each of them; and

(iii) If the provider requests or requires the individual to place funds in an account at an insured financial institution, that the individual owns the funds held in the account, the individual may withdraw from the plan at any time without penalty, and, if the individual withdraws, the individual must receive all funds in the account, other than funds earned by the provider in compliance with ~~section 12-14.5-222 (h)~~ SECTION 5-19-222 (h);

~~(D)~~ (E) If a plan provides for regular periodic payments to creditors:

(i) Each creditor of the individual to which payment will be made, the amount owed to each creditor, and any concessions the provider reasonably believes each creditor will offer; and

(ii) The schedule of expected payments to each creditor, including the amount of each payment and the date on which it will be made;

~~(E)~~ (F) If the provider holds money on behalf of the individual, each creditor that the provider believes will not participate in the plan and to which the provider will not direct payment;

~~(F)~~ (G) How the provider will comply with its obligations under ~~section 12-14.5-227 (a)~~ SECTION 5-19-227 (a);

~~(G)~~ (H) If the provider holds money on behalf of the individual, that the provider may terminate the agreement for good cause, upon return of unexpended money of

the individual;

~~(H)~~ (I) That the individual may cancel the agreement as provided in ~~section 12-14.5-220~~ SECTION 5-19-220;

~~(H)~~ (J) That the individual may contact the administrator with any questions or complaints regarding the provider; and

~~(H)~~ (K) The address, telephone number, and internet address or website of the administrator.

(b) For purposes of ~~paragraph (5) of subsection (a)~~ SUBSECTION (a)(5) of this section, delivery of an electronic record occurs when it is made available in a format in which the individual may retrieve, save, and print it, and the individual is notified that it is available.

(c) If the administrator supplies the provider with any information required under ~~subparagraph (J) of paragraph (6) of subsection (a)~~ SUBSECTION (a)(6)(K) of this section, the provider may comply with that requirement only by disclosing the information supplied by the administrator.

(d) An agreement shall provide that:

(1) The individual has a right to terminate the agreement at any time, without penalty or obligation, by giving the provider written or electronic notice, in which event:

(A) The provider will refund all unexpended money that the provider or its agent has received from or on behalf of the individual for the reduction or satisfaction of the individual's debt; and

~~(B) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p. 353, § 12, effective July 1, 2011.)~~

~~(C)~~ (B) All powers of attorney granted by the individual to the provider are revoked and ineffective;

(2) The individual authorizes any bank in which the provider or its agent has established a trust account to disclose to the administrator any financial records relating to the trust account; and

(3) The provider will notify the individual within five days after learning of a creditor's decision to reject or withdraw from a plan and that this notice will include:

(A) The identity of the creditor; and

(B) The right of the individual to modify or terminate the agreement.

~~(c) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p. 353, § 12, effective July 1, 2011.)~~

~~(f)~~ (e) An agreement may not:

(1) Provide for application of the law of any jurisdiction other than the United States and this state;

(2) Except as permitted by the uniform arbitration act, part 2 of article 22 of title 13, ~~C.R.S.~~, contain a provision that modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are generally available to the individual under law other than this part 2;

(3) Contain a provision that restricts the individual's remedies under this part 2 or law other than this part 2; or

(4) Contain a provision that:

(A) Limits or releases the liability of any person for not performing the agreement or for violating this part 2; or

(B) Indemnifies any person for liability arising under the agreement or this part 2.

~~(g)~~ (f) All rights and obligations specified in subsection (d) of this section and ~~section 12-14.5-220~~ SECTION 5-19-220 exist even if not provided in the agreement. A provision in an agreement that violates subsection (d), (e), or (f) of this section is void.

5-19-220. [Formerly 12-14.5-220] Cancellation of agreement - waiver. (a) An individual may cancel an agreement before midnight of the third business day after the individual assents to it, unless the agreement does not comply with subsection (b) of this section or ~~section 12-14.5-219 or 12-14.5-228~~ SECTION 5-19-219 OR 5-19-228, in which event the individual may cancel the agreement within thirty days after the individual assents to it. To exercise the right to cancel, the individual shall give notice in a record to the provider. Notice by mail is given when mailed.

(b) An agreement shall be accompanied by a separate form that contains in bold-faced type, surrounded by bold black lines:

Notice of Right to Cancel

You may cancel this agreement, without any penalty or obligation, at any time before midnight of the third business day that begins the day after you agree to it by electronic communication or by signing it.

To cancel this agreement during this period, send an e-mail to (E-mail address of provider) or mail or deliver a signed, dated copy of this notice, or any other written notice to (Name of provider) at (Address of provider) before midnight on (Date).

If you cancel this agreement within the 3-day period, we will refund all money you already have paid us.

You also may terminate this agreement at any later time, but we are not required to refund fees you have paid us.

I cancel this agreement,

Print your name

Signature

Date

(c) If a personal financial emergency necessitates the disbursement of an individual's money to one or more of the individual's creditors before the expiration of three days after an agreement is signed, an individual may waive the right to cancel. To waive the right, the individual shall send or deliver a signed, dated statement in the individual's own words describing the circumstances that necessitate a waiver. The waiver shall explicitly waive the right to cancel. A waiver by means of a standard form record is void.

5-19-221. [Formerly 12-14.5-221] Required language. Unless the administrator, by rule, provides otherwise, the disclosures and documents required by this part 2 shall be in English. If a provider communicates with an individual primarily in a language other than English, the provider shall furnish a translation into the other language of the disclosures and documents required by this part 2.

5-19-222. [Formerly 12-14.5-222] Trust account. (a) All money paid to a provider by or on behalf of an individual pursuant to a plan for distribution to creditors is held in trust. Within two business days after receipt, the provider shall deposit the money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services.

(b) Money held in trust by a provider is not property of the provider or its designee. The money is not available to creditors of the provider or designee, except an individual from whom or on whose behalf the provider received money, to the extent that the money has not been disbursed to creditors of the individual.

(c) A provider shall:

(1) Maintain separate records of account for each individual to whom the provider is furnishing debt-management services;

(2) Disburse money paid by or on behalf of the individual to creditors of the individual as disclosed in the agreement; except that:

(A) The provider may delay payment to the extent that a payment by the individual is not final; and

(B) If a plan provides for regular periodic payments to creditors, the disbursement

shall comply with the due dates established by each creditor; and

(3) Promptly correct any payments that are not made or that are misdirected as a result of an error by the provider or other person in control of the trust account and reimburse the individual for any costs or fees imposed by a creditor as a result of the failure to pay or misdirection.

(d) A provider may not commingle money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services with money of other persons.

(e) A trust account shall at all times have a cash balance equal to the sum of the balances of each individual's account.

(f) If a provider has established a trust account pursuant to subsection (a) of this section, the provider shall reconcile the trust account at least once a month. The reconciliation shall compare the cash balance in the trust account with the sum of the balances in each individual's account. If the provider or its designee has more than one trust account, each trust account shall be individually reconciled.

(g) If a provider discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the provider immediately shall notify the administrator by a method approved by the administrator. Unless the administrator by rule provides otherwise, within five days thereafter, the provider shall give notice to the administrator describing the remedial action taken or to be taken.

(h) If an individual terminates an agreement or it becomes reasonably apparent to a provider that a plan has failed, the provider shall promptly refund to the individual all money paid by or on behalf of the individual that has not been paid to creditors, less fees that are payable to the provider under ~~section 12-14.5-223~~ SECTION 5-19-223.

(i) Before relocating a trust account from one bank to another, a provider shall inform the administrator of the name, business address, and telephone number of the new bank. As soon as practicable, the provider shall inform the administrator of the account number of the trust account at the new bank.

5-19-223. [Formerly 12-14.5-223] Fees and other charges. (a) A provider may not impose directly or indirectly a fee or other charge on an individual or receive money from or on behalf of an individual for debt-management services except as permitted by this section.

(b) A provider may not impose charges or receive payment for debt-management services until the provider and the individual have signed an agreement that complies with ~~sections 12-14.5-219 and 12-14.5-228~~ SECTIONS 5-19-219 AND 5-19-228.

(c) If an individual assents to an agreement, a provider may not impose a fee or other charge for educational or counseling services, or the like, except as otherwise provided in this subsection (c) and ~~section 12-14.5-228 (d)~~ SECTION 5-19-228 (d).

The administrator may authorize a provider to charge a fee based on the nature and extent of the educational or counseling services furnished by the provider.

(d) The following rules apply:

(1) If an individual assents to a plan that contemplates that creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may charge:

(A) A fee not exceeding fifty dollars for consultation, obtaining a credit report, and setting up an account; and

(B) A monthly service fee, not to exceed ten dollars times the number of creditors remaining in a plan at the time the fee is assessed, but not more than fifty dollars in any month.

(2) If an individual assents to a plan that contemplates that creditors or debt collectors will settle debts for less than the principal amount of the debt:

(A) A provider may not request or receive payment of any fee or consideration until and unless:

(i) The provider has settled the terms of at least one debt pursuant to a settlement agreement or other valid contractual agreement executed by the individual;

(ii) The individual has made at least one payment pursuant to that settlement agreement or other valid contractual agreement between the individual and the creditor or debt collector; and

(iii) The fee or consideration either: Bears the same proportional relationship to the total fee for settling the terms of the entire debt balance as the individual debt amount bears to the entire debt amount, in which case the individual debt amount and the entire debt amount are those owed at the time the debt was enrolled in the service; or is a percentage of the amount saved as a result of the settlement. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the plan and the amount actually paid to satisfy the debt.

~~(B) and (C) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p. 354, § 14, effective July 1, 2011.)~~

~~(D) (B) Notwithstanding subparagraph (A) of this paragraph (2) SUBSECTION (d)(2)(A) OF THIS SECTION, no individual who completes all of his or her obligations under the agreement may be charged fees such that those fees, when added to the aggregate of offers of settlement obtained by the provider for the debtor, exceeds the principal amount of the debt.~~

~~(3) A provider may not impose or receive fees under both paragraphs (1) and (2) of this subsection (d) SUBSECTION (d)(1) AND (d)(2) OF THIS SECTION.~~

~~(4) Except as otherwise provided in section 12-14.5-228 (d) SECTION 5-19-228~~

(d), if an individual does not assent to an agreement, a provider may receive for educational and counseling services it provides to the individual a fee not exceeding one hundred dollars or, with the approval of the administrator, a larger fee. The administrator may approve a fee larger than one hundred dollars if the nature and extent of the educational and counseling services warrant the larger fee.

~~(5) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p. 354, § 14, effective July 1, 2011.)~~

(e) If, before the expiration of ninety days after the completion or termination of educational or counseling services, an individual assents to an agreement, the provider shall refund to the individual any fee paid pursuant to ~~paragraph (4) of subsection (d)~~ SUBSECTION (d)(4) of this section.

(f) If a payment to a provider by an individual under this part 2 is dishonored, a provider may impose a reasonable charge on the individual, not to exceed the lesser of twenty-five dollars and the amount permitted by law other than this part 2.

5-19-224. [Formerly 12-14.5-224] Voluntary contributions. A provider may not solicit a voluntary contribution from an individual or an affiliate of the individual for any service provided to the individual. A provider may accept voluntary contributions from an individual but, until thirty days after completion or termination of a plan, the aggregate amount of money received from or on behalf of the individual may not exceed the total amount the provider may charge the individual under ~~section 12-14.5-223~~ SECTION 5-19-223.

5-19-225. [Formerly 12-14.5-225] Voidable agreements. (a) If a provider imposes a fee or other charge or receives money or other payments not authorized by ~~section 12-14.5-223 or 12-14.5-224~~ SECTION 5-19-223 OR 5-19-224, the individual may void the agreement and recover as provided in ~~section 12-14.5-235~~ SECTION 5-19-235.

(b) If a provider is not registered as required by this part 2 when an individual assents to an agreement, the agreement is voidable by the individual.

(c) If an individual voids an agreement under subsection (b) of this section, the provider does not have a claim against the individual for breach of contract or for restitution.

5-19-226. [Formerly 12-14.5-226] Termination of agreements. (a) If an individual who has entered into an agreement fails for sixty days to make payments required by the agreement, a provider may terminate the agreement.

(b) If a provider or an individual terminates an agreement, the provider shall immediately return to the individual ANY MONEY OF THE INDIVIDUAL HELD IN TRUST FOR THE BENEFIT OF THE INDIVIDUAL.

~~(1) Any money of the individual held in trust for the benefit of the individual.~~

~~(2) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p. 356, § 15, effective July 1, 2011.)~~

5-19-227. [Formerly 12-14.5-227] Periodic reports - retention of records.

(a) A provider shall provide the accounting required by subsection (b) of this section:

(1) Upon cancellation or termination of an agreement; and

(2) Before cancellation or termination of any agreement:

(A) At least once each month; and

(B) Within five business days after a request by an individual, but the provider need not comply with more than one request from an individual in any calendar month.

(b) A provider, in a record, shall provide each individual for whom it has established a plan an accounting of the following information:

(1) The amount of money received from the individual since the last report;

(2) The amounts and dates of disbursement made on the individual's behalf, or by the individual upon the direction of the provider, since the last report to each creditor listed in the plan;

(3) The amounts deducted from the amount received from the individual;

(4) The amount held in reserve; and

(5) If, since the last report, a creditor has agreed to accept as payment in full an amount less than the principal amount of the debt owed by the individual:

(A) The total amount and terms of the settlement;

(B) The amount of the debt when the individual assented to the plan;

(C) The amount of the debt when the creditor agreed to the settlement; and

(D) The calculation of a settlement fee.

(c) A provider shall maintain records for each individual for whom it provides debt-management services for five years after the final payment made by the individual and produce a copy of them to the individual within a reasonable time after a request for them. The provider may use electronic or other means of storage of the records.

5-19-228. [Formerly 12-14.5-228] Prohibited acts and practices. (a) A provider may not, directly or indirectly:

(1) Misappropriate or misapply money held in trust;

(2) Settle a debt on behalf of an individual without the individual's agreement to the settlement terms pursuant to a settlement agreement or other valid contractual

agreement executed by the individual;

~~(3)~~ (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p. 356, § 16, effective July 1, 2011.)

~~(4)~~ (3) Exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;

~~(5)~~ (4) Initiate a transfer from an individual's account at a bank or with another person unless the transfer is:

(A) A return of money to the individual; or

(B) Before termination of an agreement, properly authorized by the agreement and this part 2, and for:

(i) Payment to one or more creditors pursuant to a plan; or

(ii) Payment of a fee;

~~(6)~~ (5) Offer a gift or bonus, premium, reward, or other compensation to an individual for executing an agreement;

~~(7)~~ (6) Offer, pay, or give a gift or bonus, premium, reward, or other compensation to a person for referring a prospective customer, except for a sales lead, if the person making the referral has a financial interest in the outcome of debt-management services provided to the customer, unless neither the provider nor the person making the referral communicates to the prospective customer the identity of the source of the referral;

~~(8)~~ (7) Receive a bonus, commission, or other benefit for referring an individual to a person;

~~(9)~~ (8) Structure a plan in a manner that would result in a negative amortization of any of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt;

~~(10)~~ (9) Compensate its employees on the basis of a formula that incorporates the number of individuals the employee induces to enter into agreements;

~~(11)~~ (10) Settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification by the creditor that the payment is in full settlement of the debt;

~~(12)~~ (11) Make a representation that:

(A) The provider will furnish money to pay bills or prevent attachments;

(B) Payment of a certain amount will permit satisfaction of a certain amount or

range of indebtedness; or

(C) Participation in a plan will or may prevent litigation, collection activity, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment;

~~(13)~~ (12) Misrepresent that it is authorized or competent to furnish legal advice or perform legal services;

~~(14)~~ (13) Represent that it is a not-for-profit entity unless it is organized and properly operating as a not-for-profit under the law of the state in which it was formed or that it is a tax-exempt entity unless it has received certification of tax-exempt status from the federal internal revenue service; except that, if the provider represents that it is a not-for-profit entity and the provider does not have tax-exempt status under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, the provider shall state, in a clear and conspicuous manner and in close proximity to the representation: "We are not an educational, charitable, or religious organization granted tax-exempt status by the Internal Revenue Service."

~~(15)~~ (14) Take a confession of judgment or power of attorney to confess judgment against an individual;

~~(16)~~ (15) Employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information; or

~~(17)~~ (16) Advise, encourage, or suggest to the individual not to make a payment to creditors under the plan.

(b) If a provider furnishes debt-management services to an individual, the provider may not, directly or indirectly:

(1) Purchase a debt or obligation of the individual;

(2) Receive from or on behalf of the individual:

(A) A promissory note or other negotiable instrument other than a check or a demand draft; or

(B) A post-dated check or demand draft;

(3) Lend money or provide credit to the individual, except as a deferral of a settlement fee at no additional expense to the individual;

(4) Obtain a mortgage or other security interest from any person in connection with the services provided to the individual;

(5) Except as permitted by federal law, disclose the identity or identifying information of the individual or the identity of the individual's creditors, except to:

(A) The administrator, upon proper demand;

(B) A creditor of the individual, to the extent necessary to secure the cooperation of the creditor in a plan; or

(C) The extent necessary to administer the plan;

(6) Except as otherwise provided in ~~section 12-14.5-223 (d)(2)~~ SECTION 5-19-223 (d)(2), provide the individual less than the full benefit of a compromise of a debt arranged by the provider;

(7) Charge the individual for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the internet, or any other matter not directly related to debt-management services or educational services concerning personal finance; or

(8) Furnish legal advice or perform legal services, unless the person furnishing that advice to or performing those services for the individual is licensed to practice law.

(c) This part 2 does not authorize any person to engage in the practice of law.

(d) A provider may not receive a gift or bonus, premium, reward, or other compensation, directly or indirectly, for advising, arranging, or assisting an individual in connection with obtaining an extension of credit or other service from a lender or service provider, except for educational or counseling services required in connection with a government-sponsored program.

(e) Unless a person supplies goods, services, or facilities generally and supplies them to the provider at a cost no greater than the cost the person generally charges to others, a provider may not purchase goods, services, or facilities from the person if an employee or a person that the provider should reasonably know is an affiliate of the provider:

(1) Owns more than ten percent of the person; or

(2) Is an employee or affiliate of the person.

5-19-229. [Formerly 12-14.5-229] Notice of litigation. No later than thirty days after a provider has been served with notice of a civil action for violation of this part 2 by or on behalf of an individual who resides in this state at either the time of an agreement or the time the notice is served, the provider shall notify the administrator in a record that it has been sued.

5-19-230. [Formerly 12-14.5-230] Advertising. A provider that advertises debt-management services shall disclose, in an easily comprehensible manner, the information specified in ~~section 12-14.5-217 (d)(3) and (d)(4)~~ SECTION 5-19-217 (d)(3) AND (d)(4).

5-19-231. [Formerly 12-14.5-231] Liability for the conduct of other persons. If a provider delegates any of its duties or obligations under an agreement or this part 2 to another person, including an independent contractor, the provider is liable for conduct of the person that, if done by the provider, would violate the agreement

or this part 2.

5-19-232. [Formerly 12-14.5-232] Powers of administrator - rules. (a) The administrator may act on its own initiative or in response to complaints and may receive complaints, take action to obtain voluntary compliance with this part 2, and seek or provide remedies as provided in this part 2.

(b) The administrator may investigate and examine, in this state or elsewhere, by subpoena or otherwise, the activities, books, accounts, and records of a person that provides or offers to provide debt-management services, or a person to which a provider has delegated its obligations under an agreement or this part 2, to determine compliance with this part 2. Information that identifies individuals who have agreements with the provider shall not be disclosed to the public. In connection with the investigation, the administrator may:

(1) Charge the person the reasonable expenses necessarily incurred to conduct the examination;

(2) Require or permit a person to file a statement under oath as to all the facts and circumstances of a matter to be investigated; and

(3) Seek a court order authorizing seizure from a bank at which the person maintains a trust account required by ~~section 12-14.5-222~~ SECTION 5-19-222, any or all money, books, records, accounts, and other property of the provider that is in the control of the bank and relates to individuals who reside in this state.

(c) The administrator may adopt rules to implement the provisions of this part 2 in accordance with section 24-4-103. ~~C.R.S.~~

(d) The administrator may enter into cooperative arrangements with any other federal or state agency having authority over providers and may exchange with any of those agencies information about a provider, including information obtained during an examination of the provider.

(e) The administrator, by rule, shall establish reasonable fees to be paid by providers for the expense of administering this part 2. The fees may vary by the type of debt-management service provided.

~~(f) and (g) Repealed.~~

5-19-233. [Formerly 12-14.5-233] Administrative and legal remedies. (a) The administrator may enforce this part 2 and rules adopted under this part 2 by taking one or more of the following actions:

(1) Ordering a provider or a director, employee, or other agent of a provider to cease and desist from any violations;

(2) Ordering a provider or a person that has caused a violation to correct the violation, including making restitution of money or property to a person aggrieved by a violation;

(3) Imposing on a provider or a person that has caused a violation a civil penalty not exceeding ten thousand dollars for each violation;

(4) Prosecuting a civil action to:

(A) Enforce an order; or

(B) Obtain restitution, a civil penalty not to exceed ten thousand dollars per violation, an injunction, or other equitable relief;

(5) Intervening in an action brought under ~~section 12-14.5-235~~ SECTION 5-19-235.

(b) If a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under ~~paragraph (1) or (2) of subsection (a)~~ SUBSECTION (a)(1) OR (a)(2) of this section, the administrator or court may impose a civil penalty not exceeding twenty thousand dollars for each violation.

(c) The administrator may maintain an action to enforce this part 2 in any county.

(d) The administrator may recover the reasonable costs of enforcing this part 2 under subsections (a) to (c) of this section, including attorney fees based on the hours reasonably expended and the hourly rates for attorneys of comparable experience in the community.

(e) In determining the amount of a civil penalty to impose under subsection (a) or (b) of this section, the administrator or the court shall consider the seriousness of the violation, the good faith of the violator, any previous violations by the violator, the deleterious effect of the violation on the public, the net worth of the violator, and any other factor the administrator or the court considers relevant to the determination of the civil penalty.

5-19-234. [Formerly 12-14.5-234] Suspension, revocation, or nonrenewal of registration - definitions. (a) In this section, "insolvent" means:

(1) Having generally ceased to pay debts in the ordinary course of business other than as a result of good-faith dispute;

(2) Being unable to pay debts as they become due; or

(3) Being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C. sec. 101 et seq., as amended.

(b) In addition to the remedies otherwise available under this ~~article~~ PART 2, the administrator may suspend, revoke, or deny renewal of a provider's registration if:

(1) A fact or condition exists that, if it had existed when the registrant applied for registration as a provider, would have been a reason for denying registration;

(2) The provider has committed a material violation of this part 2 or a rule or order of the administrator under this part 2;

(3) The provider is insolvent;

(4) The provider or an employee or affiliate of the provider has refused to permit the administrator to make an examination authorized by this part 2, failed to comply with ~~section 12-14.5-232 (b) (2)~~ SECTION 5-19-232 (b)(2) within fifteen days after request, or made a material misrepresentation or omission in complying with ~~section 12-14.5-232 (b) (2)~~ SECTION 5-19-232 (b)(2); or

(5) The provider has not responded within a reasonable time and in an appropriate manner to communications from the administrator.

(c) If a provider does not comply with ~~section 12-14.5-222 (f)~~ SECTION 5-19-222 (f) or if the administrator otherwise finds that the public health, safety, or general welfare requires emergency action, the administrator may order a summary suspension of the provider's registration, effective on the date specified in the order.

(d) If the administrator suspends, revokes, or denies renewal of the registration of a provider, the administrator may seek a court order authorizing seizure of any or all of the money in a trust account required by ~~section 12-14.5-222~~ SECTION 5-19-222, books, records, accounts, and other property of the provider that are located in this state.

(e) If the administrator suspends or revokes a provider's registration, the provider may appeal and request a hearing pursuant to section 24-4-105. ~~C.R.S.~~

5-19-235. [Formerly 12-14.5-235] Private enforcement. (a) If an individual voids an agreement pursuant to ~~section 12-14.5-225 (b)~~ SECTION 5-19-225 (b), the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except amounts paid to creditors, in addition to the recovery under ~~paragraphs (3) and (4) of subsection (c)~~ SUBSECTIONS (c)(3) AND (c)(4) of this section.

(b) If an individual voids an agreement pursuant to ~~section 12-14.5-225 (a)~~ SECTION 5-19-225 (a), the individual may recover in a civil action three times the total amount of the fees, charges, money, and payments made by the individual to the provider, in addition to the recovery under ~~paragraph (4) of subsection (c)~~ SUBSECTION (c)(4) of this section.

(c) Subject to subsection (d) of this section, an individual with respect to whom a provider violates this part 2 may recover in a civil action from the provider and any person that caused the violation:

(1) Compensatory damages for injury, including noneconomic injury, caused by the violation;

(2) Except as otherwise provided in subsection (d) of this section, with respect to a violation of ~~section 12-14.5-217, 12-14.5-219 to 12-14.5-224, 12-14.5-227, or 12-14.5-228 (a), (b), or (d)~~ SECTION 5-19-217, 5-19-219 TO 5-19-224, 5-19-227, OR 5-19-228 (a), (b), OR (d), the greater of the amount recoverable under ~~paragraph (1) of this subsection (c)~~ SUBSECTION (c)(1) OF THIS SECTION or five thousand dollars;

(3) Punitive damages; and

(4) Reasonable attorney fees and costs.

(d) In a class action, except for a violation of ~~section 12-14.5-228 (a)(5)~~ SECTION 5-19-228 (a)(4), the minimum damages provided in ~~paragraph (2) of subsection (c)~~ SUBSECTION (c)(2) of this section do not apply.

(e) In addition to the remedy available under subsection (c) of this section, if a provider violates an individual's rights under ~~section 12-14.5-220~~ SECTION 5-19-220, the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except for amounts paid to creditors.

(f) A provider is not liable under this section for a violation of this part 2 if the provider proves that the violation was not intentional and resulted from a good-faith error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. An error of legal judgment with respect to a provider's obligations under this part 2 is not a good-faith error. If, in connection with a violation, the provider has received more money than authorized by an agreement or this part 2, the defense provided by this subsection (f) is not available unless the provider refunds the excess within two business days after learning of the violation.

(g) The administrator shall assist an individual in enforcing a judgment against the surety bond or other security provided under ~~section 12-14.5-213 or 12-14.5-214~~ SECTION 5-19-213 OR 5-19-214.

5-19-236. [Formerly 12-14.5-236] Violation of unfair or deceptive practices statute. If an act or practice of a provider violates both this part 2 and section 6-1-105, ~~C.R.S.~~, an individual may not recover under both for the same act or practice.

5-19-237. [Formerly 12-14.5-237] Statute of limitations. (a) An action or proceeding brought pursuant to ~~section 12-14.5-233 (a), (b), or (c)~~ SECTION 5-19-233 (a), (b), OR (c) shall be commenced within four years after the conduct that is the basis of the administrator's complaint.

(b) An action brought pursuant to ~~section 12-14.5-235~~ SECTION 5-19-235 shall be commenced within two years after the latest of:

(1) The individual's last transmission of money to a provider;

(2) The individual's last transmission of money to a creditor at the direction of the provider;

(3) The provider's last disbursement to a creditor of the individual;

(4) The provider's last accounting to the individual pursuant to ~~section 12-14.5-227 (a)~~ SECTION 5-19-227 (a);

(5) The date on which the individual discovered or reasonably should have

discovered the facts giving rise to the individual's claim; or

(6) Termination of actions or proceedings by the administrator with respect to a violation of this part 2.

(c) The period prescribed in ~~paragraph (5) of subsection (b)~~ SUBSECTION (b)(5) of this section is tolled during any period during which the provider or, if different, the defendant has materially and willfully misrepresented information required by this part 2 to be disclosed to the individual, if the information so misrepresented is material to the establishment of the liability of the defendant under this part 2.

5-19-238. [Formerly 12-14.5-238] Uniformity of application and construction. In applying and construing this part 2, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

5-19-239. [Formerly 12-14.5-239] Relation to federal "Electronic Signatures in Global and National Commerce Act". This part 2 modifies, limits, and supersedes the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or supersede section 101 (c) of that act, 15 U.S.C. sec. 7001 (c), or authorize electronic delivery of any of the notices described in section 103 (b) of that act, 15 U.S.C. sec. 7003 (b).

5-19-240. [Formerly 12-14.5-240] Transitional provisions - application to existing transactions. Transactions entered into before January 1, 2008, and the rights, duties, and interests resulting from them may be completed, terminated, or enforced as required or permitted by a law amended, repealed, or modified by this part 2 as though the amendment, repeal, or modification had not occurred.

5-19-241. [Formerly 12-14.5-241] Severability. If any provision of this part 2 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part 2 that can be given effect without the invalid provision or application, and to this end the provisions of this part 2 are severable.

5-19-242. [Formerly 12-14.5-242] Repeal of part. This part 2 is repealed, effective September 1, 2024. Prior to such repeal, the department of regulatory agencies shall review the functions of the administrator pursuant to this part 2 and the registration of providers as provided for in section 24-34-104. ~~C.R.S.~~

SECTION 5. In Colorado Revised Statutes, 4-9-201, **amend** (b) as follows:

4-9-201. General effectiveness of security agreement. (b) A transaction subject to this ~~article~~ ARTICLE 9 is subject to any applicable rule of law that establishes a different rule for consumers and any other statute or ~~regulation~~ RULE of this state that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and any consumer protection statute or ~~regulation~~ RULE of this state, including, but not limited to, the "Uniform Consumer Credit Code", articles 1 to 9 of title 5; ~~C.R.S.~~; the "Colorado Consumer Protection Act", article 1 of title 6; ~~C.R.S.~~; "assignment of wages", article 9 of title 8; ~~C.R.S.~~; "property and earnings exempt", article 54 of title 13; ~~C.R.S.~~; and the "Colorado

Fair Debt Collection Practices Act", ~~article 14 of title 12, C.R.S.~~ ARTICLE 16 OF TITLE 5.

SECTION 6. In Colorado Revised Statutes, 5-2-301, **amend** (1)(b) as follows:

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:

(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 14 of title 12, C.R.S.~~ 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 ~~paragraph (b)~~ SUBSECTION (1)(b).

SECTION 7. In Colorado Revised Statutes, 5-3-106, **amend** (2), (3)(a)(I), and (3)(b) as follows:

5-3-106. Disclosures for real estate secured consumer credit transactions. (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 12-14.3-104.3 (1), C.R.S.~~ SECTION 5-18-107 (1) in ~~such form as~~ A FORM obtained from a consumer reporting agency as defined in ~~section 12-14.3-102 (4), C.R.S.~~ 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 12-14.3-104.3 (1), C.R.S.~~ SECTION 5-18-107 (1);

(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 12-14.3-102 (4), C.R.S.~~ 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.

SECTION 8. In Colorado Revised Statutes, 5-5-111, **amend** (3) as follows:

5-5-111. Cure of default. (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 12-14.3-102, C.R.S.~~, SECTION 5-18-103 and 15 U.S.C. sec. 1681a.

SECTION 9. In Colorado Revised Statutes, 5-6-104, **amend** (1)(g) and (1)(i) as follows:

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:

(g) Enforce the provisions of ~~article 14.5 of title 12, C.R.S.~~ ARTICLE 19 OF THIS TITLE 5;

(i) License and regulate collection agencies pursuant to ~~article 14 of title 12, C.R.S.~~ ARTICLE 16 OF THIS TITLE 5; and

SECTION 10. In Colorado Revised Statutes, 5-6-201, **amend** (2) as follows:

5-6-201. Applicability. (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 14 of title 12, C.R.S.~~ ARTICLE 16 OF THIS TITLE 5.

SECTION 11. In Colorado Revised Statutes, 5-6-204, **amend** (1) as follows:

5-6-204. Cash fund created. (1) All fees collected under this code and under article 10 of this ~~title~~ TITLE 5 shall be credited to the uniform consumer credit code cash fund, which ~~fund is hereby~~ IS CREATED AND REFERRED TO IN THIS SECTION AS THE "FUND", and all ~~moneys~~ MONEY credited to ~~such~~ THE fund shall be used for the administration and enforcement of this code, article 10 of this ~~title~~ TITLE 5, and ~~article 14.5 of title 12, C.R.S.~~ 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~~ TITLE 5, and ~~article 14.5 of title 12, C.R.S.~~ 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 ~~such~~ THE expenditures do not exceed twenty-five thousand dollars per fiscal year and do not include the hiring of any full-time equivalents.

SECTION 12. In Colorado Revised Statutes, 6-20-201, **amend** (2) as follows:

6-20-201. Definitions. For the purposes of this part 2, unless the context otherwise requires:

(2) "Collection agency" shall have the same meaning as in ~~section 12-14-103 (2), C.R.S.~~ SECTION 5-16-103 (3).

SECTION 13. In Colorado Revised Statutes, 6-20-202, **amend** (2)(d) as follows:

6-20-202. Notice to patient of debt. (2) (d) The failure of a health care provider or its agent to provide the notice required by subsection (1) of this section shall not create a cause of action or remedy against a collection agency under the "Colorado Fair Debt Collection Practices Act", ~~article 14 of title 12, C.R.S.~~ ARTICLE 16 OF TITLE 5.

SECTION 14. In Colorado Revised Statutes, 8-2-126, **amend** (7) as follows:

8-2-126. Employer use of consumer credit information - violation - short title - definitions. (7) Nothing in this section imposes any liability on a person, including a consumer reporting agency, as that term is defined in ~~section 12-14.3-102 (4), C.R.S.~~ SECTION 5-18-103 (4), for providing an employer with consumer credit information.

SECTION 15. In Colorado Revised Statutes, 10-4-116, **amend** (8)(f) as follows:

10-4-116. Use of credit information. (8) For the purposes of this section, unless the context otherwise requires:

(f) "Consumer reporting agency" shall have the same meaning as in ~~section 12-14-103 (4.5), C.R.S.~~ SECTION 5-16-103 (6).

SECTION 16. In Colorado Revised Statutes, 11-35-101, **amend** (1) as follows:

11-35-101. Alternatives to surety bonds permitted - requirements. (1) The requirement of a surety bond as a condition to licensure or authority to conduct business or perform duties in this state provided in ~~sections 6-16-104.6, 12-5.5-202 (2) (b), 12-6-111, 12-6-112, 12-6-112.2, 12-6-512, 12-6-513, 12-14-124 (1), 12-59-115 (1), 12-60-509 (2.5) (b), 12-61-907, 33-4-101 (1), 33-12-104 (1), 35-55-104 (1), 37-91-107 (2) and (3), 38-29-119 (2), 39-21-105, 39-27-104 (2) (a), (2) (b), (2) (c), (2) (d), (2) (e), (2.1) (a), (2.1) (b), (2.1) (c), (2.5) (a), and (2.5) (b), 39-28-105 (1), 42-6-115 (3), and 42-7-301 (6), C.R.S., SECTIONS 5-16-124 (1), 6-16-104.6, 12-5.5-202 (2)(b), 12-6-111, 12-6-112, 12-6-112.2, 12-6-512, 12-6-513, 12-59-115 (1), 12-61-907, 33-4-101 (1), 33-12-104 (1), 35-55-104 (1), 37-91-107 (2) AND (3), 38-29-119 (2), 39-21-105, 39-27-104 (2)(a), (2)(b), (2)(c), (2)(d), (2)(e), (2.1)(a), (2.1)(b), (2.1)(c), (2.5)(a), AND (2.5)(b), 39-28-105 (1), 42-6-115 (3), AND 42-7-301 (6) may be satisfied by a savings account or deposit in or a certificate of deposit issued by a state or national bank doing business in this state or by a savings account or deposit in or a certificate of deposit issued by a state or federal savings and loan association doing business in this state. ~~Such~~ THE savings account, deposit, or certificate of deposit shall be in the amount specified by statute, if any, and shall be assigned to the appropriate state agency for the use of the people of the state of Colorado. The aggregate liability of the bank or savings and loan association shall in no event exceed the amount of the deposit. For the purposes of the sections referred to in this section, "bond" includes the savings account, deposit, or certificate of deposit authorized by this section.~~

SECTION 17. In Colorado Revised Statutes, 12-58.5-105, **amend** (1) introductory portion and (1)(a) as follows:

12-58.5-105. Exemptions. (1) This ~~article~~ ARTICLE 58.5 does not apply to:

(a) A collection agency or consumer reporting agency, as defined in ~~section 12-14-103 (2) and (4.5)~~ SECTION 5-16-103 (3) AND (6), respectively;

SECTION 18. In Colorado Revised Statutes, 13-21-109, **amend** (1) introductory portion and (1)(b)(II) as follows:

13-21-109. Recovery of damages for checks, drafts, or orders not paid upon presentment. (1) Any person who obtains money, merchandise, property, or other thing of value, or who makes any payment of any obligation other than an obligation on a consumer credit transaction as defined in section 5-1-301 ~~C.R.S.~~, by means of making any check, draft, or order for the payment of money upon any bank, depository, person, firm, or corporation ~~which~~ THAT is not paid upon its presentment, is liable to the holder of ~~such~~ THE check, draft, or order or any assignee for collection for one of the following amounts, at the option of the holder or ~~such~~ assignee:

(b) An amount equal to the face amount of the check, draft, or order and:

(II) If the check, draft, or order has been assigned for collection to a person licensed as a collection agency pursuant to ~~article 14 of title 12, C.R.S.~~ ARTICLE 16 OF TITLE 5 as costs of collection, twenty percent of the face amount of the check, draft, or order but not less than twenty dollars; or

SECTION 19. In Colorado Revised Statutes, 24-1-113, **amend** (4)(a) as follows:

24-1-113. Department of law - creation. (4) (a) The collection agency board, created by ~~article 14 of title 12, C.R.S.~~ ARTICLE 16 OF TITLE 5, and its powers, duties, and functions are transferred by a **type 2** transfer to the department of law as a section of the division of legal affairs and shall be under the supervision of the administrator of the "Uniform Consumer Credit Code", whose office is created by section 5-6-103. ~~C.R.S.~~

SECTION 20. In Colorado Revised Statutes, 24-30-202.4, **amend** (6) and (9) introductory portion as follows:

24-30-202.4. Collection of debts due the state - controller's duties - creation of debt collection fund - definitions - reciprocal debt collection agreements. (6) Any contract awarded to private counsel or private collection agency shall require that ~~such~~ THE contractee remain licensed under ~~such~~ THE contractee's respective occupational licensing statutes or ~~regulations~~ RULES during the term of the contract. ~~Such~~ THE contract shall require that a private counsel or private collection agency shall at all times act in compliance with the provisions of the "Colorado Fair Debt Collection Practices Act", ~~article 14 of title 12, C.R.S.~~ ARTICLE 16 OF TITLE 5, and in compliance with any rules or ~~regulations~~ promulgated by the executive director.

(9) Except as provided in the "Colorado Fair Debt Collection Practices Act", ~~article 14 of title 12, C.R.S.~~ ARTICLE 16 OF TITLE 5, within five days after the initial communication with a debtor in connection with the collection of any debt, the

controller, private counsel, or private collection agency shall, unless the information is contained in the initial communication or the debtor has paid the debt, send the debtor a written notice with the disclosures specified in ~~paragraphs (a) and (b) of this subsection (9)~~ SUBSECTIONS (9)(a) AND (9)(b) OF THIS SECTION. If ~~such~~ THE disclosures are placed on the back of the notice, the front of the notice shall contain a statement notifying debtors of that fact. ~~Such~~ THE disclosures shall state:

SECTION 21. In Colorado Revised Statutes, 24-34-104, **amend** (12)(a)(VII) and (25)(a) as follows:

24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal. (12) (a) The following agencies, functions, or both, will repeal on July 1, 2017:

(VII) The regulation of collection agencies in accordance with ~~article 14 of title 12, C.R.S.~~ ARTICLE 16 OF TITLE 5;

(25) (a) The following agencies, functions, or both, ~~will~~ ARE SCHEDULED FOR repeal on September 1, 2024:

(I) The division of financial services created in article 44 of title 11; ~~C.R.S.;~~

(II) The licensing functions of the banking board and the state bank commissioner specified in article 52 of title 12, ~~C.R.S.;~~ regarding persons who transmit money;

(III) The division of banking and the banking board created in article 102 of title 11; ~~C.R.S.;~~

(IV) The state board of licensure for architects, professional engineers, and professional land surveyors in the department of regulatory agencies created in section 12-25-106; ~~C.R.S.;~~

(V) The state plumbing board created in article 58 of title 12; ~~C.R.S.;~~

(VI) The functions of the broadband deployment board created in section 40-15-509.5, ~~C.R.S.;~~ regarding the administration of the broadband fund created in section 40-15-509.5; ~~C.R.S.;~~

(VII) The evidential breath-testing cash fund created in section 42-4-1301.1 (9); ~~C.R.S.;~~

(VIII) The veterans assistance grant program created in section 28-5-712; ~~C.R.S.;~~

(IX) The underfunded courthouse facility cash fund commission created in part 3 of article 1 of title 13; ~~C.R.S.;~~

(X) The regulation of private occupational schools and their agents under article 59 of title 12, ~~C.R.S.;~~ including the functions of the private occupational school division created in section 12-59-104.1, ~~C.R.S.;~~ and the private occupational school board created in section 12-59-105.1; ~~C.R.S.;~~

(XI) The licensing and regulation of respiratory therapists by the division of professions and occupations in the department of regulatory agencies in accordance with article 41.5 of title 12; ~~C.R.S.;~~

(XII) The Colorado commission for the deaf and hard of hearing created in article 21 of title 26; ~~C.R.S.;~~

(XIII) The regulation of persons registered to practice mortuary science by sections 12-54-110 and 12-54-111, ~~C.R.S.;~~ and cremation by sections 12-54-303 and 12-54-304, ~~C.R.S.;~~ and the administration thereof in accordance with part 4 of article 54 of title 12; ~~C.R.S.;~~

(XIV) The functions specified in part 2 of ~~article 14.5 of title 12, C.R.S.;~~ OF ARTICLE 19 OF TITLE 5 of the administrator designated pursuant to section 5-6-103 ~~C.R.S.;~~ and the registration of debt-management service providers.

SECTION 22. In Colorado Revised Statutes, 24-72-204, **amend** (3.5)(c) introductory portion and (3.5)(c)(V) as follows:

24-72-204. Allowance or denial of inspection - grounds - procedure - appeal - definitions. (3.5) (c) The custodian of any records described in ~~paragraph (a) of this subsection (3.5)~~ SUBSECTION (3.5)(a) OF THIS SECTION that concern an individual who has made a request of confidentiality pursuant to this subsection (3.5) and paid any required processing fee shall deny the right of inspection of the individual's address contained in such records on the ground that disclosure would be contrary to the public interest; ~~except that such~~ THE custodian shall allow the inspection of ~~such~~ THE records by ~~such~~ THE individual, by any person authorized in writing by ~~such~~ THAT individual, and by any individual employed by one of the following entities who makes a request to the custodian to inspect ~~such~~ THE records and who provides evidence satisfactory to the custodian that the inspection is reasonably related to the authorized purpose of the employing entity:

(V) A collection agency which has a valid license as required by ~~section 12-14-115 (1), C.R.S.~~ SECTION 5-16-115 (1);

SECTION 23. In Colorado Revised Statutes, 26-13-116, **amend** (5) as follows:

26-13-116. Debt information made available to consumer reporting agencies - notice to noncustodial parent - fees - rules - definitions. (5) The state board shall promulgate rules, ~~and regulations,~~ pursuant to section 24-4-103, ~~C.R.S.;~~ to implement this section, including but not limited to procedures for contesting the accuracy of the information listed on the notice. ~~Such~~ THE rules shall be in addition to any rights that a person may have to contest a consumer reporting agency report ~~under sections 12-14.3-106 to 12-14.3-108, C.R.S.~~ PURSUANT TO SECTIONS 5-18-110 TO 5-18-117.

SECTION 24. In Colorado Revised Statutes, 39-10-112, **amend** (1)(a) as follows:

39-10-112. Action to collect unpaid taxes. (1) (a) In order to collect delinquent personal property taxes and any delinquent interest thereon, the treasurer may, at the

treasurer's option, sue the owner of the personal property in any court in the treasurer's county having jurisdiction, enter into a contract to employ the services of any collection agency that is duly licensed pursuant to ~~section 12-14-119 or 12-14-120, C.R.S.~~ SECTION 5-16-119 OR 5-16-120, or distraint, seize, and sell the personal property as provided in section 39-10-111.

SECTION 25. In Colorado Revised Statutes, **repeal** articles 14, 14.1, 14.3, and 14.5 of title 12.

SECTION 26. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 25, 2017