

CHAPTER 149

**FINANCIAL INSTITUTIONS**

SENATE BILL 94-036

BY SENATOR Lacy;  
also REPRESENTATIVES Knox, George, Armstrong, DeGette, Gordon, Lyle, Reeser, Rupert, Strom, and Wright.

**AN ACT**

**CONCERNING THE REGULATION OF DEBT MANAGEMENT.**

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

**SECTION 1.** 6-1-105 (1), Colorado Revised Statutes, 1992 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

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

(nn) VIOLATES ANY PROVISION OF ARTICLE 20 OF TITLE 12, C.R.S.

**SECTION 2.** 11-2-103 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**11-2-103. Powers of banking board.** (1) The banking board is the policy-making and rule-making authority for the division of banking and has the power to:

(a) Make, modify, reverse, and vacate rules and regulations for the proper enforcement and administration of this code and the "Public Deposit Protection Act", article 10.5 of this title; ~~and~~

(b) ~~Regulate its own procedure and practice.~~ MAKE, PROMULGATE, ALTER, AMEND, OR REVISE REASONABLE RULES AND REGULATIONS AS MAY BE NECESSARY FOR THE ENFORCEMENT AND EXECUTION OF THE PROVISIONS OF ARTICLE 20 OF TITLE 12, C.R.S.; AND

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

(c) REGULATE PROCEDURE AND PRACTICE OF THE BANKING BOARD.

**SECTION 3.** 12-20-102 (3), (5), and (6), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

**12-20-102. Definitions.** As used in this article, unless the context otherwise requires:

(3) "Debt management" means the planning and management of the financial affairs of a debtor for a fee and the receiving therefrom of money or evidences thereof for the purpose of distributing the same to ~~his~~ SUCH DEBTOR'S creditors in payment or partial payment of ~~his~~ SUCH DEBTOR'S obligations. THE BUSINESS OF DEBT MANAGEMENT IS CONDUCTED IN THIS STATE IF THE DEBT MANAGEMENT BUSINESS, ITS EMPLOYEES, OR ITS AGENTS ARE LOCATED IN THIS STATE OR IF THE DEBT MANAGEMENT BUSINESS SOLICITS OR CONTRACTS WITH DEBTORS LOCATED IN THIS STATE.

(5) "Licensee" means any individual, LIMITED LIABILITY COMPANY, partnership, unincorporated association, or corporation licensed under this article.

(6) "Office" means each location by street number, building number, city, and state where any ~~person~~ INDIVIDUAL, LIMITED LIABILITY COMPANY, PARTNERSHIP, UNINCORPORATED ASSOCIATION, OR CORPORATION engages in debt management. FOR PURPOSES OF THIS ARTICLE, BRANCH OFFICE IS INCLUDED IN THE DEFINITION OF "OFFICE".

**SECTION 4.** 12-20-103, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

**12-20-103. Debt management - licensing of companies and individuals.**

(1) No individual, LIMITED LIABILITY COMPANY, partnership, unincorporated association, or corporation shall engage in the business of debt management in this state, as defined in section 12-20-102, without a license therefor as provided for in this article; except that the following persons are not required to be licensed when engaged in the regular course of their respective businesses and professions:

(a) Attorneys-at-law;

(b) Banks and similar fiduciaries, as duly authorized and admitted to transact business in this state and performing credit and financial adjusting in the regular course of their principal business, or while performing an escrow function;

(c) Title ~~insurers~~ INSURANCE COMPANIES, TITLE INSURANCE AGENTS, and abstract companies while performing an escrow function;

(d) Employees of licensees under this article;

(e) Judicial officers or others acting under court orders;

(f) Nonprofit religious, fraternal, or cooperative organizations offering gratuitous debt management service.

(1.5) ANY INDIVIDUAL, LIMITED LIABILITY COMPANY, PARTNERSHIP, UNINCORPORATED ASSOCIATION, OR CORPORATION CLAIMING AN EXEMPTION FROM LICENSURE PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL HAVE THE BURDEN OF PROVING SUCH EXEMPTION.

(2) The application for such license shall be in writing, under oath, and in the form prescribed by the banking board. The application shall contain the name of the applicant; date of incorporation, if incorporated; ~~the address~~ ANY OFFICE where the business is to be conducted ~~and similar information as to~~ INCLUDING any branch office of the applicant; the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and such other pertinent information as the banking board may require. If the applicant is a partnership, a copy of the certificate of assumed name or articles of partnership shall be filed with the application. If the applicant is a corporation, a copy of the articles of incorporation shall be filed with the application. IF THE APPLICANT IS A LIMITED LIABILITY COMPANY, A COPY OF THE ARTICLES OF ORGANIZATION SHALL BE FILED WITH THE APPLICATION.

(3) (a) Each application shall be accompanied by such evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., a surety bond running to the people of the state of Colorado, insurance, or other evidence of financial responsibility as the banking board by rule determines to be necessary and appropriate for the protection of debtors. The amount of the surety bond or the surety bond alternative meeting the requirements of section 11-35-101, C.R.S., shall not exceed twenty-five thousand dollars. The applicant shall attest to faithfully account for all moneys collected upon accounts entrusted to it and its employees and agents. No individual, LIMITED LIABILITY COMPANY, partnership, unincorporated association, or corporation shall engage in the business of debt management until it has complied with this subsection (3) and the rules of the banking board.

(b) DEBTOR FUNDS COLLECTED BY A LICENSEE INCLUDING THE SURETY BOND OR SURETY BOND ALTERNATIVE REQUIRED BY THIS SUBSECTION (3), EVEN IF COMMINGLED WITH OTHER ASSETS OF THE LICENSEE, SHALL BE DEEMED BY OPERATION OF LAW TO BE HELD IN TRUST FOR THE BENEFIT OF THE DEBTOR IN THE EVENT OF THE BANKRUPTCY OF THE LICENSEE.

(4) Each applicant shall furnish with ~~his~~ SUCH APPLICANT'S application a copy of the contract ~~he~~ SUCH APPLICANT proposes to use between ~~himself~~ THE APPLICANT and the debtor, which shall contain a schedule of fees to be charged the debtor for ~~his~~ THE services OF THE APPLICANT, which shall not exceed ten percent of the total debts to be adjusted, and shall be subject to the approval of the banking board.

(5) At the time of making such application, the applicant shall pay to the banking board A LICENSING FEE IN an amount set by the banking board pursuant to section 11-2-103 (11), C.R.S., ~~as a license fee for each of his~~ FOR THE LICENSING OF SUCH APPLICANT'S DEBT MANAGEMENT BUSINESS. ONE FEE SHALL COVER THE APPLICANT'S OFFICE AND ANY BRANCH offices LISTED ON SUCH APPLICATION. ~~and an~~ A SEPARATE investigation fee in an amount set by the banking board pursuant to section 11-2-103 (11), C.R.S., ~~A separate application shall be made for each office maintained by the applicant.~~ SHALL ALSO BE REQUIRED AND COLLECTED WHEN THE APPLICATION IS

SUBMITTED.

**SECTION 5.** 12-20-106, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

**12-20-106. License renewal.** Each licensee, on or before December first, may make application to the banking board for renewal of such licensee's license. The application shall be on the form prescribed by the banking board and shall be accompanied by a fee in an amount set by the banking board pursuant to section 11-2-103 (11), C.R.S., together with evidence of financial responsibility as in the case of an original application; except that the original application shall be accompanied by an additional fee in an amount set by the banking board pursuant to section 11-2-103 (11), C.R.S. ~~A separate application shall be made for each office maintained by the applicant.~~ AN APPLICATION FOR RENEWAL OF A LICENSE MADE BY A LICENSEE AND THE ACCOMPANYING FEE SHALL BE VALID FOR THE APPLICANT'S OFFICE AND ALL BRANCH OFFICES USED BY THE APPLICANT AS LISTED ON SUCH APPLICATION FOR RENEWAL. NO SEPARATE FEE OR APPLICATION SHALL BE REQUIRED FOR ANY BRANCH OFFICE LISTED ON THE RENEWAL APPLICATION FOR LICENSURE.

**SECTION 6.** 12-20-108, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

**12-20-108. Duties of licensee.** (1) Each licensee who makes a written contract between ~~himself~~ SUCH LICENSEE and a debtor shall immediately furnish the debtor with a true copy of the contract. The contract shall set forth the complete list of the creditors holding such obligations, the total charges agreed upon for the services of the licensee, and the beginning and expiration date of the contract. No contract shall extend for a period longer than ~~twenty-four~~ SIXTY months.

(2) Each licensee shall maintain a separate bank account for the benefit of debtors in which all payments received from the debtor for the benefit of creditors shall be deposited and in which all payments shall remain until a remittance is made to either the debtor or the creditor. Every licensee shall keep, and use in ~~his~~ SUCH LICENSEE'S business, books, accounts, and records which will enable the commissioner to determine whether such licensee is complying with the provisions of this article and with the rules and regulations of the banking board. Every licensee shall preserve such books, accounts, and records for at least seven years after making the final entry on any transaction recorded therein.

(3) Each licensee shall keep complete and adequate records during the term of the contract and for a period of six years from the date of cancellation or completion of the contract with each debtor, which records shall contain complete information regarding the contract, extensions thereof, payments, disbursements, and charges and shall be open to inspection by the commissioner and ~~his~~ THE COMMISSIONER'S duly appointed agents during normal business hours.

(4) Each licensee shall make remittances to creditors within one month after receipt of any funds, or such shorter period as may be provided under the schedule of repayment pursuant to section 12-20-107, less fees and costs.

(5) Each licensee shall, upon request, furnish the debtor a written statement of ~~his~~

SUCH DEBTOR'S account each ninety days, or a verbal accounting at any time the debtor may request it during normal business hours.

(6) No licensee shall accept an account unless a written and thorough budget analysis indicates that the debtor can adequately meet the requirements determined by the budget analysis.

(7) In the event a compromise of a debt is arranged by the licensee with any one or more creditors, the debtor shall have the full benefit of such compromise.

**SECTION 7.** 12-20-109, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

**12-20-109. Duties and power of commissioner.** (1) The commissioner may examine ~~upon five days' notice given the licensee~~ the condition and affairs of ~~said~~ ANY licensee AT SUCH TIMES AS ARE NECESSARY IN THE OPINION OF THE COMMISSIONER AS DIRECTED BY THE BANKING BOARD. In connection with any examination, the commissioner may examine, on oath, any licensee and any director, officer, employee, customer, creditor, or stockholder of a licensee concerning the affairs and business of the licensee. The commissioner shall ascertain whether the licensee transacts its business in the manner prescribed by law and the rules and regulations of the banking board issued thereunder. The licensee shall pay the cost of the examination as determined by the commissioner, which fee shall not exceed a sum per day of examination set by the banking board pursuant to section 11-2-103 (11), C.R.S. Failure to pay the examination fee within thirty days of receipt of demand from the commissioner shall automatically suspend the license until the fee is paid.

(2) In the investigation of alleged violations of this article, the BANKING board or the commissioner may compel the attendance of any person or the production of any books, accounts, records, and files used therein, and may examine under oath all persons in attendance pursuant thereto.

**SECTION 8.** 12-20-110 (1) (e) and (1) (f), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

**12-20-110. Unlawful acts by licensee.** (1) It is unlawful and a violation of this article for the holder of any license issued under the terms and provisions of this article:

(e) To pay any bonus or other consideration to any individual, LIMITED LIABILITY COMPANY, partnership, unincorporated association, or corporation for the referral of a debtor to ~~his~~ SUCH LICENSEE'S business, or to accept or receive any bonus, commission, or other consideration for referring any debtor to any individual, LIMITED LIABILITY COMPANY, partnership, unincorporated association, or corporation for any reason;

(f) To advertise, ~~his services~~ display, distribute, broadcast, or televise or permit to be displayed, advertised, distributed, broadcast, or televised ~~his~~ SUCH LICENSEE'S services in any manner inconsistent with law;

**SECTION 9.** 12-20-112, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

**12-20-112. Violation.** (1) It is unlawful for any individual, LIMITED LIABILITY COMPANY, partnership, unincorporated association, or corporation to engage in the business of debt management without first obtaining a license as required by this article. Any individual, LIMITED LIABILITY COMPANY, partnership, unincorporated association, corporation, or any other group of individuals, however organized, or any owner, partner, member, officer, director, employee, agent, or representative thereof who willfully or knowingly engages in the business of debt management without the license required by this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars for each violation, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

(2) Any licensee who violates any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars for the first offense. Upon conviction of each subsequent offense, there may be assessed a fine of not more than one thousand dollars, or imprisonment in the county jail for a period of not more than one year, or both such fine and imprisonment.

**SECTION 10.** 12-20-113, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

**12-20-113. Limitation of actions.** All actions FOR FRAUD, MISREPRESENTATION, CONCEALMENT, OR DECEIT BROUGHT in any of the courts of this state pursuant to this article shall be commenced within the time period prescribed in section 13-80-103, C.R.S. ALL OTHER CIVIL AND CRIMINAL ACTIONS SHALL BE BROUGHT WITHIN THE APPLICABLE STATUTES OF LIMITATIONS AS PROVIDED BY LAW.

**SECTION 11.** 12-20-114, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

**12-20-114. Commissioner as agent for service of process.** (1) No licensee shall transact business until ~~he~~ SUCH LICENSEE has first appointed in writing the commissioner as agent of the licensee for service of process in this state. Service upon the commissioner, or, in the commissioner's absence, the deputy commissioner, is of the same legal force and validity as if served upon any licensee under this article.

(2) Whenever lawful process against any licensee is served upon the banking board or the commissioner, two copies shall be furnished, and the commissioner shall forthwith forward a copy of the process served, by registered mail, postpaid and directed to the licensee. For each service of process the sum of two dollars shall be collected which shall be paid by the plaintiff at the time of such service, the same to be recovered by ~~him~~ THE PLAINTIFF as part of the taxable costs if ~~he~~ SUCH PLAINTIFF prevails in the suit.

**SECTION 12.** 12-20-115, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

**12-20-115. Disposition of fees.** All moneys received by the banking board and the commissioner from fees, licenses, and examinations pursuant to this article shall be deposited by the banking board and the commissioner with the state treasurer and credited to the ~~general~~ DIVISION OF BANKING CASH fund ~~of the state of Colorado~~ CREATED IN SECTION 11-2-114.5, C.R.S.

**SECTION 13.** 12-20-116, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

**12-20-116. Repeal - review of functions.** This article is repealed, effective ~~July 1, 1994~~ JULY 1, 2000. Prior to such repeal, the licensing functions of the commissioner and the banking board shall be reviewed as provided for in section 24-34-104, C.R.S.

**SECTION 14.** 24-34-104 (23.1) (b), Colorado Revised Statutes, 1988 Repl. Vol., is repealed as follows:

**24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.** (23.1) The following boards and the functions of the specified agencies shall terminate on July 1, 1994:

(b) ~~The licensing of debt management companies through the state bank commissioner in accordance with article 20 of title 12, C.R.S.;~~

**SECTION 15.** 24-34-104, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.** (29.1) THE FOLLOWING FUNCTION OF THE SPECIFIED AGENCY SHALL TERMINATE ON JULY 1, 2000: THE LICENSING OF DEBT MANAGEMENT THROUGH THE BANKING BOARD AND THE STATE BANK COMMISSIONER IN ACCORDANCE WITH ARTICLE 20 OF TITLE 12, C.R.S.

**SECTION 16. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 20, 1994