

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 17-0237.01 Jane Ritter x4342

HOUSE BILL 17-1238

HOUSE SPONSORSHIP

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Holbert, Cooke, Gardner, Guzman, Kagan

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE NONSUBSTANTIVE RELOCATION OF LAWS RELATED**
102 **TO DEBT MANAGEMENT AND COLLECTION SERVICES FROM TITLE**
103 **12, COLORADO REVISED STATUTES, AS PART OF THE**
104 **ORGANIZATIONAL RECODIFICATION OF TITLE 12.**

Bill Summary

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

Committee on Legal Services. Current law directs the office of legislative legal services to study the organizational recodification of title 12, Colorado Revised Statutes, which relates to professions and

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

HOUSE
2nd Reading Unamended
April 3, 2017

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

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

7 ~~(2) (Deleted by amendment, L. 95, p. 1224, § 1, effective July 1,~~
8 ~~1995.)~~

9 **5-16-103. [Formerly 12-14-103] Definitions.** As used in this
10 ~~article~~ ARTICLE 16, unless the context otherwise requires:

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

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

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

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

19 (II) Person who:

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

22 (B) Takes assignment of debts for collection purposes;

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

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

1 (b) "Collection agency" does not include:

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

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

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

13 (IV) Any person while serving or attempting to serve legal process
14 on any other person in connection with the judicial enforcement of any
15 debt;

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

20 ~~(VI) Repealed.~~

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

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

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

27 (C) ~~Such~~ THE activity concerns a debt ~~which~~ THAT was not in

1 default at the time it was obtained by ~~such~~ THE person; or

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

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

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

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

17 (d) For the purposes of ~~section 12-14-108 (1) (f)~~ SECTION
18 5-16-108 (1)(f), "collection agency" includes any person engaged in any
19 business the principal purpose of which is the enforcement of security
20 interests. For purposes of ~~sections 12-14-104, 12-14-105, 12-14-106,~~
21 ~~12-14-107, 12-14-108, and 12-14-109 only~~ SECTIONS 5-16-104, 5-16-105,
22 5-16-106, 5-16-107, 5-16-108, AND 5-16-109 ONLY, "collection agency"
23 includes a debt collector for the department of personnel.

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

1 concern licensing and licensees:

2 ~~(I) (Deleted by amendment, L. 2000, p. 935, § 2, effective July 1,~~
3 ~~2000.)~~

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

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

14 ~~(3)~~(4) "Communication" means conveying information regarding
15 a debt in written or oral form, directly or indirectly, to any person through
16 any medium.

17 ~~(4)~~ (5) "Consumer" means any natural person obligated or
18 allegedly obligated to pay any debt.

19 ~~(4.5)~~(a) (6) (a) "Consumer reporting agency" means any person
20 that, for monetary fees, dues, or on a cooperative nonprofit basis,
21 regularly engages in whole or in part in the practice of assembling or
22 evaluating consumer credit information or other information on
23 consumers for the purpose of furnishing consumer reports to third parties.

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

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

1 5-18-103 (4).

2 ~~(5)~~ (7) "Creditor" means any person who offers or extends credit
3 creating a debt or to which a debt is owed, but ~~such term~~ "CREDITOR"
4 does not include any person to the extent ~~such~~ THE person receives an
5 assignment or transfer of a debt in default solely for the purpose of
6 facilitating collection of ~~such~~ THE debt for another.

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

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

12 ~~(7)~~ (9) "Debt collector" means any person employed or engaged
13 by a collection agency to perform the collection of debts owed or due or
14 asserted to be owed or due to another, and includes any person employed
15 by the department of personnel, or any division of ~~said~~ THAT department,
16 when collecting debts due to the state on behalf of another state agency.

17 ~~(8) (Deleted by amendment, L. 2000, p. 935, § 2, effective July 1,~~
18 ~~2000.)~~

19 ~~(9)~~ (10) "Location information" means a consumer's place of
20 abode and his OR HER telephone number at such place or his OR HER place
21 of employment.

22 ~~(9.3)~~ (11) "Person" means a natural person, firm, corporation,
23 limited liability company, or partnership.

24 ~~(9.5)~~ (12) "Principal" means any individual having a position of
25 responsibility in a collection agency, including but not limited to any
26 manager, director, officer, partner, owner, or shareholder owning ten
27 percent or more of the stock.

1 ~~(10)~~ (13) "Solicitor" means any person employed or engaged by
2 a collection agency who solicits or attempts to solicit debts for collection
3 by ~~such~~ THE person or any other person.

4 ~~(11)~~ (14) "State" means any state, territory, or possession of the
5 United States, the District of Columbia, the Commonwealth of Puerto
6 Rico, or any political subdivision of any of them.

7 **5-16-104. [Formerly 12-14-104] Location information -**
8 **acquisition.** (1) Any debt collector or collection agency communicating
9 with any person other than the consumer for the purpose of acquiring
10 location information about the consumer shall:

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

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

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

20 (d) Not communicate by postcard;

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

26 (f) After the debt collector or collection agency knows the
27 consumer is represented by an attorney with regard to the subject debt and

1 has knowledge of, or can readily ascertain, ~~such~~ THE attorney's name and
2 address, not communicate with any person other than that attorney, unless
3 the attorney fails to respond within a reasonable period of time, not less
4 than thirty days, to communication from the debt collector or collection
5 agency.

6 **5-16-105. [Formerly 12-14-105] Communication in connection**
7 **with debt collection - definition.** (1) Without the prior consent of the
8 consumer given directly to the debt collector or collection agency or the
9 express permission of a court of competent jurisdiction, a debt collector
10 or collection agency shall not communicate with a consumer in
11 connection with the collection of any debt:

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

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

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

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

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

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

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

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

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

25 (c) In its initial written communication to a consumer, a collection
26 agency shall include the following statement: "FOR INFORMATION
27 ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES

1 ACT, SEE WWW.AGO.STATE.CO.US/CADC/CADCMAIN.CFM." If
2 the website address is changed, the notification shall be corrected to
3 contain the correct address. If the notification is placed on the back of the
4 written communication, there shall be a statement on the front notifying
5 the consumer of such fact.

6 ~~(d) (Deleted by amendment, L. 2003, p. 1865, § 2, effective May~~
7 ~~21, 2003.)~~

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

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

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

24 **5-16-106. [Formerly 12-14-106] Harassment or abuse.** (1) A
25 debt collector or collection agency shall not engage in any conduct the
26 natural consequence of which is to harass, oppress, or abuse any person
27 in connection with the collection of a debt, including, but not limited to,

1 the following conduct:

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

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

6 (c) The publication of a list of consumers who allegedly refuse to
7 pay debts, except to a consumer reporting agency or to persons meeting
8 the requirements of 15 U.S.C. sec. 1681b (a) (3) and ~~section 12-14.3-103~~
9 ~~(+)(e)~~ SECTION 5-18-104 (1)(c);

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

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

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

19 **5-16-107. [Formerly 12-14-107] False or misleading**
20 **representations.** (1) A debt collector or collection agency shall not use
21 any false, deceptive, or misleading representation or means in connection
22 with the collection of any debt, including, but not limited to, the
23 following conduct:

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

- 1 (b) The false representation of:
 - 2 (I) The character, amount, or legal status of any debt; or
 - 3 (II) Any services rendered or compensation which may be
 - 4 lawfully received by any debt collector for the collection of a debt;
- 5 (c) The false representation or implication that any individual is
- 6 an attorney or that any communication is from an attorney;
- 7 (d) The representation or implication that nonpayment of any debt
- 8 will result in the arrest or imprisonment of any person or in the seizure,
- 9 garnishment, attachment, or sale of any property or wages of any person
- 10 unless ~~such~~ THE action is lawful and the debt collector, collection agency,
- 11 or creditor intends to take such action;
- 12 (e) The threat to take any action that cannot legally be taken or
- 13 that is not intended to be taken;
- 14 (f) The false representation or implication that a sale, referral, or
- 15 other transfer of any interest in a debt shall cause the consumer to:
 - 16 (I) Lose any claim or defense to payment of the debt; or
 - 17 (II) Become subject to any practice prohibited by this ~~article~~
 - 18 ARTICLE 16;
- 19 (g) The false representation or implication that the consumer
- 20 committed any crime;
- 21 (h) The false representation or implication that the consumer has
- 22 engaged in any disgraceful conduct;
- 23 (i) Communicating or threatening to communicate to any person
- 24 credit information which is known or which should be known to be false,
- 25 including the failure to communicate that a disputed debt is disputed;
- 26 (j) The use or distribution of any written communication which
- 27 simulates or is falsely represented to be a document authorized, issued, or

1 approved by any court, official, or agency of the United States or any state
2 or which creates a false or misleading impression as to its source,
3 authorization, or approval;

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

7 (l) Except as otherwise provided for communications to acquire
8 location information under ~~section 12-14-104~~ SECTION 5-16-104, the
9 failure to disclose clearly, in the initial written communication made to
10 collect a debt or obtain information about a consumer and also, if the
11 initial communication with the consumer is oral, in the initial oral
12 communication, that the debt collector or collection agency is attempting
13 to collect a debt and that any information obtained will be used for that
14 purpose, and, in subsequent communications, that the communication is
15 from a debt collector or collection agency; except that this ~~paragraph (l)~~
16 SUBSECTION (1)(l) shall not apply to a formal pleading made in
17 connection with a legal action;

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

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

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

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

27 (q) The false representation or implication that a debt collector or

1 collection agency operates or is employed by a consumer reporting
2 agency.

3 **5-16-108. [Formerly 12-14-108] Unfair practices.** (1) A debt
4 collector or collection agency shall not use unfair or unconscionable
5 means to collect or attempt to collect any debt, including, but not limited
6 to, the following conduct:

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

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

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

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

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

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

1 (I) There is no present right to possession of the property claimed
2 as collateral through an enforceable security interest;

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

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

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

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

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

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

21 **5-16-109. [Formerly 12-14-109] Validation of debts.** (1) Within
22 five days after the initial communication with a consumer in connection
23 with the collection of any debt, a debt collector or collection agency shall,
24 unless the following information is contained in the initial communication
25 or the consumer has paid the debt, send the consumer a written notice
26 with the disclosures specified in ~~paragraphs (a) to (e) of this subsection~~
27 ~~(f)~~ SUBSECTIONS (1)(a) TO (1)(e) OF THIS SECTION. If ~~such~~ THE disclosures

1 are placed on the back of the notice, the front of the notice shall contain
2 a statement notifying consumers of that fact. ~~Such~~ THE disclosures shall
3 state:

4 (a) The amount of the debt;

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

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

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

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

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

22 (2) If the consumer notifies the debt collector or collection agency
23 in writing within the thirty-day period described in ~~paragraph (c) of~~
24 ~~subsection (1)~~ SUBSECTION (1)(c) of this section that the debt, or any
25 portion thereof, is disputed or that the consumer requests the name and
26 address of the original creditor, the debt collector or collection agency
27 shall cease collection of the debt, or any disputed portion thereof, until the

1 debt collector or collection agency obtains verification of the debt or a
2 copy of a judgment or the name and address of the original creditor and
3 mails a copy of ~~such~~ THE verification or judgment or name and address
4 of the original creditor to the consumer.

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

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

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

18 **5-16-111. [Formerly 12-14-111] Legal actions by collection**
19 **agencies.** (1) Any debt collector or collection agency who brings any
20 legal action on a debt against any consumer shall:

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

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

- 1 (I) ~~Such~~ THE consumer signed the contract sued upon;
- 2 (II) ~~Such~~ THE consumer resides at the commencement of the
3 action; or
- 4 (III) ~~Such~~ THE action may be brought pursuant to article 13 or
5 13.5 of title 26, ~~C.R.S.~~, section 14-14-104, ~~C.R.S.~~, or article 4 or 6 of title
6 19, ~~C.R.S.~~, if the action is by a private collection agency acting on behalf
7 of a delegate child support enforcement unit.

8 **5-16-112. [Formerly 12-14-112] Deceptive forms.** (1) It is
9 unlawful for any person to design, compile, and furnish any form
10 knowing that ~~such~~ THE form would be used to create the false belief in a
11 consumer that a person other than the creditor of ~~such~~ THE consumer is
12 participating in the collection or in the attempted collection of a debt that
13 ~~such~~ THE consumer allegedly owes ~~such~~ THE creditor, when in fact ~~such~~
14 THE person is not so participating.

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

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

21 **5-16-113. [Formerly 12-14-113] Civil liability.** (1) In addition
22 to administrative enforcement pursuant to ~~section 12-14-114~~ SECTION
23 5-16-114 and subject to ~~section 12-14-134~~ SECTION 5-16-132 and the
24 limitations provided by ~~subsection (9)~~ SUBSECTION (10) of this section,
25 and except as otherwise provided by this section, any debt collector or
26 collection agency who fails to comply with any provision of this ~~article~~
27 ARTICLE 16 or private child support collector, as defined in ~~section~~

1 ~~12-14.1-102 (9)~~ SECTION 5-17-102 (9), who fails to comply with any
2 provision of this ~~article~~ ARTICLE 16 or ~~article 14.1 of this title~~ ARTICLE 17
3 OF THIS TITLE 5, with respect to a consumer is liable to ~~such~~ THE
4 consumer in an amount equal to the sum of:

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

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

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

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

19 ~~(1.5)~~ (2) In the case of any unsuccessful action brought under this
20 section, the plaintiff shall be liable to each defendant in an amount equal
21 to that defendant's cost incurred in defending the action, together with
22 ~~such~~ reasonable attorney fees as may be determined by the court.

23 ~~(2)~~ (3) In determining the amount of liability in any action under
24 subsection (1) of this section, the court shall consider, among other
25 relevant factors:

26 (a) In any individual action under ~~subparagraph (I) of paragraph~~
27 ~~(b) of subsection (1)~~ SUBSECTION (1)(b)(I) of this section, the frequency

1 and persistence of noncompliance by the debt collector or collection
2 agency, the nature of ~~such~~ noncompliance, and the extent to which ~~such~~
3 noncompliance was intentional;

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

11 ~~(3)~~ (4) A debt collector, private child support collector, as defined
12 in ~~section 12-14.1-102 (9)~~ SECTION 5-17-102 (9), or collection agency
13 may not be held liable in any action brought pursuant to the provisions of
14 this ~~article~~ ARTICLE 16 if the debt collector or collection agency shows by
15 a preponderance of evidence that the violation was not intentional or
16 grossly negligent and ~~which~~ THE violation resulted from a bona fide error,
17 notwithstanding the maintenance of procedures reasonably adapted to
18 avoid any such error.

19 ~~(4)~~ (5) An action to enforce any liability created by the provisions
20 of this ~~article~~ ARTICLE 16 may be brought in any court of competent
21 jurisdiction within one year from the date on which the violation occurs.

22 ~~(5)~~ (6) No provision of this section imposing any liability shall
23 apply to any act done or omitted in good faith in conformity with any
24 advisory opinion of the administrator, notwithstanding that, after ~~such~~
25 THE act or omission has occurred, ~~such~~ THE opinion is amended,
26 rescinded, or determined by judicial or other authority to be invalid for
27 any reason.

1 ~~(6)~~ (7) The policy of this state is not to award double damages
2 under this ~~article~~ ARTICLE 16 and the federal "Fair Debt Collection
3 Practices Act", 15 U.S.C. sec. 1692 et seq. No damages under this section
4 shall be recovered if damages are recovered for a like provision of said
5 federal act.

6 ~~(7)~~ (8) Notwithstanding subsection (1) of this section, harassment
7 of the employer or the family of a consumer shall be considered an
8 invasion of privacy and a civil action may be brought which is not subject
9 to the damage limitations of ~~said~~ subsection (1) OF THIS SECTION.

10 ~~(8)~~ (9) It shall be an affirmative defense to any action based upon
11 failure of a debt collector, private child support collector, as defined in
12 ~~section 12-14.1-102 (9)~~ SECTION 15-17-102 (9), or collection agency to
13 comply with this section that the debt collector or collection agency
14 believed, in good faith, that the debtor was other than a natural person.

15 ~~(9)~~ (10) There shall be no private cause of action under this
16 section for any alleged violation of ~~section 12-14-128 (4) (a)~~ SECTION
17 5-16-125 (4)(a). Violations of ~~section 12-14-128 (4) (a)~~ SECTION 5-16-125
18 (4)(a) may be prosecuted only through administrative enforcement
19 pursuant to ~~section 12-14-114~~ SECTION 5-16-114.

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

24 (b) If the state controller, or ~~such designee as~~ A PERSON he or she
25 designates to recover ~~moneys~~ MONEY owed to the state, fails to comply
26 with any provision of this ~~article~~ ARTICLE 16, the controller, or ~~such~~ HIS
27 OR HER designee, shall be subject to disciplinary action as specified in the

1 rules promulgated by the executive director of the department of
2 personnel pursuant to article 4 of title 24. ~~C.R.S.~~

3 **5-16-114. [Formerly 12-14-114] Administrative enforcement -**
4 **rules.** Compliance with this ~~article~~ ARTICLE 16 shall be enforced by the
5 administrator. The administrator may make reasonable rules for the
6 administration and enforcement of this ~~article~~ ARTICLE 16, including
7 standards of conduct for licensees and collection notices and forms.

8 **5-16-115. [Formerly 12-14-115] License - registration -**
9 **unlawful acts.** (1) It is unlawful for any person to:

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

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

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

17 ~~(3.5)~~ (2) It is unlawful for a person to act as a collections manager
18 without having complied with ~~sections 12-14-119 and 12-14-122~~
19 SECTIONS 5-16-119 AND 5-16-122.

20 ~~(4)~~ (3) It is unlawful for any person to employ ~~any~~ A person as a
21 solicitor, collections manager, or debt collector under this ~~article~~ ARTICLE
22 16 without complying with this section.

23 **5-16-116. [Formerly 12-14-116] Collection agency board -**
24 **created.** (1) For the purpose of carrying out the provisions of this ~~article~~
25 ARTICLE 16 subject to ~~section 12-14-117 (1)~~ SECTION 5-16-117 (1), the
26 governor shall appoint five members to the collection agency board,
27 which board is hereby created. The members of the board serving on July

1 1, 2003, shall continue to serve their appointed terms, and their successors
2 shall be appointed for three-year terms. Upon the death, resignation, or
3 removal of any member of the board, the governor shall appoint a
4 member to fill the unexpired term. Any member of the board may be
5 removed by the governor for misconduct, neglect of duty, or
6 incompetence. No member may serve more than two consecutive terms
7 without first a lapse of at least one term before being appointed to any
8 additional terms.

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

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

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

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

27 **5-16-117. [Formerly 12-14-117] Powers and duties of the**

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

5 ~~(2) Repealed.~~

6 ~~(3)~~ (2) The administrator is authorized to approve or deny any
7 application submitted pursuant to this ~~article~~ ARTICLE 16 and to issue any
8 license authorized by this ~~article~~ ARTICLE 16.

9 ~~(4)~~ (3) Any complaint received by the administrator regarding
10 violations of this ~~article~~ ARTICLE 16 by an attorney shall be forwarded to
11 the supreme court's attorney regulation counsel.

12 ~~(5)~~ (4) The administrator shall enforce the provisions of ~~article~~
13 ~~14.1 of this title pursuant to section 12-14.1-111~~ ARTICLE 17 OF THIS TITLE
14 5 PURSUANT TO SECTION 5-17-111.

15 **5-16-118. [Formerly 12-14-118] Collection agency license -**
16 **required.** Any person acting as a collection agency must possess a valid
17 license issued by the administrator in accordance with this ~~article~~ ARTICLE
18 16 and any rules ~~and regulations~~ adopted pursuant thereto.

19 **5-16-119. [Formerly 12-14-119] Collection agency license -**
20 **requirements - application - fee - expiration.** (1) As requisites for
21 licensure, ~~the~~ AN applicant for a collection agency license shall:

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

26 (II) Notwithstanding the requirements of ~~subparagraph (I) of this~~
27 ~~paragraph (a)~~ SUBSECTION (1)(a)(I) OF THIS SECTION, the administrator

1 may substitute other business experience for ~~such~~ requirements where
2 ~~such~~ THE business experience has provided comparable experience in
3 collections.

4 (b) (I) Employ a collections manager who shall BE RESPONSIBLE
5 FOR THE ACTIONS OF THE DEBT COLLECTORS IN THAT OFFICE.

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

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

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

14 (c) File a bond in the amount and manner specified in ~~section~~
15 ~~12-14-124~~ SECTION 5-16-124;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (4) When the administrator approves the application, the applicant

1 shall pay a nonrefundable license fee in an amount to be determined by
2 the administrator.

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

18 (~~6~~) (~~Deleted by amendment, L. 2003, p. 1868, § 8, effective May~~
19 ~~21, 2003.~~)

20 (~~7~~) (6) A collection agency must obtain a license for its principal
21 place of business, but its branch offices, if any, need not obtain separate
22 licenses. A collection agency with branch offices must notify the
23 administrator in writing of the location of each branch office within thirty
24 days after the branch office commences business.

25 **5-16-120. [Formerly 12-14-120] License - issuance - grounds**
26 **for denial - appeal - contents.** (1) Upon the approval of the license
27 application by the administrator and the satisfaction of all application

1 requirements, the administrator shall issue the applicant a license to
2 operate as a collection agency.

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

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

11 (4) The license shall state the name of the licensee, location by
12 street and number or office building and room number, city, county, and
13 state where the licensee has his OR HER principal place of business,
14 together with the number and date of ~~such~~ THE license and the date of
15 expiration of the license, and shall further state that it is issued pursuant
16 to this ~~article~~ ARTICLE 16 and that the licensee is duly authorized under
17 this ~~article~~ ARTICLE 16.

18 ~~(5) Repealed.~~

19 ~~(6)~~ (5) The administrator may deny any application for a license
20 or its renewal if the collection agency has failed to perform the duties
21 enumerated in ~~section 12-14-123~~ SECTION 5-16-123.

22 ~~(7)~~ (6) The administrator may deny any application for a license
23 or its renewal if the collection agency does not have a positive net worth.

24 **5-16-121. [Formerly 12-14-121] Collection agency license -**
25 **renewals.** Each licensee shall make an application to renew its license in
26 the form and manner prescribed by the administrator. The application
27 shall be accompanied by a nonrefundable renewal fee in an amount

1 determined by the administrator.

2 **5-16-122. [Formerly 12-14-122] Collection agency license -**
3 **notification of change and reapplication requirements.** (1) (a) Upon
4 any of the following changes, the licensee shall notify the administrator
5 in writing of ~~such~~ THE change within thirty days after its occurrence:

6 (I) Change of business name or address;

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

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

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

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

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

2 (I) In a sole proprietorship or partnership, any change in the
3 persons owning the collection agency;

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

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

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

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

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

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

27 (5) The licensee may appeal the final decision of the administrator

1 pursuant to section 24-4-104. ~~C.R.S.~~

2 **5-16-123. [Formerly 12-14-123] Duties of collection agencies.**

3 (1) A licensee shall:

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

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

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

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

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

1 share of the collection to an operating account is not a violation of this
2 section.

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

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

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

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

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

26 (I) The owner of a sole proprietorship;

27 (II) A partner of a partnership;

1 (III) A member of a limited liability company; or

2 (IV) An officer or director of a corporation.

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

7 **5-16-124. [Formerly 12-14-124] Bond - definition.** (1) Each
8 licensee shall maintain at all times and each applicant shall file, prior to
9 the issuance of any license to ~~such~~ THE applicant, a bond in the sum of
10 twelve thousand dollars plus an additional two thousand dollars for each
11 ten thousand dollars or part thereof by which the average monthly sums
12 remitted or owed to all of its clients during the previous year exceed
13 fifteen thousand dollars; or, in the alternative, an applicant or licensee
14 shall present evidence of a savings account, deposit, or certificate of
15 deposit of the same sum and meeting the requirements of section
16 11-35-101. ~~C.R.S.~~ The total amount of the bond shall not exceed twenty
17 thousand dollars and shall be in favor of the attorney general of the state
18 of Colorado for use of the people of the state of Colorado and the
19 administrator. ~~Such~~ THE bond shall be executed by the applicant or
20 licensee as principal and by a corporation that is licensed by the
21 commissioner of insurance to transact the business of fidelity and surety
22 insurance as surety. If any such surety, during the life of the bond, cancels
23 the bond or reduces the penal sum of the bond, the surety immediately
24 shall notify the administrator in writing. The administrator shall give
25 notice to the licensee that the bond has been cancelled or reduced and that
26 the licensee's license shall automatically expire unless a new or increased
27 bond with proper sureties is filed within thirty days after the date the

1 administrator received the notice, or on ~~such~~ A later date as is stated in the
2 surety's notice.

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

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

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

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

27 (6) (a) ~~Said~~ THE bond shall include a condition that the licensee

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

7 (b) "Debts in process of collection" means any debts ~~which~~ THAT
8 have been in ~~said~~ THE licensee's hands for less than nine months, debts on
9 which payments are being made, or on which payments have been
10 promised, debts on which suit has been brought, and claims ~~which~~ THAT
11 have been forwarded to any other collection agency or attorney.

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

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

1 commissioner of insurance and shall notify the licensee.

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

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

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

19 **5-16-125. [Formerly 12-14-128] Unlawful acts.** (1) In addition
20 to the unlawful acts specified in ~~sections 12-14-112 and 12-14-115~~
21 SECTIONS 5-16-112 AND 5-16-115, it is unlawful and a violation of this
22 ~~article~~ ARTICLE 16 for any person:

23 (a) To refuse or fail to comply with ~~section 12-14-104, 12-14-105,~~
24 ~~12-14-106, 12-14-107, 12-14-108, 12-14-109, 12-14-110, 12-14-118,~~
25 ~~12-14-119 (1), or 12-14-123 (1) (b) to (1) (e) or (2)~~ SECTION 5-16-104,
26 5-16-105, 5-16-106, 5-16-107, 5-16-108, 5-16-109, 5-16-110, 5-16-118,
27 5-16-119 (1), OR 5-16-123 (1)(b) TO (1)(e) OR (2);

1 (b) To aid or abet any person operating or attempting to operate
2 in violation of this ~~article~~ ARTICLE 16, including but not limited to ~~section~~
3 ~~12-14-115~~ SECTION 5-16-115; except that nothing in this ~~article~~ ARTICLE
4 16 shall prevent any licensed collection agency from accepting, as
5 forwarder, claims for collection from any collection agency or attorney
6 whose place of business is outside this state;

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

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

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

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

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

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

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

26 (6) Any officer or agent of a corporation who personally
27 participates in any violation of this ~~article~~ ARTICLE 16 shall be subject to

1 the penalties prescribed in ~~section 12-14-129~~ SECTION 5-16-126 for
2 individuals.

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

7 **5-16-127. [Formerly 12-14-130] Complaint - investigations -**
8 **powers of administrator - sanctions.** (1) Upon ~~the~~ filing with the
9 administrator by any interested person ~~of~~ a written complaint charging
10 any person with a violation of this ~~article~~ ARTICLE 16, any rule adopted
11 pursuant to this ~~article~~ ARTICLE 16, or any lawful order of the
12 administrator, the administrator shall conduct an investigation. ~~thereof.~~

13 (2) For reasonable cause, the administrator may, on its own
14 motion, conduct an investigation of the conduct of any person concerning
15 compliance with this ~~article~~ ARTICLE 16. The administrator may also issue
16 subpoenas to require the attendance of witnesses or the production of
17 documents. ~~which~~ THE subpoenas may be issued to any person, whether
18 located in this state or elsewhere, who has engaged in or is engaging in
19 any violation of this ~~article~~, ARTICLE 16. THE ADMINISTRATOR MAY ALSO
20 administer oaths; conduct hearings in aid of any investigation or inquiry
21 necessary to administer the provisions of this ~~article~~ ARTICLE 16; and
22 apply to the appropriate court for an appropriate order to effect the
23 purposes of this ~~article~~ ARTICLE 16.

24 (3) If any licensee or one of its principals or collections managers
25 is convicted of or enters a plea of guilty or nolo contendere to any crime
26 specified in part 4 of article 4, in part 1, 2, 3, 5, 7, or 9 of article 5, or in
27 article 5.5 of title 18, ~~C.R.S.~~, or any similar crime under the jurisdiction

1 of any federal court or court of another state, the conviction or plea shall
2 constitute grounds for disciplinary action under this section.

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

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

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

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

26 (7) For the purpose of any proceeding under this ~~article~~ ARTICLE
27 16, the administrator may subpoena witnesses and compel them to give

1 testimony under oath. If any subpoenaed witness fails or refuses to appear
2 or testify, the subpoenaing authority may petition the district court, and,
3 upon proper showing, the court may order the witness to appear and
4 testify. Disobedience of the order of court may be punished as a contempt
5 of court.

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

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

15 (10) (a) If the administrator or the administrative law judge finds
16 that the licensee or collections manager has violated this ~~article~~ ARTICLE
17 16, the rules adopted pursuant to this ~~article~~ ARTICLE 16, or any lawful
18 order of the administrator, or if the licensee fraudulently obtained a
19 license, the administrator may issue letters of admonition; deny, revoke,
20 or suspend the license of ~~such~~ THE licensee or approval of the collections
21 manager; place ~~such~~ THE licensee or collections manager on probation;
22 or impose administrative fines in an amount up to one thousand five
23 hundred dollars per violation on the licensee or collections manager.

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

1 administrator to appeal the issuance of the letter.

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

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

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

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

20 **5-16-128. [Formerly 12-14-130.1] Debt collectors for the**
21 **department of personnel - complaint - disciplinary procedures.**

22 (1) Any interested person may file a written complaint with the executive
23 director of the department of personnel charging a debt collector in the
24 employ of the department of personnel with a violation of:

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

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

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

3 (2) Each complaint filed pursuant to this section shall be referred
4 to the executive director of the department of personnel who shall
5 conduct an investigation to determine if a violation of subsection (1) of
6 this section occurred. If the executive director makes a determination that
7 a violation did occur, the debt collector who is the subject of the
8 complaint shall be subject to the disciplinary procedures set forth in rules
9 adopted by the state personnel board. If a determination made pursuant
10 to this subsection (2) is unsatisfactory to any party, an appeal may be
11 made to the board of ethics for the executive branch of state government
12 in the office of the governor.

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

21 **5-16-129. [Formerly 12-14-131] Records.** The administrator shall
22 keep a suitable record of all license applications and bonds required to be
23 filed. ~~Such~~ THE record shall state whether a license has been issued under
24 ~~such~~ THE application and bond and, if revoked, the date of the filing of
25 the order of revocation. The administrator shall keep a list of each person
26 who has had a license revoked or has been terminated as a collections
27 manager for a violation of this ~~article~~ ARTICLE 16. In ~~such~~ THE record, all

1 licenses issued shall be indicated by their serial numbers and the names
2 and addresses of the licensees. This section shall apply to renewal
3 applications and renewal licenses. ~~Such~~ THE record shall be open for
4 inspection as a public record in the office of the administrator.

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

8 **5-16-131. [Formerly 12-14-133] Duty of district attorney.** It is
9 the duty of the district attorney to prosecute all violations of the
10 provisions of this ~~article~~ ARTICLE 16 occurring within his OR HER district.

11 **5-16-132. [Formerly 12-14-134] Remedies.** The remedies
12 provided in this ~~article~~ ARTICLE 16 are in addition to and not exclusive of
13 any other remedies provided by law.

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

27 **5-16-134. [Formerly 12-14-136] Disposition of fees and fines.**

1 (1) (a) All revenue, except fines, collected pursuant to this ~~article~~
2 ARTICLE 16 shall be collected by the administrator and transmitted to the
3 state treasurer, who shall credit the same to the collection agency cash
4 fund, which fund is hereby created AND REFERRED TO IN THIS SECTION AS
5 THE "FUND". The general assembly shall make annual appropriations from
6 ~~such~~ THE fund for the uses and purposes of this ~~article~~ ARTICLE 16. All
7 revenue credited to ~~such~~ THE fund, including earned interest, shall be used
8 for the administration and enforcement of this ~~article~~ ARTICLE 16.

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

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

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

23 **5-16-135. [Formerly 12-14-137] Repeal of article.** This ~~article~~
24 ARTICLE 16 is repealed, effective July 1, 2017.

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

27 **ARTICLE 17**

1 **Colorado Child Support Collection**

2 **Consumer Protection Act**

3 **5-17-101. [Formerly 12-14.1-101] Legislative declaration.** The
4 general assembly hereby finds and determines that, to ensure that families
5 receive the maximum amount of child support established by court or
6 administrative order, additional consumer protections are needed for
7 parents entitled to receive child support who contract with private
8 collection agencies for the collection of child support.

9 **5-17-102. [Formerly 12-14.1-102] Definitions.** As used in this
10 ~~article~~ ARTICLE 17, unless the context otherwise requires:

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

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

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

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

22 (5) "Child support order" means any judgment, decree, order, or
23 administrative order of support in favor of an obligee, whether temporary,
24 permanent, final, or subject to modification, revocation, or remission,
25 regardless of the kind of action or proceeding in which it is entered,
26 requiring the payment of current child support, child support arrears, child
27 support debt, retroactive support, or medical support, whether or not such

1 THE order is combined with an order for maintenance.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (10) "Private child support enforcement service contract" or
8 "contract" means a contract or agreement, as described in ~~section~~
9 ~~12-14.1-106~~ SECTION 5-17-106, pursuant to which a collector agrees to
10 perform a child support enforcement service for an obligee for a fee.

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

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

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

24 **5-17-104. [Formerly 12-14.1-104] Prohibited practices.** (1) A
25 collector may not engage in any fraudulent, unfair, deceptive, or
26 misleading act or practice in soliciting an obligee to enter into a contract
27 for the provision of child support enforcement services or in offering or

1 performing a service pursuant to such a contract, including but not limited
2 to the following:

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

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

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

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

21 (e) When a child support order directs that payment be made
22 through a central payment registry, suggesting or instructing that the
23 obligor or the obligor's employer send the payment to the collector;

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

1 (g) Requiring an obligee to sign a private child support
2 enforcement contract that does not conform to the provisions of ~~section~~
3 ~~12-14.1-106~~ SECTION 5-17-106;

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

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

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

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

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

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

21 **5-17-105. [Formerly 12-14.1-105] Fees.** (1) A private child
22 support collector may not charge an obligee a fee unless:

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

27 (b) Before the obligee incurs the fee, the obligee has authorized

1 the fee in writing.

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

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

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

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

15 **5-17-106. [Formerly 12-14.1-106] Requirements relating to**
16 **private child support enforcement service contracts.** (1) In order to
17 perform a child support enforcement service for an obligee, a collector
18 shall enter into a written private child support enforcement service
19 contract that:

20 (a) Meets the requirements of this section;

21 (b) Has been delivered to the obligee in a form that the obligee
22 may keep;

23 (c) Is dated and signed by the obligee and an authorized
24 representative of the collector;

25 (d) Fully discloses each term of the contract, any fees that may be
26 imposed pursuant to the contract, and any amount that the obligee would
27 be required to pay to the collector for services performed under ~~section~~

1 ~~12-14.1-109~~ SECTION 5-17-109 if the contract were to be canceled or
2 terminated by the obligee; and

3 (e) Includes a copy of any other document the collector requires
4 the obligee to sign.

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

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

13 (a) A clear and accurate explanation of the amount of child
14 support that will be collected;

15 (b) A clear description of the child support enforcement services
16 that may be provided pursuant to the contract;

17 (c) A clear and accurate explanation of the fees that will be
18 deducted and an example of how they are deducted;

19 (d) A good-faith estimate of the total amount of fees that will be
20 charged pursuant to the contract;

21 (e) The full legal name, principal business address, and telephone
22 number of the collector and any agents who assist the collector in
23 providing a child support enforcement service and any separate name,
24 address, and telephone number that the obligee may need for
25 communication about the case;

26 (f) A complete and accurate copy of each disclosure and notice
27 required by this ~~article~~ ARTICLE 17 to be provided to the obligee before

1 the obligee signs the contract;

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

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

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

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

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

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

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

26 (c) A clause that requires the obligee to close, or not open, a child
27 support case with a county delegate child support enforcement unit or

1 state agency administering a state plan approved under Title IV-D of the
2 federal "Social Security Act", as amended; and

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

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

9 (6) A private child support enforcement service contract shall be
10 accompanied by a form, in duplicate, that has the heading "notice of
11 cancellation" and contains a description of, in easy-to-understand
12 language, the cancellation and termination provisions contained in ~~section~~
13 ~~12-14.1-109~~ SECTION 5-17-109, the cancellation rights of the consumer
14 obligee contained in ~~section 12-14.1-109~~ SECTION 5-17-109, and the
15 principal business address of the collector.

16 (7) A collector who enters into a contract with an obligee shall
17 retain a copy of the signed contract and the statement signed by the
18 obligee acknowledging receipt of the preliminary notice required by
19 subsection (2) of this section for a period of five years after the
20 completion or settlement of the collection efforts by the collector or
21 termination of the contract, whichever event occurs first.

22 **5-17-107. [Formerly 12-14.1-107] Accounting for collections.**

23 (1) A collector shall, on a monthly basis, provide to the obligee an
24 accurate and up-to-date accounting that meets the requirements of rules
25 promulgated by the administrator under ~~section 12-14.1-113~~ SECTION
26 5-17-113. The accounting shall be provided to the obligee by mail,
27 telephone, or secure internet connection. The obligee shall request in

1 writing the preferred method that the collector should use to provide the
2 accounting to the obligee.

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

9 **5-17-108. [Formerly 12-14.1-108] Verification of account**
10 **information.** (1) In lieu of ~~section 12-14-109~~ SECTION 5-16-109, the
11 following verification provisions shall apply to the collection of child
12 support by a collector:

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

17 (I) The name of the obligee;

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

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

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

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

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

12 (V) A statement that the arrears balance reflected does not include
13 any amounts owed to a county delegate child support enforcement unit or
14 state agency administering a state plan approved under Title IV-D of the
15 federal "Social Security Act", as amended.

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

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

25 **5-17-109. [Formerly 12-14.1-109] Cancellation or termination**
26 **of private child support enforcement service contract.** (1) An obligee
27 may cancel a private child support enforcement service contract with a

1 collector at any time within thirty days of signing the contract or after any
2 twelve consecutive months in which the collector fails to make a
3 collection. The notification of cancellation shall be in writing and shall
4 be effective upon receipt of the notice by the collector. If the notification
5 of cancellation is received by the collector subsequent to the thirty-day
6 time period following the signing of the contract, the notification shall be
7 valid if post-marked within the thirty-day time period.

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

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

18 (a) The obligee cancels the contract:

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

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

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

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

27 **5-17-110. [Formerly 12-14.1-110] Civil liability.** The provisions

1 of ~~section 12-14-113~~ SECTION 5-16-113, with the exception of the statute
2 of limitations set forth in ~~subsection (4) of said section~~ SECTION 5-16-113
3 (5), shall apply to any violation of this ~~article~~ ARTICLE 17 and are in
4 addition to and not exclusive of any other remedies provided by law.

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

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

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

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

23 **5-17-113. [Formerly 12-14.1-113] Notice - rules.** (1) The
24 administrator shall promulgate rules related to the notice required to be
25 provided to the obligee in ~~section 12-14.1-106 (2)~~ SECTION 5-17-106 (2)
26 and the accounting required to be provided in ~~section 12-14.1-107~~
27 SECTION 5-17-107.

1 character, general reputation, personal characteristics, or mode of living
2 as factors to establish a consumer's eligibility for credit insurance or
3 employment. When a consumer reporting agency undertakes a business
4 that has the potential to profoundly affect an individual consumer's life,
5 whether for good or ill, it is incumbent upon such agencies to ensure that
6 the information they are providing is accurate. Inaccurate consumer credit
7 reports directly impair the efficiency of the banking system and unfair
8 credit reporting methods undermine the public confidence in the banking
9 system. There is a need to ensure that consumer reporting agencies
10 exercise their responsibilities with fairness, impartiality, and respect for
11 the consumer's rights. The general assembly further finds and declares
12 that, in the event the information provided by a consumer reporting
13 agency in a consumer credit report is inaccurate, the consumer has the
14 right to have that information corrected in a swift and uncomplicated way.

15 **5-18-103. [Formerly 12-14.3-102] Definitions.** As used in this
16 ~~article~~ ARTICLE 18, unless the context otherwise requires:

17 (1) "Adverse action" includes:

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

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

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

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

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

11 (b) "Consumer report" does not include:

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

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

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

24 (4) "Consumer reporting agency" means any person ~~which~~ THAT,
25 for monetary fees, dues, or on a cooperative nonprofit basis, regularly
26 engages in whole or in part in the practice of assembling or evaluating
27 consumer credit information or other information on consumers for the

1 purpose of furnishing consumer reports to third parties. "Consumer
2 reporting agency" shall not include any business entity that provides
3 check verification or check guarantee services only.

4 ~~(4.3)~~ (5) "Credit scoring" means the practice of quantifying the
5 credit risk a person presents using ~~such~~ THE person's history,
6 characteristics, or attributes in a formula designed to objectively rate
7 credit risk or insurance risk of loss.

8 ~~(4.5)~~ (6) "Creditworthiness" means any entry in a consumer's
9 credit file that impacts the ability of a consumer to obtain and retain
10 credit, employment, business or professional licenses, investment
11 opportunities, or insurance. Entries contained in a consumer file or in a
12 consumer report that affect creditworthiness shall include, but not be
13 limited to, payment information, defaults, judgments, liens, bankruptcies,
14 collections, records of arrest and indictments, and multiple-credit
15 inquiries.

16 ~~(4.7)~~ (7) "Dwelling" means a residential structure that contains
17 one to four units, whether or not that structure is attached to real property.
18 The term includes any individual condominium unit, cooperative unit,
19 mobile home, or trailer, if it is used as a residence.

20 ~~(5)~~ (8) "Employment purposes", when used in connection with a
21 consumer report, means a report used for the purpose of evaluating a
22 consumer for employment, promotion, reassignment, or retention as an
23 employee.

24 ~~(6)~~ (9) "File" means all of the information on the consumer ~~which~~
25 THAT is recorded and retained by a consumer reporting agency regardless
26 of how the information is stored.

27 ~~(7)~~ (10) "Investigative consumer report" means a consumer report

1 or portion thereof in which information on a consumer's character,
2 general reputation, personal characteristics, or mode of living is obtained
3 through personal interviews with neighbors, friends, or associates of the
4 consumer, reported on or with others with whom the consumer is
5 acquainted or who may have knowledge concerning any ~~such~~ OF THE
6 items of information. The term does not include specific factual
7 information on a consumer's credit record obtained directly from a
8 creditor of the consumer or from a consumer reporting agency when ~~such~~
9 THE information was obtained directly from a creditor of the consumer or
10 from the consumer.

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

15 ~~(8)~~ (12) "Person" means any natural person, firm, corporation, or
16 partnership.

17 ~~(9)~~ (13) "Proper identification" means information generally
18 deemed sufficient to identify a person. If the consumer is unable to
19 reasonably identify himself or herself with the information described
20 above, a consumer reporting agency may require additional information
21 concerning the consumer's employment and personal or family history in
22 order to verify his or her identity.

23 ~~(10)~~ (14) "Reviewing the account" means activities related to
24 account maintenance, monitoring, credit line increases, and account
25 upgrades and enhancements.

26 ~~(11)~~ (15) "Security freeze" or "freeze" means a notice placed in a
27 consumer report, at the request of a consumer and subject to certain

1 exemptions, that prohibits the consumer reporting agency from releasing
2 the consumer report or any information from it without the express
3 authorization of the consumer.

4 **5-18-104. [Formerly 12-14.3-103] Permissible purposes -**
5 **prohibition.** (1) A consumer reporting agency may furnish a consumer
6 report only under the following circumstances:

7 (a) In response to an order of a court having jurisdiction to issue
8 such an order;

9 (b) In accordance with the written instructions of the consumer to
10 whom it relates; and

11 (c) To a person which the consumer reporting agency has reason
12 to believe:

13 (I) Intends to use the information in connection with a credit
14 transaction involving the consumer on whom the information is to be
15 furnished and involving an extension of credit to, or review or collection
16 of an account of, the consumer and if the consumer chooses to provide
17 ~~their~~ HIS OR HER social security number to the user, the user shall include
18 the social security number with, or as a supplement to, a request for a
19 consumer report, and include the social security number when
20 transmitting subsequent credit information to a consumer reporting
21 agency; or

22 (II) Intends to use the information for employment purposes only
23 if an applicant or employee is first informed that a credit report may be
24 requested in connection with his or her application for employment and
25 the consumer consents in writing to the same; or

26 (III) Intends to use credit scoring information in connection with
27 the underwriting or rating of insurance involving the consumer and ~~such~~

1 THE person establishes that the consumer has received written
2 notification, or notification in the same medium as the application for
3 insurance, that a credit report may be requested in connection with his or
4 her application for insurance, and that credit scoring information may be
5 used to determine either the consumer's eligibility for insurance or the
6 premium to be charged to the consumer; or

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

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

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

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

1 **5-18-105. [Formerly 12-14.3-103.5] Consumer reports -**
2 **accuracy of information.** Whenever a consumer reporting agency
3 prepares a consumer report, the agency shall follow reasonable
4 procedures to assure maximum possible accuracy of the information
5 concerning the consumer about whom the report relates, including the use
6 of the consumer's social security number if, in accordance with ~~section~~
7 ~~12-14.3-103 (1)(c)(I)~~ SECTION 5-18-104 (1)(c)(I), the consumer's social
8 security number is provided to the consumer reporting agency by a person
9 intending to use the information contained in a consumer report in
10 connection with a credit transaction involving the consumer and the social
11 security number was initially provided to the user by the consumer in
12 connection with ~~such~~ THAT transaction.

13 **5-18-106. [Formerly 12-14.3-104] Disclosures to consumers.**

14 (1) A consumer reporting agency shall, upon written or verbal request
15 and proper identification of any consumer, clearly, accurately, and in a
16 manner that is understandable to the consumer, disclose to the consumer,
17 in writing, all information in its files at the time of the request pertaining
18 to the consumer, including but not limited to:

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

22 (b) A set of instructions, presented in a manner that is
23 understandable to the consumer, describing how information is presented
24 on its written disclosure of the file; and

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

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

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

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

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

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

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

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

10 **5-18-107. [Formerly 12-14.3-104.3] Credit scoring related to**
11 **the extension of credit secured by a dwelling - definition.** (1) In
12 connection with an application for an extension of credit for a consumer
13 purpose that is to be secured by a dwelling, the consumer reporting
14 agency shall, upon the written request of the consumer, contained either
15 in the application for an extension of credit or in a separate document,
16 disclose to the consumer the following:

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

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

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

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

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

26 (2) (a) Nothing in subsection (1) of this section shall be construed
27 to compel a consumer reporting agency to develop or disclose a credit

1 score if the agency does not:

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

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

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

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

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

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

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

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

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

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

20 **5-18-108. [Formerly 12-14.3-105] Charges for certain**
21 **disclosures.** (1) A consumer reporting agency shall not impose a charge
22 for:

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

25 (b) Notifying any person designated by the consumer, pursuant to
26 the applicable provisions of the federal "Fair Credit Reporting Act", 15
27 U.S.C. sec. 1681i, as amended, of the deletion of information ~~which~~ THAT

1 is found to be inaccurate or ~~which~~ THAT can no longer be verified; or

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

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

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

14 **5-18-109. [Formerly 12-14.3-105.3] Reporting of information**
15 **prohibited.** (1) Except as authorized under subsection (2) of this section,
16 no consumer reporting agency shall make any consumer report containing
17 any of the following items of information:

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

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

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

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

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

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

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

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

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

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

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

22 (4) A consumer reporting agency shall not include, in a consumer
23 report made to a person requesting credit information pertaining to a
24 consumer, the names of any other persons who have requested credit
25 information pertaining to that consumer or the number of such inquiries
26 made more than one year preceding the date of the consumer report;
27 except that such information shall be retained for two years and provided

1 to the consumer as provided in this ~~article~~ ARTICLE 18.

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

9 **5-18-110. [Formerly 12-14.3-106] Procedure for disputed**
10 **information.** (1) If the completeness or accuracy of any item of
11 information contained in the consumer's file is disputed by the consumer
12 and the consumer notifies the consumer reporting agency directly of ~~such~~
13 THE dispute, the agency shall reinvestigate the item free of charge and
14 record the current status of the disputed information on or before thirty
15 business days after the date the agency receives notice conveyed by the
16 consumer. The consumer reporting agency shall provide the consumer
17 with the option of speaking directly to a representative of the agency to
18 notify the agency of disputed information contained in the consumer's
19 file.

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

25 (3) Notwithstanding subsection (1) of this section, a consumer
26 reporting agency may terminate a reinvestigation of information disputed
27 by a consumer under ~~such~~ subsection (1) if the agency reasonably

1 determines that ~~such~~ THE CONSUMER'S dispute ~~by the consumer~~ is
2 frivolous or irrelevant. Upon making such a determination, a consumer
3 reporting agency shall promptly notify the consumer of ~~such~~ ITS
4 determination and ~~the~~ reasons, ~~therefor~~, by mail, or if authorized by the
5 consumer for that purpose, by telephone. The presence of contradictory
6 information in the consumer's file does not in and of itself constitute
7 reasonable grounds for determining the dispute is frivolous or irrelevant.

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

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

25 (6) A consumer reporting agency shall provide written notice of
26 the results of any reinvestigation or reinsertion made pursuant to this
27 section within five business days of the completion of the reinvestigation

1 or reinsertion. ~~Such~~ THE notice shall include:

2 (a) A statement that the reinvestigation is complete;

3 (b) A statement of the determination of the consumer reporting
4 agency on the completeness or accuracy of the disputed information;

5 (c) A copy of the consumer's file or consumer report and a
6 description of the results of the reinvestigation;

7 (d) A notice that, if requested by the consumer, a description of
8 the procedure used to determine the accuracy and completeness of the
9 information shall be provided to the consumer by the consumer reporting
10 agency, including the name, business address, and, if available, the
11 telephone number of any person contacted in connection with ~~such~~ THAT
12 information;

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

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

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

25 (8) The consumer reporting agency shall provide a person who
26 provides credit information to the agency with the option to speak directly
27 with a representative of the agency or to submit corrections to previously

1 reported information by facsimile or other automated means when
2 inaccurate information that was reported by ~~such~~ THE credit information
3 provider appears on a consumer's file. The consumer reporting agency
4 shall, in a period not to exceed five business days from the receipt of ~~such~~
5 THE faxed or automated information regarding ~~such~~ THE corrections,
6 correct ~~such~~ THE inaccuracies on the consumer's file and, upon request,
7 communicate ~~such~~ THE corrections to the person who submitted the initial
8 request for corrections. The credit information provider's communication
9 shall include information established by the consumer reporting agency
10 that identifies him or her as the credit information provider who provided
11 the original inaccurate information. Nothing in this subsection (8) shall
12 be construed to prohibit a consumer reporting agency from correcting
13 inaccurate information in a consumer's file or a consumer report at any
14 time.

15 **5-18-111. [Formerly 12-14.3-106.5] Consumer report**
16 **information block.** (1) (a) A consumer reporting agency shall, within
17 thirty days after the receipt of a police report or order pursuant to this
18 ~~paragraph (a)~~ SUBSECTION (1)(a), permanently block the reporting of any
19 information that a consumer identifies on his or her consumer report as
20 being subject to either a police report or a court order referenced in
21 ~~subparagraph (I) or (II) of this paragraph (a)~~ SUBSECTION (1)(a)(I) OR
22 (1)(a)(II) OF THIS SECTION if the consumer provides a consumer reporting
23 agency with proof of the consumer's identification and a copy of:

24 (I) A police report that alleges that a person other than the
25 consumer obtained or recorded, by means of fraud, theft, or other
26 violation of the "Colorado Criminal Code", personal identifying
27 information of the consumer without authorization from the consumer

1 and that the person used the information to obtain, or attempt to obtain,
2 credit, goods, services, or ~~moneys~~ MONEY in the name of the consumer
3 without the consumer's consent; or

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

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

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

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

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

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

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

24 (b) A consumer reporting agency shall decline to block or shall
25 rescind any block of consumer information if, in the case of a block or
26 block request based upon the filing of an order, the sentencing court
27 amends, dismisses, or withdraws its prior order to correct records issued

1 pursuant to section 18-1.3-603 (7), ~~C.R.S.~~, and the consumer provides
2 ~~such~~ documentation from the court and proof of the consumer's identity.

3 (3) If a block of credit information is declined or rescinded
4 pursuant to this section, the consumer reporting agency shall promptly
5 notify the consumer in the same manner as consumers are notified of the
6 reinsertion of information pursuant to ~~section 12-14.3-106~~ SECTION
7 5-18-110. The prior presence of the blocked information in the consumer
8 reporting agency's file on the consumer is not evidence of whether the
9 consumer knew or should have known that he or she obtained possession
10 of any goods, services, or ~~moneys~~ MONEY.

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

17 **5-18-112. [Formerly 12-14.3-106.6] Security freeze - timing -**
18 **covered entities - cost.** (1) (a) A consumer may elect to place a security
19 freeze on his or her consumer report by making a request in writing by
20 certified mail to a consumer reporting agency.

21 (b) Except as provided in ~~subsection (11) and paragraph (b) of~~
22 ~~subsection (6)~~ SUBSECTIONS (6)(b) AND (11) of this section, if a security
23 freeze is in place, information from a consumer report may not be
24 released to a third party without prior, express authorization from the
25 consumer.

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

1 to the consumer report.

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

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

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

15 (a) Proper identification;

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

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

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

26 (5) A consumer reporting agency may develop procedures
27 involving the use of telephone, fax, internet, or other electronic media to

1 receive and process a request from a consumer to place a freeze or to
2 temporarily lift a freeze on a consumer report pursuant to subsection (3)
3 of this section in an expedited manner.

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

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

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

14 (7) If a third party requests access to a consumer report on which
15 a security freeze is in effect, and the request is in connection with an
16 application for credit or other use, and the consumer does not allow his
17 or her consumer report to be accessed by that specific party or during that
18 period of time, the third party may treat the application as incomplete.

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

24 (9) Except as otherwise provided pursuant to ~~paragraph (b) of~~
25 ~~subsection (6)~~ SUBSECTION (6)(b) of this section, a security freeze shall
26 remain in place until the consumer requests that the security freeze be
27 removed. A consumer reporting agency shall remove a security freeze

1 within three business days of receiving a request for removal from the
2 consumer, who provides both of the following:

- 3 (a) Proper identification; and
- 4 (b) The unique personal identification number or password
5 provided by the consumer reporting agency pursuant to ~~paragraph (b) of~~
6 ~~subsection (2)~~ SUBSECTION (2)(b) of this section.

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

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

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

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

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

26 (d) A state or local agency, law enforcement agency, trial court,
27 private collection agency, or person acting pursuant to a court order,

- 1 warrant, or subpoena authorizing the use of the consumer report;
- 2 (e) A child support enforcement agency acting to enforce child
3 support obligations;
- 4 (f) The department of health care policy and financing or its
5 agents or assigns acting to investigate fraud;
- 6 (g) The department of human services or its agents or assignees
7 acting to investigate fraud;
- 8 (h) The department of revenue or its agents or assigns acting to
9 investigate or collect delinquent taxes or unpaid court orders or to fulfill
10 any of its other statutory responsibilities or exercise any of its statutory
11 authority;
- 12 (i) The use of credit information for the purposes of prescreening
13 as provided for by the FEDERAL "Fair Credit Reporting Act", 15 U.S.C.
14 sec. 1681 et seq.;
- 15 (j) Any person or entity administering a credit file monitoring
16 subscription service to which the consumer has subscribed;
- 17 (k) Any person or entity for the purpose of providing a consumer
18 with a copy of his or her consumer report upon the consumer's request;
- 19 (l) Any person or entity for use in setting or adjusting a rate,
20 adjusting a claim, or underwriting for insurance purposes;
- 21 (m) A pension plan acting to determine the consumer's eligibility
22 for plan benefits or payments authorized by law or to investigate fraud;
- 23 (n) A person conducting a pre-sentence investigation in a criminal
24 matter or a probation officer using this information for supervision of an
25 offender;
- 26 (o) A collections investigator or other person engaged in the
27 collecting of fees, fines, or restitution assessed in a court proceeding;

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

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

7 (12) (a) Fees for requesting a security freeze, temporarily lifting
8 a security freeze, and permanently removing a security freeze from
9 consumer reports may be charged only in accordance with this subsection
10 (12).

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

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

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

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

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

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

5 State Consumers Have the Right to Obtain a Security Freeze

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

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

23 The security freeze is designed to prevent credit,
24 loans, and services from being approved in your name
25 without your consent. When you place a security freeze on
26 your consumer report, within five business days you will be
27 provided procedures for the temporary release of your

1 consumer report to a specific party or parties or for a period
2 of time after the security freeze is in place. To provide that
3 authorization, you must contact the consumer reporting
4 agency and provide the proper information regarding the
5 third party or parties who are to receive the consumer
6 report or the period of time for which the report shall be
7 available to users of the consumer report.

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

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

17 You should be aware that using a security freeze to
18 take control over who gains access to the personal and
19 financial information in your consumer report may delay,
20 interfere with, or prohibit the timely approval of any
21 subsequent request or application you make regarding new
22 loans, credit, mortgage, insurance, government services or
23 payments, rental housing, employment, investment, license,
24 cellular phone, utilities, digital signature, internet credit
25 card transaction, or other services, including an extension
26 of credit at the point of sale. You should plan ahead and lift
27 a security freeze either completely if you are shopping

1 around, or specifically for a certain creditor a few days
2 before actually applying for new credit.

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

8 **5-18-114. [Formerly 12-14.3-106.8] Security freeze -**
9 **prohibition of changing official information in credit report.** If a
10 security freeze is in place, a consumer reporting agency shall not change
11 any of the following official information in a consumer report without
12 sending a written notice of the change to the consumer within thirty days
13 of the change being posted to the consumer's file: Name, date of birth,
14 social security number, and address. Written notice is not required for
15 technical modifications of a consumer's official information, including
16 name and street abbreviations, complete spellings, or transposition of
17 numbers or letters. In the case of an address change, the written notice
18 shall be sent to both the new address and the former address.

19 **5-18-115. [Formerly 12-14.3-106.9] Security freeze -**
20 **exemptions.** (1) ~~Sections 12-14.3-106.6 to 12-14.3-106.8~~ SECTIONS
21 5-18-112 TO 5-18-114 shall not apply to a consumer reporting agency that
22 acts only as a reseller of credit information by assembling and merging
23 information contained in the database of another consumer reporting
24 agency or multiple consumer reporting agencies, and that does not
25 maintain a permanent database of credit information from which new
26 consumer reports are produced. However, a consumer reporting agency
27 shall honor any security freeze placed on a consumer report by another

1 consumer reporting agency.

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

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

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

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

16 **5-18-116. [Formerly 12-14.3-107] Consumer's right to file**
17 **action in court or arbitrate disputes.** An action to enforce any
18 obligation of a consumer reporting agency to a consumer under this
19 ~~article~~ ARTICLE 18 may be brought in any court of competent jurisdiction
20 as provided by the federal "Fair Credit Reporting Act" or submitted to
21 binding arbitration after the consumer has followed all dispute procedures
22 in ~~section 12-14.3-106~~ SECTION 5-18-110 and has received the notice
23 specified in ~~subsection (6) of said section~~ SECTION 5-18-110 (6), or has
24 followed all of the block procedures in ~~section 12-14.3-106.5~~ SECTION
25 5-18-111, or has followed all of the freeze procedures in ~~section~~
26 ~~12-14.3-106.6~~ SECTION 5-18-112, in the manner set forth in the rules of
27 the American arbitration association to determine whether the consumer

1 reporting agency met its obligations under this ~~article~~ ARTICLE 18. No
2 decision by an arbitrator pursuant to this section shall affect the validity
3 of any obligations or debts owed to any party. A successful party to any
4 ~~such~~ arbitration proceeding shall be compensated for the costs and
5 attorney fees of the proceeding as determined by the court or arbitration.
6 No consumer may submit more than one action to arbitration against any
7 consumer reporting agency during any one-hundred-twenty-day period.
8 The results of an arbitration action brought against a consumer reporting
9 agency doing business in this state shall be communicated in a timely
10 manner with all other consumer reporting agencies doing business in this
11 state. If, as a result of an arbitration a determination is made in favor of
12 the consumer, any adverse information in ~~such~~ THE consumer's file or
13 record shall be blocked, removed, or stricken in a timely manner, or the
14 consumer report shall be frozen within five days of receipt of ~~such~~ THE
15 determination by the consumer reporting agency. If ~~such~~ THE adverse
16 information is not ~~so~~ blocked, removed, or stricken, or the file is not
17 frozen, the consumer may bring an action against the noncomplying
18 agency pursuant to this section notwithstanding the
19 one-hundred-twenty-day waiting period.

20 **5-18-117. [Formerly 12-14.3-108] Violations.** (1) Any consumer
21 reporting agency that willfully violates any provision of this ~~article~~
22 ARTICLE 18, or the federal "Fair Credit Reporting Act", 15 U.S.C. sec.
23 1681c, as amended, shall be liable for three times the amount of actual
24 damages or one thousand dollars for a violation of ~~section 12-14.3-106.6~~
25 SECTION 5-18-112, or for each inaccurate or unblocked entry in the
26 consumer's file that was disputed or alleged to be unauthorized in
27 accordance with ~~section 12-14.3-106.5~~ SECTION 5-18-111 by the

1 consumer, whichever is greater, reasonable attorney fees, and costs.

2 (2) (a) Any consumer reporting agency that negligently violates
3 this ~~article~~ ARTICLE 18, or the federal "Fair Credit Reporting Act", 15
4 U.S.C. sec. 1681c, as amended, shall be liable for the greater of actual
5 damages or one thousand dollars for each violation of ~~section~~
6 ~~12-14.3-106.6~~ SECTION 5-18-112, or for each inaccurate or unblocked
7 entry in the consumer's file that was disputed or alleged to be
8 unauthorized in accordance with ~~section 12-14.3-106.5~~ SECTION 5-18-111
9 by the consumer that affects the consumer's creditworthiness, as defined
10 in ~~section 12-14.3-102 (4.5)~~ SECTION 5-18-103 (6), plus reasonable
11 attorney fees, and costs, if within thirty days after receiving notice of
12 dispute from a consumer, in accordance with ~~section 12-14.3-106~~
13 SECTION 5-18-110, the consumer reporting agency does not correct the
14 complained of items or activities and does not send the consumer and,
15 upon request of the consumer, any person who has requested the
16 consumer information, written notification of ~~such~~ THE corrective action,
17 in accordance with ~~section 12-14.3-106 (6), or section 12-14.3-106.6~~
18 SECTION 5-18-110 (6) OR SECTION 5-18-112, or if, within thirty days after
19 receiving a copy of a police report alleging, or a certified court order
20 finding, unauthorized activity, the consumer reporting agency does not
21 block the information in accordance with ~~section 12-14.3-106.5~~ SECTION
22 5-18-111.

23 (b) Any consumer reporting agency that negligently violates this
24 ~~article~~ ARTICLE 18, or the federal "Fair Credit Reporting Act", 15 U.S.C.
25 sec. 1681c, as amended, shall be liable for the greater of actual damages
26 or one thousand dollars for all violations of ~~section 12-14.3-106.6~~
27 SECTION 5-18-112 or all inaccurate or unblocked entries in the consumer's

1 file that were disputed or alleged to be unauthorized in accordance with
2 ~~section 12-14.3-106.5 or section 12-14.3-106.6~~ SECTION 5-18-111 OR
3 SECTION 5-18-112 by the consumer that did not affect the consumer's
4 creditworthiness, plus reasonable attorney fees, and costs, if within thirty
5 days after receiving notice of dispute from a consumer, in accordance
6 with ~~section 12-14.3-106~~ SECTION 5-18-110, the consumer reporting
7 agency does not correct the complained of items or activities and does not
8 send the consumer and, if requested by the consumer, any person who has
9 requested the consumer information, written notification of ~~such~~ THE
10 corrective action, in accordance with ~~section 12-14.3-106 (6) or section~~
11 ~~12-14.3-106.6~~ SECTION 5-18-110 (6) OR SECTION 5-18-112 or if, within
12 thirty days after receiving a copy of a police report alleging, or a certified
13 court order finding, unauthorized activity, the consumer reporting agency
14 does not block the information in accordance with ~~section 12-14.3-106.5~~
15 SECTION 5-18-111.

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

24 **5-18-118. [Formerly 12-14.3-109] Provisions of article**
25 **cumulative.** The provisions of this ~~article~~ ARTICLE 18 are cumulative, and
26 any action taken under the provisions of this ~~article~~ ARTICLE 18 shall not
27 constitute an election to take any such action to the exclusion of any other

1 action authorized by law; except that a credit reporting agency shall not
2 be subject to suit with respect to any issue that was the subject of an
3 arbitration proceeding brought pursuant to ~~section 12-14.3-107~~ SECTION
4 5-18-116.

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

7 **ARTICLE 19**

8 **Debt-Management Services**

9 PART 1

10 COLORADO CREDIT SERVICES

11 ORGANIZATION ACT

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

15 **5-19-102. [Formerly 12-14.5-102] Legislative declaration.**

16 (1) The general assembly finds and declares that:

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

24 (b) Certain advertising and business practices of some credit
25 services organizations have worked a financial hardship upon the people
26 of this state, often those who are of limited economic means and
27 inexperienced in credit matters. Credit services organizations have

1 significant impact upon the economy and well-being of this state and its
2 people.

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

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

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

14 **5-19-103. [Formerly 12-14.5-103] Definitions.** As used in this
15 part 1, unless the context otherwise requires:

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

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

1 (a) ~~(Deleted by amendment, L. 2009, (HB 09-1141), ch. 41, p.~~
2 ~~159, § 7, effective July 1, 2009.)~~

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

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

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

11 ~~(5) Repealed.~~

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

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

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

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

1 connection with the offer or sale of the services of a credit services
2 organization; or

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

9 **5-19-105. [Formerly 12-14.5-106] Written disclosure required.**
10 Before the execution of a contract or agreement between the buyer and a
11 credit services organization or before the receipt by the credit services
12 organization of any money or other valuable consideration, whichever
13 occurs first, the credit services organization shall provide the buyer with
14 a statement in writing containing all the information required by ~~section~~
15 ~~12-14.5-107~~ SECTION 5-19-106. The credit services organization shall
16 maintain on file for a period of two years an exact copy of the statement,
17 personally signed by the buyer, acknowledging receipt of a copy of the
18 statement.

19 **5-19-106. [Formerly 12-14.5-107] Content of written**
20 **disclosure.** (1) The information statement required pursuant to ~~section~~
21 ~~12-14.5-106~~ SECTION 5-19-105 shall be printed in at least ten-point type
22 and shall include:

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

25 **RIGHTS UNDER COLORADO**
26 **AND FEDERAL LAW**

27 You have a right to obtain a copy of your credit

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

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

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

1 services.

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

4 **5-19-107. [Formerly 12-14.5-108] Written contracts required.**

5 (1) Each contract between the buyer and a credit services organization
6 for the purchase of the services of the credit services organization shall
7 be in writing, dated, signed by the buyer, and include the following:

8 (a) A conspicuous statement in bold-faced type, in immediate
9 proximity to the space reserved for the signature of the buyer, as follows:

10 "You, the buyer, may cancel this contract at any time prior to midnight of
11 the fifth working day after the date of the transaction. See the attached
12 notice of cancellation form for an explanation of this right."

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

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

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

19 (II) The estimated date by which the services are to be performed,
20 or the estimated length of time for performing the services;

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

27 (d) The credit services organization's principal business address

1 which shall be the actual office location of the organization and the name
2 and address of its agent in the state authorized to receive service of
3 process.

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

9 Notice of Cancellation

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

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

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

21 I hereby cancel this transaction,
22 _____ (date) _____
23 _____ (purchaser's signature) _____.

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

27 **5-19-108. [Formerly 12-14.5-109] Waivers and exemptions.**

1 (1) Any waiver by a buyer of any part of this part 1 is void as against
2 public policy. Any attempt by a credit services organization to have a
3 buyer waive rights given by this part 1 is a violation of this part 1.

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

7 **5-19-109. [12-14.5-110] Criminal penalties and injunctive**
8 **relief.** (1) Any person who violates any provision of this part 1 commits
9 a class 1 misdemeanor and shall be punished as provided in section
10 18-1.3-501. ~~C.R.S.~~ Violating any provision of this part 1 with respect to
11 any buyer shall constitute a class 1 public nuisance subject to the
12 provisions of part 3 of article 13 of title 16. ~~C.R.S.~~

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

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

24 **5-19-110. [Formerly 12-14.5-110.5] Powers of administrator of**
25 **the uniform consumer credit code and district attorney - subpoenas**
26 **- hearings.** (1) When the administrator of the uniform consumer credit
27 code or district attorney has cause to believe that any person, whether

1 located in this state or elsewhere, has violated or is violating any
2 provision of this part 1, the administrator or district attorney may, in
3 addition to the other powers conferred upon the administrator or district
4 attorney by this part 1:

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

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

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

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

26 (2) In the event of a willful violation by a credit services
27 organization of this part 1 or of a contract subject to this part 1, a person

1 who is injured thereby shall be awarded, in addition to the damages
2 allowable under subsection (1) of this section, an additional amount equal
3 to twice the actual damages awarded under subsection (1) of this section.

4 ~~(3) Repealed.~~

5 **5-19-112. [Formerly 12-14.5-112] Aiding or assisting violation.**

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

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

16 **5-19-114. [Formerly 12-14.5-114] Relation between parts of**
17 **article.** In the event of a conflict between part 2 of this ~~article~~ ARTICLE 19
18 and this part 1, the provisions of part 2 of this ~~article~~ ARTICLE 19 shall
19 control. A credit service organization that also performs
20 debt-management services shall comply with the requirements of part 2
21 of this ~~article~~ ARTICLE 19.

22 PART 2

23 UNIFORM DEBT-MANAGEMENT SERVICES ACT

24 **5-19-201. [Formerly 12-14.5-201] Short title.** ~~This part 2 shall be~~
25 ~~known and may be cited as~~ THE SHORT TITLE OF THIS PART 2 IS the
26 "Uniform Debt-Management Services Act".

27 **5-19-202. [Formerly 12-14.5-202] Definitions.** As used in this

1 part 2, unless the context otherwise requires:

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

4 (2) "Affiliate":

5 (A) With respect to an individual, means:

- 6 (i) The spouse of the individual;
- 7 (ii) A sibling of the individual or the spouse of a sibling;
- 8 (iii) An individual or the spouse of an individual who is a lineal
9 ancestor or lineal descendant of the individual or the individual's spouse;
- 10 (iv) An aunt, uncle, great aunt, great uncle, first cousin, niece,
11 nephew, grandniece, or grandnephew, whether related by the whole or the
12 half blood or adoption, or the spouse of any of them; or

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

15 (B) With respect to an entity, means:

- 16 (i) A person that directly or indirectly controls, is controlled by,
17 or is under common control with, the entity;
- 18 (ii) An officer of, or an individual performing similar functions
19 with respect to, the entity;
- 20 (iii) A director of, or an individual performing similar functions
21 with respect to, the entity;
- 22 (iv) A person that receives or received more than twenty-five
23 thousand dollars from the entity in either the current year or the preceding
24 year or a person that owns more than ten percent of, or an individual who
25 is employed by or is a director of, a person that receives or received more
26 than twenty-five thousand dollars from the entity in either the current year
27 or the preceding year;

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

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

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

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

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

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

22 ~~(6) and (7) (Deleted by amendment, L. 2011, (HB 11-1206), ch.~~
23 ~~113, p. 348, § 1, effective July 1, 2011.)~~

24 ~~(8)~~ (6) "Concessions" means assent to repayment of a debt on
25 terms more favorable to an individual than the terms of the contract
26 between the individual and a creditor.

27 ~~(9)~~ (7) "Day" means calendar day.

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

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

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

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

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

21 ~~(11)~~ (9) "Entity" means a person other than an individual.

22 ~~(12)~~ (10) "Good faith" means honesty in fact and the observance
23 of reasonable standards of fair dealing.

24 ~~(12.5)~~ (11) "Individual" means a natural person.

25 ~~(13)~~ (12) "Person" means an individual, corporation, business
26 trust, estate, trust, partnership, limited liability company, association, joint
27 venture, or any other legal or commercial entity. The term does not

1 include a public corporation, government, or governmental subdivision,
2 agency, or instrumentality.

3 ~~(14)~~ (13) "Plan" means a program or strategy in which a provider
4 furnishes debt-management services to an individual and that includes a
5 schedule of payments to be made by or on behalf of the individual and
6 used to pay debts owed by the individual.

7 ~~(15)~~ (14) "Principal amount of the debt" means the amount of a
8 debt at the time of an agreement.

9 ~~(16)~~ (15) "Provider" means a person that provides, offers to
10 provide, or agrees to provide debt-management services directly or
11 through others.

12 ~~(17)~~ (16) "Record" means information that is inscribed on a
13 tangible medium or that is stored in an electronic or other medium and is
14 retrievable in perceivable form.

15 ~~(18)~~ (17) "Settlement fee" means a charge imposed on or paid by
16 an individual in connection with a creditor's assent to accept in full
17 satisfaction of a debt an amount less than the principal amount of the
18 debt.

19 ~~(19)~~ (18) "Sign" means, with present intent to authenticate or
20 adopt a record:

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

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

24 ~~(20)~~ (19) "State" means a state of the United States, the District
25 of Columbia, Puerto Rico, the United States Virgin Islands, or any
26 territory or insular possession subject to the jurisdiction of the United
27 States.

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

- 3 (i) Established in an insured bank;
- 4 (ii) Separate from other accounts of the provider or its designee;
- 5 (iii) Designated as a trust account or other account designated to
6 indicate that the money in the account is not the money of the provider;
- 7 and

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

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

- 16 (i) The funds are held in an account at an insured financial
17 institution;
- 18 (ii) The individual owns the funds held in the account and is paid
19 accrued interest on the account, if any;
- 20 (iii) The entity administering the account is not owned, controlled
21 by, or in any way affiliated with the provider;
- 22 (iv) The entity administering the account does not give or accept
23 any money or other compensation in exchange for referrals of business
24 involving the debt management provider or plan; and
- 25 (v) The individual may withdraw from the debt management plan
26 at any time without penalty, and immediately receives all funds in the
27 account, other than fees earned in compliance with ~~section 12-14.5-223~~

1 SECTION 5-19-223, as required by ~~section 12-14.5-226~~ SECTION 5-19-226.

2 **5-19-203. [Formerly 12-14.5-203] Exempt agreements and**

3 **persons.** (a) This part 2 does not apply to an agreement with an
4 individual who the provider has no reason to know resides in this state at
5 the time of the agreement.

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

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

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

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

17 (4) Is subject to the "Colorado Foreclosure Protection Act", part
18 11 of article 1 of title 6. ~~C.R.S.~~

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

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

24 (2) A bank;

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

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

4 **5-19-204. [Formerly 12-14.5-204] Registration required.**

5 (a) Except as otherwise provided in subsection (b) of this section, on or
6 after July 1, 2008, a provider may not provide debt-management services
7 to an individual who it reasonably should know resides in this state at the
8 time it agrees to provide the services, unless the provider is registered
9 under this part 2.

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

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

14 **5-19-205. [Formerly 12-14.5-205] Application for registration**
15 **- form, fee, and accompanying documents.** (a) An application for

16 registration as a provider shall be in a form prescribed by the
17 administrator.

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

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

23 ~~C.R.S.~~

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

25 (3) Identification of all trust accounts required by ~~section~~
26 ~~12-14.5-222~~ SECTION 5-19-222 and an irrevocable consent authorizing the
27 administrator to review and examine the trust accounts;

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

3 ~~(5) (4) Proof of compliance with the requirements of title 7~~
4 ~~C.R.S., that specify the prerequisites for an entity to do business in this~~
5 ~~state; and~~

6 ~~(6) (5) If the applicant is organized as a not-for-profit entity or is~~
7 ~~exempt from taxation, evidence of not-for-profit and tax-exempt status~~
8 ~~applicable to the applicant under the federal "Internal Revenue Code of~~
9 ~~1986", 26 U.S.C. sec. 501, as amended.~~

10 **5-19-206. [Formerly 12-14.5-206] Application for registration**
11 **- required information.** An application for registration shall be signed
12 under penalty of false statement and include:

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

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

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

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

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

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

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

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

8 (7) The applicant's financial statements, audited by an accountant
9 licensed to conduct audits, for each of the two years immediately
10 preceding the application or, if it has not been in operation for the two
11 years preceding the application, for the period of its existence;

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

13 ~~(10)~~ (8) A description of the three most commonly used
14 educational programs that the applicant provides or intends to provide to
15 individuals who reside in this state and a copy of any materials used or to
16 be used in those programs;

17 ~~(11)~~ (9) A description of the applicant's financial analysis and
18 initial plan, including any form or electronic model, used to evaluate the
19 financial condition of individuals. The description shall be deemed to be
20 confidential commercial data under section 24-72-204 (3)(a)(IV). ~~C.R.S.~~

21 ~~(12)~~ (10) A copy of each form of agreement that the applicant will
22 use with individuals who reside in this state;

23 ~~(13)~~ (11) The schedule of fees and charges that the applicant will
24 use with individuals who reside in this state;

25 ~~(14)~~ (12) At the applicant's expense, the results of a state and
26 national fingerprint-based criminal history records check, conducted
27 within the immediately preceding twelve months, covering every officer

1 of the applicant and every employee or agent of the applicant who is
2 authorized to initiate transactions to the trust account required by ~~section~~
3 ~~12-14.5-222~~ SECTION 5-19-222. The administrator shall be the authorized
4 agency to receive information regarding the result of the national criminal
5 history records check.

6 ~~(15)~~ (13) The names and addresses of all employers of each
7 director during the five years immediately preceding the application;
8 except that if a director receives no compensation from the provider, the
9 applicable period shall be two years. The names and addresses shall be
10 deemed to be confidential.

11 ~~(16)~~ (14) A description of any ownership interest of at least ten
12 percent by a director, owner, or employee of the applicant in:

13 (A) Any affiliate of the applicant; or

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

16 ~~(17)~~ (15) For not-for-profit providers, a statement of the amount
17 of compensation of the applicant's five most highly compensated
18 employees for each of the three years immediately preceding the
19 application or, if it has not been in operation for the three years
20 immediately preceding the application, for the period of its existence;

21 ~~(18)~~ (16) The identity of each director who is an affiliate, as
22 defined in ~~section 12-14.5-202 (2) (A) or (2) (B) (i), (2) (B) (ii), (2) (B)~~
23 ~~(iv), (2) (B) (v), (2) (B) (vi), or (2) (B) (vii)~~ SECTION 5-19-202 (2)(A) OR
24 (2)(B)(i), (2)(B)(ii), (2)(B)(iv), (2)(B)(v), (2)(B)(vi), OR (2)(B)(vii), of the
25 applicant; and

26 ~~(19)~~ (17) Any other information that the administrator reasonably
27 requires to perform the administrator's duties under ~~section 12-14.5-209~~

1 SECTION 5-19-209.

2 **5-19-207. [Formerly 12-14.5-207] Application for registration**
3 **- obligation to update information.** An applicant or registered provider
4 shall notify the administrator within fifteen days after a change in the
5 information specified in ~~section 12-14.5-205 (b) (6) or section~~
6 ~~12-14.5-206 (1), (3), (6), (12), or (13)~~ SECTION 5-19-205 (b)(5) OR
7 SECTION 5-19-206 (1), (3), (6), (10), OR (11).

8 **5-19-208. [Formerly 12-14.5-208] Application for registration**
9 **- public information.** Except for the information required by ~~section~~
10 ~~12-14.5-206 (7), (11), (14), (15), and (17)~~ SECTION 5-19-206 (7), (9), (12),
11 (13), AND (15), and the addresses required by ~~section 12-14.5-206 (4)~~
12 SECTION 5-19-206 (4), the administrator shall make the information in an
13 application for registration as a provider available to the public.

14 **5-19-209. [Formerly 12-14.5-209] Certificate of registration -**
15 **issuance or denial.** (a) Except as otherwise provided in subsections (b)
16 and (c) of this section, the administrator shall issue a certificate of
17 registration as a provider to a person that complies with ~~sections~~
18 ~~12-14.5-205 and 12-14.5-206~~ SECTIONS 5-19-205 AND 5-19-206.

19 (b) The administrator may deny registration if:

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

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

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

27 (4) The administrator, upon reasonable belief, finds that the

1 financial responsibility, experience, character, or general fitness of the
2 applicant or its owners, directors, employees, or agents does not warrant
3 belief that the business will be operated in compliance with this part 2.

4 (c) The administrator shall deny registration if:

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

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

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

14 (1) Are affiliates of the applicant, as defined in ~~section~~
15 ~~12-14.5-202 (2) (A), (2) (B) (i), (2) (B) (ii), (2) (B) (iv), (2) (B) (v), (2)~~
16 ~~(B) (vi), or (2) (B) (vii)~~ SECTION 5-19-202 (2)(A), (2)(B)(i), (2)(B)(ii),
17 (2)(B)(iv), (2)(B)(v), (2)(B)(vi), OR (2)(B)(vii); or

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

22 (e) The administrator may temporarily approve a certificate of
23 registration in the event an applicant has made a timely effort to obtain a
24 criminal records check as required in ~~section 12-14.5-206 (14)~~ SECTION
25 5-19-206 (12), but for which a timely return of information has not
26 occurred, for a reasonable period of time but no longer than one hundred
27 twenty days, provided that the applicant has provided all other required

1 information in the application for registration and the administrator finds
2 no reason to believe from the information that has been provided that the
3 applicant may not provide fair and honest services to debtors under this
4 part 2.

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

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

17 ~~(c) Repealed.~~

18 **5-19-211. [Formerly 12-14.5-211] Renewal of registration.**

19 (a) A provider shall obtain a renewal of its registration annually before
20 the expiration date of the registration to be renewed, as specified in this
21 section.

22 ~~(b) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p.~~
23 ~~351, § 7, effective July 1, 2011.)~~

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

27 (1) Be filed before the registration expires;

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

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

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

11 ~~(5) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p.~~
12 ~~351, § 7, effective July 1, 2011.)~~

13 ~~(6)~~ (5) Disclose the total amount of money received by the
14 applicant pursuant to plans during the preceding twelve months from or
15 on behalf of individuals who reside in this state and the total amount of
16 money distributed to creditors of those individuals during that period;

17 ~~(7)~~ (6) If the applicant does not hold money on behalf of any
18 debtor, disclose for business done with debtors in the state of Colorado
19 during the preceding twelve months, the number of debtors with whom
20 the applicant has had agreements, the number of fully settled debt
21 agreements with creditors that applicant concluded for debtors, and an
22 estimate of the total amount of debt under contract between applicant and
23 debtors; and

24 ~~(8)~~ (7) Provide any other information that the administrator
25 reasonably requires to perform the administrator's duties under this
26 section.

27 ~~(d)~~ (c) Except for the information required by ~~section 12-14.5-206~~

1 ~~(7), (11), (14), (15), and (17)~~ SECTION 5-19-206 (7), (9), (12), (13), AND
2 (15) and the addresses required by ~~section 12-14.5-206 (4)~~ SECTION
3 5-19-206 (4), the administrator shall make the information in an
4 application for renewal of registration as a provider available to the
5 public.

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

10 ~~(f)~~ (e) If the administrator denies an application for renewal of
11 registration as a provider, the applicant, within thirty days after receiving
12 notice of the denial, may appeal and request a hearing pursuant to article
13 4 of title 24. ~~C.R.S.~~ Subject to ~~section 12-14.5-234~~ SECTION 5-19-234,
14 while the appeal is pending, the applicant shall continue to provide
15 debt-management services to individuals with whom it has agreements.
16 If the denial is affirmed, subject to the administrator's order and ~~section~~
17 ~~12-14.5-234~~ SECTION 5-19-234, the applicant shall continue to provide
18 debt-management services to individuals with whom it has agreements
19 until, with the approval of the administrator, it transfers the agreements
20 to another registered provider or returns to the individuals all unexpended
21 money that is under the applicant's control.

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

25 **5-19-212. [Formerly 12-14.5-212] Registration in another state.**
26 If a provider holds a license or certificate of registration in another state
27 authorizing it to provide debt-management services, the provider may

1 submit a copy of that license or certificate and the application for it
2 instead of an application in the form prescribed by ~~section 12-14.5-205~~
3 ~~(a), 12-14.5-206, or 12-14.5-211 (c)~~ SECTION 5-19-205 (a), 5-19-206, OR
4 5-19-211 (b). The administrator shall accept the application and the
5 license or certificate from the other state as an application for registration
6 as a provider or for renewal of registration as a provider, as appropriate,
7 in this state if:

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

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

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

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

20 **5-19-213. [Formerly 12-14.5-213] Bond required.** (a) Except as
21 otherwise provided in ~~section 12-14.5-214~~ SECTION 5-19-214, a provider
22 that is required to be registered under this part 2 shall file a surety bond
23 with the administrator, which shall:

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

27 (2) Run to this state for the benefit of this state and of individuals

1 who reside in this state when they agree to receive debt-management
2 services from the provider, as their interests may appear.

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

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

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

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

15 (c) If the principal amount of a surety bond is reduced by payment
16 of a claim or a judgment, the provider and the surety shall notify the
17 administrator immediately and, within thirty days after notice by the
18 administrator, the provider shall file a new or additional surety bond in an
19 amount set by the administrator. The amount of the new or additional
20 bond shall be at least the amount of the bond immediately before payment
21 of the claim or judgment. If for any reason a surety terminates a bond, the
22 surety shall provide written notice of the termination to the administrator
23 immediately, and the provider shall immediately file a new surety bond
24 in the amount of fifty thousand dollars or other amount determined
25 pursuant to subsection (b) of this section.

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

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

6 (2) An individual recovers a final judgment pursuant to ~~section~~
7 ~~12-14.5-235 (a), (b), (c) (1), (c) (2), or (c) (4)~~ SECTION 5-19-235 (a), (b),
8 (c)(1), (c)(2), OR (c)(4).

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

14 (1) To satisfaction of a final order or judgment under ~~section~~
15 ~~12-14.5-233 (a) (2), (a) (4), (a) (5), or (d)~~ SECTION 5-19-233 (a)(2), (a)(4),
16 (a)(5), OR (d);

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

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

22 (4) If a final order or judgment is issued under ~~section~~
23 ~~12-14.5-233 (a)~~ SECTION 5-19-233 (a), to the expenses charged pursuant
24 to ~~section 12-14.5-232 (b) (1)~~ SECTION 5-19-232 (b)(1).

25 **5-19-214. [Formerly 12-14.5-214] Bond required - substitute.**

26 (a) Instead of the surety bond required by ~~section 12-14.5-213~~ SECTION
27 5-19-213, a provider may deliver to the administrator, in the amount

1 required by ~~section 12-14.5-213 (b)~~ SECTION 5-19-213 (b), and, except as
2 otherwise provided in ~~paragraph (2) of this subsection (a)~~ SUBSECTION
3 (a)(1) OF THIS SECTION, payable or available to this state and to
4 individuals who reside in this state when they agree to receive
5 debt-management services from the provider, as their interests may
6 appear, if the provider or its agent does not comply with this part 2:

7 ~~(1) Repealed.~~

8 ~~(2)~~(1) With the approval of the administrator, an irrevocable letter
9 of credit, issued or confirmed by a bank approved by the administrator,
10 payable upon presentation of a certificate by the administrator stating that
11 the provider or its agent has not complied with this part 2.

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

15 **5-19-215. [Formerly 12-14.5-215] Good faith requirement.** A
16 provider shall act in good faith in all matters under this part 2.

17 **5-19-216. [Formerly 12-14.5-216] Customer service.** A provider
18 ~~that~~ is required to be registered under this part 2 shall maintain a toll-free
19 communication system, staffed at a level that reasonably permits an
20 individual to speak to a counselor, debt specialist, or customer-service
21 representative, as appropriate, during ordinary business hours.

22 **5-19-217. [Formerly 12-14.5-217] Prerequisites for providing**
23 **debt-management services.** (a) Before providing or contracting to
24 provide debt-management services, a registered provider shall give the
25 individual an itemized list of goods and services and the charges for each.
26 The list shall be clear and conspicuous, be in a record the individual may
27 keep whether or not the individual assents to an agreement, and describe

1 the goods and services the provider offers:

2 (1) Free of additional charge if the individual enters into an
3 agreement;

4 (2) For a charge if the individual does not enter into an agreement;
5 and

6 (3) For a charge if the individual enters into an agreement, using
7 the following terminology, as applicable, and format:

8 Set-up fee _____ *dollar amount of fee*

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

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

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

15 _____
16 *(item) dollar amount or method of determining amount*

17 _____
18 *(item) dollar amount or method of determining amount.*

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

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

24 (2) Has prepared a financial analysis; and

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

26 (A) Has prepared a plan for the individual;

27 (B) Has made a determination, based on the provider's analysis of

1 the information provided by the individual and otherwise available to it,
2 that the plan is suitable for the individual and the individual will be able
3 to meet the payment obligations under the plan; and

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

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

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

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

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

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

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

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

26 (D) All other creditors.

27 (d) Before an individual assents to an agreement to engage in a

1 plan, the provider shall inform the individual, in a record that contains
2 nothing else, that is given separately, and that the individual may keep
3 whether or not the individual assents to the agreement:

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

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

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

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

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

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

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

24 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

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

1 debts.

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

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

6 _____
7 *Name and business address of provider*

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

13 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

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

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

20 _____
21 *Name and business address of provider*

22 (g) If a plan contemplates that creditors will settle debts for less
23 than the full principal amount of debt owed, a provider may comply with
24 subsection (d) of this section by providing the following disclosure,
25 surrounded by black lines:

26 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

27 (1) Our program is not right for all individuals, and

1 you may ask us to provide information about bankruptcy
2 and other ways to deal with your debts.

3 (2) Nonpayment of your debts under our program
4 may:

5 Hurt your credit rating or credit scores;
6 Lead your creditors to increase finance and other charges;
7 and
8 Lead your creditors to undertake activity, including
9 lawsuits, to collect the debts.

10 (3) Reduction of debt under our program may result
11 in taxable income to you, even though you will not actually
12 receive any money.

13 _____

14 *Name and business address of provider*

15 **5-19-218. [Formerly 12-14.5-218] Communication by electronic**
16 **or other means - definitions.** (a) As used in this section, unless the
17 context otherwise requires:

18 (1) "Consumer" means an individual who seeks or obtains goods
19 or services that are used primarily for personal, family, or household
20 purposes.

21 (2) "Federal act" means the federal "Electronic Signatures in
22 Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., as
23 amended.

24 (b) A provider may satisfy the requirements of ~~section~~
25 ~~12-14.5-217, 12-14.5-219, or 12-14.5-227~~ SECTION 5-19-217, 5-19-219,
26 OR 5-19-227 by means of the internet or other electronic means if the
27 provider obtains a consumer's consent in the manner provided by section

1 101 (c) (1) of the federal act.

2 (c) The disclosures and materials required by sections
3 ~~12-14.5-217, 12-14.5-219, and 12-14.5-227~~ SECTIONS 5-19-217,
4 5-19-219, AND 5-19-227 shall be presented in a form that is capable of
5 being accurately reproduced for later reference.

6 (d) With respect to disclosure by means of an internet website, the
7 disclosure of the information required by ~~section 12-14.5-217(d)~~ SECTION
8 5-19-217 (d) shall appear on one or more screens that:

9 (1) Contain no other information; and

10 (2) The individual must see before proceeding to assent to
11 formation of a plan.

12 (e) At the time of providing the materials and agreement required
13 by ~~sections 12-14.5-217 (c) and (d), 12-14.5-219, and 12-14.5-227~~
14 SECTIONS 5-19-217 (c) AND (d), 5-19-219, AND 5-19-227, a provider shall
15 inform the individual that upon electronic, telephonic, or written request,
16 it will send the individual a written copy of the materials, and shall
17 comply with a request as provided in subsection (f) of this section.

18 (f) If a provider is requested, before the expiration of ninety days
19 after a plan is completed or terminated, to send a written copy of the
20 materials required by ~~section 12-14.5-217 (c) and (d), 12-14.5-219, or~~
21 ~~12-14.5-227~~ SECTION 5-19-217 (c) AND (d), 5-19-219, OR 5-19-227, the
22 provider shall send them at no charge within three business days after the
23 request, but the provider need not comply with a request more than once
24 per calendar month or if it reasonably believes the request is made for
25 purposes of harassment. If a request is made more than ninety days after
26 a plan is completed or terminated, the provider shall send within a
27 reasonable time a written copy of the materials requested.

1 (g) A provider that maintains an internet website shall disclose on
2 the home page of its website or on a page that is clearly and
3 conspicuously connected to the home page by a link that clearly reveals
4 its contents:

5 (1) Its name and all names under which it does business;

6 (2) Its principal business address, telephone number, and
7 electronic mail address, if any; and

8 (3) The names of its principal officers.

9 (h) Subject to subsection (i) of this section, if a consumer who has
10 consented to electronic communication in the manner provided by section
11 101 of the federal act withdraws consent as provided in the federal act, a
12 provider may terminate its agreement with the consumer.

13 (i) If a provider wishes to terminate an agreement with a consumer
14 pursuant to subsection (h) of this section, it shall notify the consumer that
15 it will terminate the agreement unless the consumer, within thirty days
16 after receiving the notification, consents to electronic communication in
17 the manner provided in section 101 (c) of the federal act. If the consumer
18 consents, the provider may terminate the agreement only as permitted by
19 ~~section 12-14.5-219 (a) (6) (G)~~ SECTION 5-19-219 (a)(6)(H).

20 **5-19-219. [Formerly 12-14.5-219] Form and contents of**
21 **agreement.** (a) An agreement shall:

22 (1) Be in a record;

23 (2) Be dated and signed by the provider and the individual;

24 (3) Include the name of the individual and the address where the
25 individual resides;

26 (4) Include the name, business address, and telephone number of
27 the provider;

1 (5) Be delivered to the individual immediately upon formation of
2 the agreement; and

3 (6) Disclose:

4 (A) The services to be provided;

5 (B) In a clear and conspicuous manner, the amount, percentage,
6 or method of determining the amount, of all fees, individually itemized,
7 to be paid by the individual, using only the terminology contained in
8 ~~section 12-14.5-223~~ SECTION 5-19-223;

9 (C) The schedule of payments to be made by or on behalf of the
10 individual, including the amount of each payment, the date on which each
11 payment is due, an estimate of the date of the final payment, and an
12 estimate of the total of all payments to be made under the plan;

13 ~~(C.5)~~ (D) In a clear and conspicuous manner, the following
14 information:

15 (i) The amount of time necessary to achieve the represented
16 results;

17 (ii) If the plan includes a settlement offer to any of the individual's
18 creditors or debt collectors, the time by which the provider will make a
19 bona fide settlement offer to each of them and the amount of money or
20 the percentage of each outstanding debt that the individual must
21 accumulate before the provider will make a bona fide settlement offer to
22 each of them; and

23 (iii) If the provider requests or requires the individual to place
24 funds in an account at an insured financial institution, that the individual
25 owns the funds held in the account, the individual may withdraw from the
26 plan at any time without penalty, and, if the individual withdraws, the
27 individual must receive all funds in the account, other than funds earned

1 by the provider in compliance with ~~section 12-14.5-222 (h)~~ SECTION
2 5-19-222 (h);

3 ~~(D)~~ (E) If a plan provides for regular periodic payments to
4 creditors:

5 (i) Each creditor of the individual to which payment will be made,
6 the amount owed to each creditor, and any concessions the provider
7 reasonably believes each creditor will offer; and

8 (ii) The schedule of expected payments to each creditor, including
9 the amount of each payment and the date on which it will be made;

10 ~~(E)~~ (F) If the provider holds money on behalf of the individual,
11 each creditor that the provider believes will not participate in the plan and
12 to which the provider will not direct payment;

13 ~~(F)~~ (G) How the provider will comply with its obligations under
14 ~~section 12-14.5-227 (a)~~ SECTION 5-19-227 (a);

15 ~~(G)~~ (H) If the provider holds money on behalf of the individual,
16 that the provider may terminate the agreement for good cause, upon
17 return of unexpended money of the individual;

18 ~~(H)~~ (I) That the individual may cancel the agreement as provided
19 in ~~section 12-14.5-220~~ SECTION 5-19-220;

20 ~~(I)~~ (J) That the individual may contact the administrator with any
21 questions or complaints regarding the provider; and

22 ~~(J)~~ (K) The address, telephone number, and internet address or
23 website of the administrator.

24 (b) For purposes of ~~paragraph (5) of subsection (a)~~ SUBSECTION
25 (a)(5) of this section, delivery of an electronic record occurs when it is
26 made available in a format in which the individual may retrieve, save, and
27 print it, and the individual is notified that it is available.

1 (c) If the administrator supplies the provider with any information
2 required under ~~subparagraph (J) of paragraph (6) of subsection (a)~~
3 ~~SUBSECTION (a)(6)(K) of this section~~, the provider may comply with that
4 requirement only by disclosing the information supplied by the
5 administrator.

6 (d) An agreement shall provide that:

7 (1) The individual has a right to terminate the agreement at any
8 time, without penalty or obligation, by giving the provider written or
9 electronic notice, in which event:

10 (A) The provider will refund all unexpended money that the
11 provider or its agent has received from or on behalf of the individual for
12 the reduction or satisfaction of the individual's debt; and

13 ~~(B) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p.~~
14 ~~353, § 12, effective July 1, 2011.)~~

15 ~~(C) (B) All powers of attorney granted by the individual to the~~
16 ~~provider are revoked and ineffective;~~

17 (2) The individual authorizes any bank in which the provider or
18 its agent has established a trust account to disclose to the administrator
19 any financial records relating to the trust account; and

20 (3) The provider will notify the individual within five days after
21 learning of a creditor's decision to reject or withdraw from a plan and that
22 this notice will include:

23 (A) The identity of the creditor; and

24 (B) The right of the individual to modify or terminate the
25 agreement.

26 ~~(e) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p.~~
27 ~~353, § 12, effective July 1, 2011.)~~

- 1 ~~(f)~~ (e) An agreement may not:
- 2 (1) Provide for application of the law of any jurisdiction other
- 3 than the United States and this state;
- 4 (2) Except as permitted by the uniform arbitration act, part 2 of
- 5 article 22 of title 13, ~~C.R.S.~~, contain a provision that modifies or limits
- 6 otherwise available forums or procedural rights, including the right to
- 7 trial by jury, that are generally available to the individual under law other
- 8 than this part 2;
- 9 (3) Contain a provision that restricts the individual's remedies
- 10 under this part 2 or law other than this part 2; or
- 11 (4) Contain a provision that:
- 12 (A) Limits or releases the liability of any person for not
- 13 performing the agreement or for violating this part 2; or
- 14 (B) Indemnifies any person for liability arising under the
- 15 agreement or this part 2.
- 16 ~~(g)~~ (f) All rights and obligations specified in subsection (d) of this
- 17 section and ~~section 12-14.5-220~~ SECTION 5-19-220 exist even if not
- 18 provided in the agreement. A provision in an agreement that violates
- 19 subsection (d), (e), or (f) of this section is void.

20 **5-19-220. [Formerly 12-14.5-220] Cancellation of agreement -**

21 **waiver.** (a) An individual may cancel an agreement before midnight of

22 the third business day after the individual assents to it, unless the

23 agreement does not comply with subsection (b) of this section or ~~section~~

24 ~~12-14.5-219~~ or ~~12-14.5-228~~ SECTION 5-19-219 OR 5-19-228, in which

25 event the individual may cancel the agreement within thirty days after the

26 individual assents to it. To exercise the right to cancel, the individual shall

27 give notice in a record to the provider. Notice by mail is given when

1 mailed.

2 (b) An agreement shall be accompanied by a separate form that
3 contains in bold-faced type, surrounded by bold black lines:

4 Notice of Right to Cancel

5 You may cancel this agreement, without any penalty
6 or obligation, at any time before midnight of the third
7 business day that begins the day after you agree to it by
8 electronic communication or by signing it.

9 To cancel this agreement during this period, send an
10 e-mail to (E-mail address of provider) or mail or deliver a
11 signed, dated copy of this notice, or any other written
12 notice to (Name of provider) at (Address of provider)
13 before midnight on (Date).

14 If you cancel this agreement within the 3-day period,
15 we will refund all money you already have paid us.

16 You also may terminate this agreement at any later
17 time, but we are not required to refund fees you have paid
18 us.

19 I cancel this agreement,

20 _____

21 *Print your name*

22 _____

23 *Signature*

24 _____

25 *Date*

26 (c) If a personal financial emergency necessitates the
27 disbursement of an individual's money to one or more of the individual's

1 creditors before the expiration of three days after an agreement is signed,
2 an individual may waive the right to cancel. To waive the right, the
3 individual shall send or deliver a signed, dated statement in the
4 individual's own words describing the circumstances that necessitate a
5 waiver. The waiver shall explicitly waive the right to cancel. A waiver by
6 means of a standard form record is void.

7 **5-19-221. [Formerly 12-14.5-221] Required language.** Unless
8 the administrator, by rule, provides otherwise, the disclosures and
9 documents required by this part 2 shall be in English. If a provider
10 communicates with an individual primarily in a language other than
11 English, the provider shall furnish a translation into the other language of
12 the disclosures and documents required by this part 2.

13 **5-19-222. [Formerly 12-14.5-222] Trust account.** (a) All money
14 paid to a provider by or on behalf of an individual pursuant to a plan for
15 distribution to creditors is held in trust. Within two business days after
16 receipt, the provider shall deposit the money in a trust account established
17 for the benefit of individuals to whom the provider is furnishing
18 debt-management services.

19 (b) Money held in trust by a provider is not property of the
20 provider or its designee. The money is not available to creditors of the
21 provider or designee, except an individual from whom or on whose behalf
22 the provider received money, to the extent that the money has not been
23 disbursed to creditors of the individual.

24 (c) A provider shall:

25 (1) Maintain separate records of account for each individual to
26 whom the provider is furnishing debt-management services;

27 (2) Disburse money paid by or on behalf of the individual to

1 creditors of the individual as disclosed in the agreement; except that:

2 (A) The provider may delay payment to the extent that a payment
3 by the individual is not final; and

4 (B) If a plan provides for regular periodic payments to creditors,
5 the disbursement shall comply with the due dates established by each
6 creditor; and

7 (3) Promptly correct any payments that are not made or that are
8 misdirected as a result of an error by the provider or other person in
9 control of the trust account and reimburse the individual for any costs or
10 fees imposed by a creditor as a result of the failure to pay or misdirection.

11 (d) A provider may not commingle money in a trust account
12 established for the benefit of individuals to whom the provider is
13 furnishing debt-management services with money of other persons.

14 (e) A trust account shall at all times have a cash balance equal to
15 the sum of the balances of each individual's account.

16 (f) If a provider has established a trust account pursuant to
17 subsection (a) of this section, the provider shall reconcile the trust
18 account at least once a month. The reconciliation shall compare the cash
19 balance in the trust account with the sum of the balances in each
20 individual's account. If the provider or its designee has more than one
21 trust account, each trust account shall be individually reconciled.

22 (g) If a provider discovers, or has a reasonable suspicion of,
23 embezzlement or other unlawful appropriation of money held in trust, the
24 provider immediately shall notify the administrator by a method approved
25 by the administrator. Unless the administrator by rule provides otherwise,
26 within five days thereafter, the provider shall give notice to the
27 administrator describing the remedial action taken or to be taken.

1 (h) If an individual terminates an agreement or it becomes
2 reasonably apparent to a provider that a plan has failed, the provider shall
3 promptly refund to the individual all money paid by or on behalf of the
4 individual that has not been paid to creditors, less fees that are payable to
5 the provider under ~~section 12-14.5-223~~ SECTION 5-19-223.

6 (i) Before relocating a trust account from one bank to another, a
7 provider shall inform the administrator of the name, business address, and
8 telephone number of the new bank. As soon as practicable, the provider
9 shall inform the administrator of the account number of the trust account
10 at the new bank.

11 **5-19-223. [Formerly 12-14.5-223] Fees and other charges.** (a) A
12 provider may not impose directly or indirectly a fee or other charge on an
13 individual or receive money from or on behalf of an individual for
14 debt-management services except as permitted by this section.

15 (b) A provider may not impose charges or receive payment for
16 debt-management services until the provider and the individual have
17 signed an agreement that complies with ~~sections 12-14.5-219 and~~
18 ~~12-14.5-228~~ SECTIONS 5-19-219 AND 5-19-228.

19 (c) If an individual assents to an agreement, a provider may not
20 impose a fee or other charge for educational or counseling services, or the
21 like, except as otherwise provided in this subsection (c) and ~~section~~
22 ~~12-14.5-228 (d)~~ SECTION 5-19-228 (d). The administrator may authorize
23 a provider to charge a fee based on the nature and extent of the
24 educational or counseling services furnished by the provider.

25 (d) The following rules apply:

26 (1) If an individual assents to a plan that contemplates that
27 creditors will reduce finance charges or fees for late payment, default, or

1 delinquency, the provider may charge:

2 (A) A fee not exceeding fifty dollars for consultation, obtaining
3 a credit report, and setting up an account; and

4 (B) A monthly service fee, not to exceed ten dollars times the
5 number of creditors remaining in a plan at the time the fee is assessed, but
6 not more than fifty dollars in any month.

7 (2) If an individual assents to a plan that contemplates that
8 creditors or debt collectors will settle debts for less than the principal
9 amount of the debt:

10 (A) A provider may not request or receive payment of any fee or
11 consideration until and unless:

12 (i) The provider has settled the terms of at least one debt pursuant
13 to a settlement agreement or other valid contractual agreement executed
14 by the individual;

15 (ii) The individual has made at least one payment pursuant to that
16 settlement agreement or other valid contractual agreement between the
17 individual and the creditor or debt collector; and

18 (iii) The fee or consideration either: Bears the same proportional
19 relationship to the total fee for settling the terms of the entire debt balance
20 as the individual debt amount bears to the entire debt amount, in which
21 case the individual debt amount and the entire debt amount are those
22 owed at the time the debt was enrolled in the service; or is a percentage
23 of the amount saved as a result of the settlement. The percentage charged
24 cannot change from one individual debt to another. The amount saved is
25 the difference between the amount owed at the time the debt was enrolled
26 in the plan and the amount actually paid to satisfy the debt.

27 ~~(B) and (C) (Deleted by amendment, L. 2011, (HB 11-1206), ch.~~

1 ~~113, p. 354, § 14, effective July 1, 2011.)~~

2 ~~(D)~~ (B) Notwithstanding ~~subparagraph (A) of this paragraph (2)~~
3 SUBSECTION (d)(2)(A) OF THIS SECTION, no individual who completes all
4 of his or her obligations under the agreement may be charged fees such
5 that those fees, when added to the aggregate of offers of settlement
6 obtained by the provider for the debtor, exceeds the principal amount of
7 the debt.

8 (3) A provider may not impose or receive fees under both
9 ~~paragraphs (1) and (2) of this subsection (d)~~ SUBSECTION (d)(1) AND
10 (d)(2) OF THIS SECTION.

11 (4) Except as otherwise provided in ~~section 12-14.5-228 (d)~~
12 SECTION 5-19-228 (d), if an individual does not assent to an agreement,
13 a provider may receive for educational and counseling services it provides
14 to the individual a fee not exceeding one hundred dollars or, with the
15 approval of the administrator, a larger fee. The administrator may approve
16 a fee larger than one hundred dollars if the nature and extent of the
17 educational and counseling services warrant the larger fee.

18 ~~(5) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p.~~
19 ~~354, § 14, effective July 1, 2011.)~~

20 (e) If, before the expiration of ninety days after the completion or
21 termination of educational or counseling services, an individual assents
22 to an agreement, the provider shall refund to the individual any fee paid
23 pursuant to ~~paragraph (4) of subsection (d)~~ SUBSECTION (d)(4) of this
24 section.

25 (f) If a payment to a provider by an individual under this part 2 is
26 dishonored, a provider may impose a reasonable charge on the individual,
27 not to exceed the lesser of twenty-five dollars and the amount permitted

1 by law other than this part 2.

2 **5-19-224. [Formerly 12-14.5-224] Voluntary contributions.** A
3 provider may not solicit a voluntary contribution from an individual or an
4 affiliate of the individual for any service provided to the individual. A
5 provider may accept voluntary contributions from an individual but, until
6 thirty days after completion or termination of a plan, the aggregate
7 amount of money received from or on behalf of the individual may not
8 exceed the total amount the provider may charge the individual under
9 ~~section 12-14.5-223~~ SECTION 5-19-223.

10 **5-19-225. [Formerly 12-14.5-225] Voidable agreements.** (a) If
11 a provider imposes a fee or other charge or receives money or other
12 payments not authorized by ~~section 12-14.5-223 or 12-14.5-224~~ SECTION
13 5-19-223 OR 5-19-224, the individual may void the agreement and recover
14 as provided in ~~section 12-14.5-235~~ SECTION 5-19-235.

15 (b) If a provider is not registered as required by this part 2 when
16 an individual assents to an agreement, the agreement is voidable by the
17 individual.

18 (c) If an individual voids an agreement under subsection (b) of
19 this section, the provider does not have a claim against the individual for
20 breach of contract or for restitution.

21 **5-19-226. [Formerly 12-14.5-226] Termination of agreements.**

22 (a) If an individual who has entered into an agreement fails for sixty days
23 to make payments required by the agreement, a provider may terminate
24 the agreement.

25 (b) If a provider or an individual terminates an agreement, the
26 provider shall immediately return to the individual ANY MONEY OF THE
27 INDIVIDUAL HELD IN TRUST FOR THE BENEFIT OF THE INDIVIDUAL.

1 (1) ~~Any money of the individual held in trust for the benefit of the~~
2 ~~individual.~~

3 (2) ~~(Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p.~~
4 ~~356, § 15, effective July 1, 2011.)~~

5 **5-19-227. [Formerly 12-14.5-227] Periodic reports - retention**
6 **of records.** (a) A provider shall provide the accounting required by
7 subsection (b) of this section:

8 (1) Upon cancellation or termination of an agreement; and

9 (2) Before cancellation or termination of any agreement:

10 (A) At least once each month; and

11 (B) Within five business days after a request by an individual, but
12 the provider need not comply with more than one request from an
13 individual in any calendar month.

14 (b) A provider, in a record, shall provide each individual for
15 whom it has established a plan an accounting of the following
16 information:

17 (1) The amount of money received from the individual since the
18 last report;

19 (2) The amounts and dates of disbursement made on the
20 individual's behalf, or by the individual upon the direction of the provider,
21 since the last report to each creditor listed in the plan;

22 (3) The amounts deducted from the amount received from the
23 individual;

24 (4) The amount held in reserve; and

25 (5) If, since the last report, a creditor has agreed to accept as
26 payment in full an amount less than the principal amount of the debt owed
27 by the individual:

- 1 (A) The total amount and terms of the settlement;
- 2 (B) The amount of the debt when the individual assented to the
- 3 plan;
- 4 (C) The amount of the debt when the creditor agreed to the
- 5 settlement; and
- 6 (D) The calculation of a settlement fee.
- 7 (c) A provider shall maintain records for each individual for
- 8 whom it provides debt-management services for five years after the final
- 9 payment made by the individual and produce a copy of them to the
- 10 individual within a reasonable time after a request for them. The provider
- 11 may use electronic or other means of storage of the records.

12 **5-19-228. [Formerly 12-14.5-228] Prohibited acts and**
13 **practices.** (a) A provider may not, directly or indirectly:

- 14 (1) Misappropriate or misapply money held in trust;
- 15 (2) Settle a debt on behalf of an individual without the individual's
- 16 agreement to the settlement terms pursuant to a settlement agreement or
- 17 other valid contractual agreement executed by the individual;
- 18 ~~(3) (Deleted by amendment, L. 2011, (HB 11-1206), ch. 113, p.~~
- 19 ~~356, § 16, effective July 1, 2011.)~~
- 20 ~~(4)~~ (3) Exercise or attempt to exercise a power of attorney after an
- 21 individual has terminated an agreement;
- 22 ~~(5)~~ (4) Initiate a transfer from an individual's account at a bank or
- 23 with another person unless the transfer is:
 - 24 (A) A return of money to the individual; or
 - 25 (B) Before termination of an agreement, properly authorized by
 - 26 the agreement and this part 2, and for:
 - 27 (i) Payment to one or more creditors pursuant to a plan; or

- 1 (ii) Payment of a fee;
- 2 ~~(6)~~ (5) Offer a gift or bonus, premium, reward, or other
3 compensation to an individual for executing an agreement;
- 4 ~~(7)~~ (6) Offer, pay, or give a gift or bonus, premium, reward, or
5 other compensation to a person for referring a prospective customer,
6 except for a sales lead, if the person making the referral has a financial
7 interest in the outcome of debt-management services provided to the
8 customer, unless neither the provider nor the person making the referral
9 communicates to the prospective customer the identity of the source of
10 the referral;
- 11 ~~(8)~~ (7) Receive a bonus, commission, or other benefit for referring
12 an individual to a person;
- 13 ~~(9)~~ (8) Structure a plan in a manner that would result in a negative
14 amortization of any of an individual's debts, unless a creditor that is owed
15 a negatively amortizing debt agrees to refund or waive the finance charge
16 upon payment of the principal amount of the debt;
- 17 ~~(10)~~ (9) Compensate its employees on the basis of a formula that
18 incorporates the number of individuals the employee induces to enter into
19 agreements;
- 20 ~~(11)~~ (10) Settle a debt or lead an individual to believe that a
21 payment to a creditor is in settlement of a debt to the creditor unless, at
22 the time of settlement, the individual receives a certification by the
23 creditor that the payment is in full settlement of the debt;
- 24 ~~(12)~~ (11) Make a representation that:
- 25 (A) The provider will furnish money to pay bills or prevent
26 attachments;
- 27 (B) Payment of a certain amount will permit satisfaction of a

1 certain amount or range of indebtedness; or

2 (C) Participation in a plan will or may prevent litigation,
3 collection activity, garnishment, attachment, repossession, foreclosure,
4 eviction, or loss of employment;

5 ~~(13)~~ (12) Misrepresent that it is authorized or competent to furnish
6 legal advice or perform legal services;

7 ~~(14)~~ (13) Represent that it is a not-for-profit entity unless it is
8 organized and properly operating as a not-for-profit under the law of the
9 state in which it was formed or that it is a tax-exempt entity unless it has
10 received certification of tax-exempt status from the federal internal
11 revenue service; except that, if the provider represents that it is a
12 not-for-profit entity and the provider does not have tax-exempt status
13 under section 501 (c) (3) of the federal "Internal Revenue Code of 1986",
14 as amended, the provider shall state, in a clear and conspicuous manner
15 and in close proximity to the representation: "We are not an educational,
16 charitable, or religious organization granted tax-exempt status by the
17 Internal Revenue Service."

18 ~~(15)~~ (14) Take a confession of judgment or power of attorney to
19 confess judgment against an individual;

20 ~~(16)~~ (15) Employ an unfair, unconscionable, or deceptive act or
21 practice, including the knowing omission of any material information; or

22 ~~(17)~~ (16) Advise, encourage, or suggest to the individual not to
23 make a payment to creditors under the plan.

24 (b) If a provider furnishes debt-management services to an
25 individual, the provider may not, directly or indirectly:

26 (1) Purchase a debt or obligation of the individual;

27 (2) Receive from or on behalf of the individual:

1 (A) A promissory note or other negotiable instrument other than
2 a check or a demand draft; or

3 (B) A post-dated check or demand draft;

4 (3) Lend money or provide credit to the individual, except as a
5 deferral of a settlement fee at no additional expense to the individual;

6 (4) Obtain a mortgage or other security interest from any person
7 in connection with the services provided to the individual;

8 (5) Except as permitted by federal law, disclose the identity or
9 identifying information of the individual or the identity of the individual's
10 creditors, except to:

11 (A) The administrator, upon proper demand;

12 (B) A creditor of the individual, to the extent necessary to secure
13 the cooperation of the creditor in a plan; or

14 (C) The extent necessary to administer the plan;

15 (6) Except as otherwise provided in ~~section 12-14.5-223 (d) (2)~~
16 SECTION 5-19-223 (d)(2), provide the individual less than the full benefit
17 of a compromise of a debt arranged by the provider;

18 (7) Charge the individual for or provide credit or other insurance,
19 coupons for goods or services, membership in a club, access to computers
20 or the internet, or any other matter not directly related to
21 debt-management services or educational services concerning personal
22 finance; or

23 (8) Furnish legal advice or perform legal services, unless the
24 person furnishing that advice to or performing those services for the
25 individual is licensed to practice law.

26 (c) This part 2 does not authorize any person to engage in the
27 practice of law.

1 (d) A provider may not receive a gift or bonus, premium, reward,
2 or other compensation, directly or indirectly, for advising, arranging, or
3 assisting an individual in connection with obtaining an extension of credit
4 or other service from a lender or service provider, except for educational
5 or counseling services required in connection with a
6 government-sponsored program.

7 (e) Unless a person supplies goods, services, or facilities generally
8 and supplies them to the provider at a cost no greater than the cost the
9 person generally charges to others, a provider may not purchase goods,
10 services, or facilities from the person if an employee or a person that the
11 provider should reasonably know is an affiliate of the provider:

12 (1) Owns more than ten percent of the person; or

13 (2) Is an employee or affiliate of the person.

14 **5-19-229. [Formerly 12-14.5-229] Notice of litigation.** No later
15 than thirty days after a provider has been served with notice of a civil
16 action for violation of this part 2 by or on behalf of an individual who
17 resides in this state at either the time of an agreement or the time the
18 notice is served, the provider shall notify the administrator in a record that
19 it has been sued.

20 **5-19-230. [Formerly 12-14.5-230] Advertising.** A provider that
21 advertises debt-management services shall disclose, in an easily
22 comprehensible manner, the information specified in ~~section 12-14.5-217~~
23 ~~(d)(3) and (d)(4)~~ SECTION 5-19-217 (d)(3) AND (d)(4).

24 **5-19-231. [Formerly 12-14.5-231] Liability for the conduct of**
25 **other persons.** If a provider delegates any of its duties or obligations
26 under an agreement or this part 2 to another person, including an
27 independent contractor, the provider is liable for conduct of the person

1 that, if done by the provider, would violate the agreement or this part 2.

2 **5-19-232. [Formerly 12-14.5-232] Powers of administrator -**

3 **rules.** (a) The administrator may act on its own initiative or in response
4 to complaints and may receive complaints, take action to obtain voluntary
5 compliance with this part 2, and seek or provide remedies as provided in
6 this part 2.

7 (b) The administrator may investigate and examine, in this state
8 or elsewhere, by subpoena or otherwise, the activities, books, accounts,
9 and records of a person that provides or offers to provide
10 debt-management services, or a person to which a provider has delegated
11 its obligations under an agreement or this part 2, to determine compliance
12 with this part 2. Information that identifies individuals who have
13 agreements with the provider shall not be disclosed to the public. In
14 connection with the investigation, the administrator may:

15 (1) Charge the person the reasonable expenses necessarily
16 incurred to conduct the examination;

17 (2) Require or permit a person to file a statement under oath as to
18 all the facts and circumstances of a matter to be investigated; and

19 (3) Seek a court order authorizing seizure from a bank at which
20 the person maintains a trust account required by ~~section 12-14.5-222~~
21 SECTION 5-19-222, any or all money, books, records, accounts, and other
22 property of the provider that is in the control of the bank and relates to
23 individuals who reside in this state.

24 (c) The administrator may adopt rules to implement the provisions
25 of this part 2 in accordance with section 24-4-103. ~~C.R.S.~~

26 (d) The administrator may enter into cooperative arrangements
27 with any other federal or state agency having authority over providers and

1 may exchange with any of those agencies information about a provider,
2 including information obtained during an examination of the provider.

3 (e) The administrator, by rule, shall establish reasonable fees to be
4 paid by providers for the expense of administering this part 2. The fees
5 may vary by the type of debt-management service provided.

6 ~~(f) and (g) Repealed.~~

7 **5-19-233. [Formerly 12-14.5-233] Administrative and legal**
8 **remedies.** (a) The administrator may enforce this part 2 and rules
9 adopted under this part 2 by taking one or more of the following actions:

10 (1) Ordering a provider or a director, employee, or other agent of
11 a provider to cease and desist from any violations;

12 (2) Ordering a provider or a person that has caused a violation to
13 correct the violation, including making restitution of money or property
14 to a person aggrieved by a violation;

15 (3) Imposing on a provider or a person that has caused a violation
16 a civil penalty not exceeding ten thousand dollars for each violation;

17 (4) Prosecuting a civil action to:

18 (A) Enforce an order; or

19 (B) Obtain restitution, a civil penalty not to exceed ten thousand
20 dollars per violation, an injunction, or other equitable relief;

21 (5) Intervening in an action brought under ~~section 12-14.5-235~~
22 SECTION 5-19-235.

23 (b) If a person violates or knowingly authorizes, directs, or aids
24 in the violation of a final order issued under ~~paragraph (1) or (2) of~~
25 ~~subsection (a)~~ SUBSECTION (a)(1) OR (a)(2) of this section, the
26 administrator or court may impose a civil penalty not exceeding twenty
27 thousand dollars for each violation.

1 (c) The administrator may maintain an action to enforce this part
2 2 in any county.

3 (d) The administrator may recover the reasonable costs of
4 enforcing this part 2 under subsections (a) to (c) of this section, including
5 attorney fees based on the hours reasonably expended and the hourly rates
6 for attorneys of comparable experience in the community.

7 (e) In determining the amount of a civil penalty to impose under
8 subsection (a) or (b) of this section, the administrator or the court shall
9 consider the seriousness of the violation, the good faith of the violator,
10 any previous violations by the violator, the deleterious effect of the
11 violation on the public, the net worth of the violator, and any other factor
12 the administrator or the court considers relevant to the determination of
13 the civil penalty.

14 **5-19-234. [Formerly 12-14.5-234] Suspension, revocation, or**
15 **nonrenewal of registration - definitions.** (a) In this section, "insolvent"
16 means:

17 (1) Having generally ceased to pay debts in the ordinary course of
18 business other than as a result of good-faith dispute;

19 (2) Being unable to pay debts as they become due; or

20 (3) Being insolvent within the meaning of the federal bankruptcy
21 law, 11 U.S.C. sec. 101 et seq., as amended.

22 (b) In addition to the remedies otherwise available under this
23 ~~article~~ PART 2, the administrator may suspend, revoke, or deny renewal of
24 a provider's registration if:

25 (1) A fact or condition exists that, if it had existed when the
26 registrant applied for registration as a provider, would have been a reason
27 for denying registration;

1 (2) The provider has committed a material violation of this part 2
2 or a rule or order of the administrator under this part 2;

3 (3) The provider is insolvent;

4 (4) The provider or an employee or affiliate of the provider has
5 refused to permit the administrator to make an examination authorized by
6 this part 2, failed to comply with ~~section 12-14.5-232 (b) (2)~~ SECTION
7 5-19-232 (b)(2) within fifteen days after request, or made a material
8 misrepresentation or omission in complying with ~~section 12-14.5-232 (b)~~
9 ~~(2)~~ SECTION 5-19-232 (b)(2); or

10 (5) The provider has not responded within a reasonable time and
11 in an appropriate manner to communications from the administrator.

12 (c) If a provider does not comply with ~~section 12-14.5-222 (f)~~
13 SECTION 5-19-222 (f) or if the administrator otherwise finds that the
14 public health, safety, or general welfare requires emergency action, the
15 administrator may order a summary suspension of the provider's
16 registration, effective on the date specified in the order.

17 (d) If the administrator suspends, revokes, or denies renewal of
18 the registration of a provider, the administrator may seek a court order
19 authorizing seizure of any or all of the money in a trust account required
20 by ~~section 12-14.5-222~~ SECTION 5-19-222, books, records, accounts, and
21 other property of the provider that are located in this state.

22 (e) If the administrator suspends or revokes a provider's
23 registration, the provider may appeal and request a hearing pursuant to
24 section 24-4-105. ~~C.R.S.~~

25 **5-19-235. [Formerly 12-14.5-235] Private enforcement.** (a) If
26 an individual voids an agreement pursuant to ~~section 12-14.5-225 (b)~~
27 SECTION 5-19-225 (b), the individual may recover in a civil action all

1 money paid or deposited by or on behalf of the individual pursuant to the
2 agreement, except amounts paid to creditors, in addition to the recovery
3 under ~~paragraphs (3) and (4) of subsection (c)~~ SUBSECTIONS (c)(3) AND
4 (c)(4) of this section.

5 (b) If an individual voids an agreement pursuant to ~~section~~
6 ~~12-14.5-225 (a)~~ SECTION 5-19-225 (a), the individual may recover in a
7 civil action three times the total amount of the fees, charges, money, and
8 payments made by the individual to the provider, in addition to the
9 recovery under ~~paragraph (4) of subsection (c)~~ SUBSECTION (c)(4) of this
10 section.

11 (c) Subject to subsection (d) of this section, an individual with
12 respect to whom a provider violates this part 2 may recover in a civil
13 action from the provider and any person that caused the violation:

14 (1) Compensatory damages for injury, including noneconomic
15 injury, caused by the violation;

16 (2) Except as otherwise provided in subsection (d) of this section,
17 with respect to a violation of ~~section 12-14.5-217, 12-14.5-219 to~~
18 ~~12-14.5-224, 12-14.5-227, or 12-14.5-228 (a), (b), or (d)~~ SECTION
19 5-19-217, 5-19-219 TO 5-19-224, 5-19-227, OR 5-19-228 (a), (b), OR (d),
20 the greater of the amount recoverable under ~~paragraph (1) of this~~
21 ~~subsection (c)~~ SUBSECTION (c)(1) OF THIS SECTION or five thousand
22 dollars;

23 (3) Punitive damages; and

24 (4) Reasonable attorney fees and costs.

25 (d) In a class action, except for a violation of ~~section 12-14.5-228~~
26 ~~(a) (5)~~ SECTION 5-19-228 (a)(4), the minimum damages provided in
27 ~~paragraph (2) of subsection (c)~~ SUBSECTION (c)(2) of this section do not

1 apply.

2 (e) In addition to the remedy available under subsection (c) of this
3 section, if a provider violates an individual's rights under ~~section~~
4 ~~12-14.5-220~~ SECTION 5-19-220, the individual may recover in a civil
5 action all money paid or deposited by or on behalf of the individual
6 pursuant to the agreement, except for amounts paid to creditors.

7 (f) A provider is not liable under this section for a violation of this
8 part 2 if the provider proves that the violation was not intentional and
9 resulted from a good-faith error notwithstanding the maintenance of
10 procedures reasonably adapted to avoid the error. An error of legal
11 judgment with respect to a provider's obligations under this part 2 is not
12 a good-faith error. If, in connection with a violation, the provider has
13 received more money than authorized by an agreement or this part 2, the
14 defense provided by this subsection (f) is not available unless the provider
15 refunds the excess within two business days after learning of the
16 violation.

17 (g) The administrator shall assist an individual in enforcing a
18 judgment against the surety bond or other security provided under ~~section~~
19 ~~12-14.5-213~~ or ~~12-14.5-214~~ SECTION 5-19-213 OR 5-19-214.

20 **5-19-236. [Formerly 12-14.5-236] Violation of unfair or**
21 **deceptive practices statute.** If an act or practice of a provider violates
22 both this part 2 and section 6-1-105, ~~C.R.S.~~, an individual may not
23 recover under both for the same act or practice.

24 **5-19-237. [Formerly 12-14.5-237] Statute of limitations.** (a) An
25 action or proceeding brought pursuant to ~~section 12-14.5-233 (a), (b), or~~
26 ~~(e)~~ SECTION 5-19-233 (a), (b), OR (c) shall be commenced within four
27 years after the conduct that is the basis of the administrator's complaint.

1 (b) An action brought pursuant to ~~section 12-14.5-235~~ SECTION
2 5-19-235 shall be commenced within two years after the latest of:

- 3 (1) The individual's last transmission of money to a provider;
4 (2) The individual's last transmission of money to a creditor at the
5 direction of the provider;
6 (3) The provider's last disbursement to a creditor of the individual;
7 (4) The provider's last accounting to the individual pursuant to
8 ~~section 12-14.5-227 (a)~~ SECTION 5-19-227 (a);
9 (5) The date on which the individual discovered or reasonably
10 should have discovered the facts giving rise to the individual's claim; or
11 (6) Termination of actions or proceedings by the administrator
12 with respect to a violation of this part 2.

13 (c) The period prescribed in ~~paragraph (5) of subsection (b)~~
14 SUBSECTION (b)(5) of this section is tolled during any period during which
15 the provider or, if different, the defendant has materially and willfully
16 misrepresented information required by this part 2 to be disclosed to the
17 individual, if the information so misrepresented is material to the
18 establishment of the liability of the defendant under this part 2.

19 **5-19-238. [Formerly 12-14.5-238] Uniformity of application**
20 **and construction.** In applying and construing this part 2, consideration
21 shall be given to the need to promote uniformity of the law with respect
22 to its subject matter among states that enact it.

23 **5-19-239. [Formerly 12-14.5-239] Relation to federal**
24 **"Electronic Signatures in Global and National Commerce Act".** This
25 part 2 modifies, limits, and supersedes the federal "Electronic Signatures
26 in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., but
27 does not modify, limit, or supersede section 101 (c) of that act, 15 U.S.C.

1 sec. 7001 (c), or authorize electronic delivery of any of the notices
2 described in section 103 (b) of that act, 15 U.S.C. sec. 7003 (b).

3 **5-19-240. [Formerly 12-14.5-240] Transitional provisions -**
4 **application to existing transactions.** Transactions entered into before
5 January 1, 2008, and the rights, duties, and interests resulting from them
6 may be completed, terminated, or enforced as required or permitted by a
7 law amended, repealed, or modified by this part 2 as though the
8 amendment, repeal, or modification had not occurred.

9 **5-19-241. [Formerly 12-14.5-241] Severability.** If any provision
10 of this part 2 or its application to any person or circumstance is held
11 invalid, the invalidity does not affect other provisions or applications of
12 this part 2 that can be given effect without the invalid provision or
13 application, and to this end the provisions of this part 2 are severable.

14 **5-19-242. [Formerly 12-14.5-242] Repeal of part.** This part 2 is
15 repealed, effective September 1, 2024. Prior to ~~such~~ repeal, the
16 department of regulatory agencies shall review the functions of the
17 administrator pursuant to this part 2 and the registration of providers as
18 provided for in section 24-34-104. ~~C.R.S.~~

19 **SECTION 5.** In Colorado Revised Statutes, 4-9-201, **amend** (b)
20 as follows:

21 **4-9-201. General effectiveness of security agreement.** (b) A
22 transaction subject to this ~~article~~ ARTICLE 9 is subject to any applicable
23 rule of law that establishes a different rule for consumers and any other
24 statute or ~~regulation~~ RULE of this state that regulates the rates, charges,
25 agreements, and practices for loans, credit sales, or other extensions of
26 credit and any consumer protection statute or ~~regulation~~ RULE of this
27 state, including, but not limited to, the "Uniform Consumer Credit Code",

1 articles 1 to 9 of title 5; ~~C.R.S.~~, the "Colorado Consumer Protection Act",
2 article 1 of title 6; ~~C.R.S.~~, "assignment of wages", article 9 of title 8;
3 ~~C.R.S.~~, "property and earnings exempt", article 54 of title 13; ~~C.R.S.~~, and
4 the "Colorado Fair Debt Collection Practices Act", ~~article 14 of title 12,~~
5 ~~C.R.S.~~ ARTICLE 16 OF TITLE 5.

6 **SECTION 6.** In Colorado Revised Statutes, 5-2-301, **amend**
7 (1)(b) as follows:

8 **5-2-301. Authority to make supervised loans.** (1) Unless a
9 person is a supervised financial organization or has first obtained a
10 license from the administrator authorizing him or her to make supervised
11 loans, he or she shall not engage in the business of:

12 (b) Taking assignments of and undertaking direct collection of
13 payments from or enforcement of rights against consumers arising from
14 supervised loans; except that a person who is licensed by the
15 administrator as a collection agency pursuant to ~~article 14 of title 12,~~
16 ~~C.R.S.~~ ARTICLE 16 OF THIS TITLE 5 or is licensed by the Colorado
17 supreme court to practice law, and who takes assignment of supervised
18 loans only after such loans are in default, is not required to obtain a
19 supervised lender license to engage in the activities described in this
20 ~~paragraph (b)~~ SUBSECTION (1)(b).

21 **SECTION 7.** In Colorado Revised Statutes, 5-3-106, **amend** (2),
22 (3)(a)(I), and (3)(b) as follows:

23 **5-3-106. Disclosures for real estate secured consumer credit**
24 **transactions.** (2) A creditor that makes or arranges for extensions of
25 consumer loans secured by a dwelling and that uses credit scores for that
26 purpose shall, upon request of the consumer, provide to the consumer to
27 whom the credit report relates, as soon as practicable and reasonable, but

1 in a period not to exceed thirty days, a copy of the information
2 specifically required to be disclosed pursuant to ~~section 12-14.3-104.3~~
3 ~~(1), C.R.S.~~; SECTION 5-18-107 (1) in ~~such form as~~ A FORM obtained from
4 a consumer reporting agency as defined in ~~section 12-14.3-102(4), C.R.S.~~
5 SECTION 5-18-103 (4). The creditor may charge a reasonable fee for
6 making such information available to the consumer and such charge shall
7 be an additional charge within the meaning of section 5-2-202 and not
8 part of the finance charge.

9 (3) (a) Nothing in subsection (2) of this section shall require the
10 creditor to:

11 (I) Explain to the consumer the information specifically required
12 to be disclosed pursuant to ~~section 12-14.3-104.3 (1), C.R.S.~~ SECTION
13 5-18-107 (1);

14 (b) The creditor's obligation pursuant to subsection (2) of this
15 section and this subsection (3) shall be limited to providing a copy of the
16 information that was received from a consumer reporting agency, as
17 defined in ~~section 12-14.3-102 (4), C.R.S.~~ SECTION 5-18-103 (4). A
18 creditor who uses a credit score has no liability under this subsection (3)
19 or subsection (2) of this section for the content of the credit score
20 information received from a consumer reporting agency or from the
21 omission of any information within the report provided by the consumer
22 reporting agency.

23 **SECTION 8.** In Colorado Revised Statutes, 5-5-111, **amend** (3)
24 as follows:

25 **5-5-111. Cure of default.** (3) Unless a creditor has provided the
26 cosignor on a consumer credit transaction with a notice of right to cure
27 that complies with section 5-5-110 and this section, in addition to the

1 notice of right to cure provided to the consumer, the creditor may neither
2 accelerate maturity of the unpaid balance of the obligation as to the
3 cosignor nor report that amount on the cosignor's consumer report with
4 a consumer reporting agency, as defined in ~~section 12-14.3-102, C.R.S.,~~
5 SECTION 5-18-103 and 15 U.S.C. sec. 1681a.

6 **SECTION 9.** In Colorado Revised Statutes, 5-6-104, **amend**
7 (1)(g) and (1)(i) as follows:

8 **5-6-104. Powers of administrator - harmony with federal**
9 **regulations - reliance on rules.** (1) In addition to other powers granted
10 by this code, the administrator, within the limitations provided by law,
11 may:

12 (g) Enforce the provisions of ~~article 14.5 of title 12, C.R.S.~~
13 ARTICLE 19 OF THIS TITLE 5;

14 (i) License and regulate collection agencies pursuant to ~~article 14~~
15 ~~of title 12, C.R.S.~~ ARTICLE 16 OF THIS TITLE 5; and

16 **SECTION 10.** In Colorado Revised Statutes, 5-6-201, **amend** (2)
17 as follows:

18 **5-6-201. Applicability.** (2) This part 2 does not apply to
19 supervised lenders described in section 5-1-301 (46), persons making
20 consumer loans described in section 5-1-301 (15), or to persons licensed
21 as collection agencies pursuant to ~~article 14 of title 12, C.R.S.~~ ARTICLE 16
22 OF THIS TITLE 5.

23 **SECTION 11.** In Colorado Revised Statutes, 5-6-204, **amend** (1)
24 as follows:

25 **5-6-204. Cash fund created.** (1) All fees collected under this
26 code and under article 10 of this ~~title~~ TITLE 5 shall be credited to the
27 uniform consumer credit code cash fund, which ~~fund is hereby~~ IS created

1 AND REFERRED TO IN THIS SECTION AS THE "FUND", and all ~~moneys~~ MONEY
2 credited to ~~such~~ THE fund shall be used for the administration and
3 enforcement of this code, article 10 of this ~~title~~ TITLE 5, and ~~article 14.5~~
4 ~~of title 12, C.R.S.~~ ARTICLE 19 OF THIS TITLE 5. Interest earned on the fund
5 shall be credited to the fund. The general assembly shall make annual
6 appropriations out of the fund for the administration and enforcement of
7 this code, article 10 of this ~~title~~ TITLE 5, and ~~article 14.5 of title 12, C.R.S.~~
8 ARTICLE 19 OF THIS TITLE 5; except that expenditures by the administrator
9 for consumer and creditor education resulting from the penalties provided
10 in sections 5-2-303 (7)(f), 5-6-109 (1), 5-6-110, and 5-6-114 (2) shall not
11 require appropriation by the general assembly if ~~such~~ THE expenditures
12 do not exceed twenty-five thousand dollars per fiscal year and do not
13 include the hiring of any full-time equivalents.

14 **SECTION 12.** In Colorado Revised Statutes, 6-20-201, **amend**
15 (2) as follows:

16 **6-20-201. Definitions.** For the purposes of this part 2, unless the
17 context otherwise requires:

18 (2) "Collection agency" shall have the same meaning as in ~~section~~
19 ~~12-14-103 (2), C.R.S.~~ SECTION 5-16-103 (3).

20 **SECTION 13.** In Colorado Revised Statutes, 6-20-202, **amend**
21 (2)(d) as follows:

22 **6-20-202. Notice to patient of debt.** (2) (d) The failure of a
23 health care provider or its agent to provide the notice required by
24 subsection (1) of this section shall not create a cause of action or remedy
25 against a collection agency under the "Colorado Fair Debt Collection
26 Practices Act", ~~article 14 of title 12, C.R.S.~~ ARTICLE 16 OF TITLE 5.

27 **SECTION 14.** In Colorado Revised Statutes, 8-2-126, **amend** (7)

1 as follows:

2 **8-2-126. Employer use of consumer credit information -**
3 **violation - short title - definitions.** (7) Nothing in this section imposes
4 any liability on a person, including a consumer reporting agency, as that
5 term is defined in ~~section 12-14.3-102 (4), C.R.S.~~ SECTION 5-18-103 (4),
6 for providing an employer with consumer credit information.

7 **SECTION 15.** In Colorado Revised Statutes, 10-4-116, **amend**
8 (8)(f) as follows:

9 **10-4-116. Use of credit information.** (8) For the purposes of this
10 section, unless the context otherwise requires:

11 (f) "Consumer reporting agency" shall have the same meaning as
12 in ~~section 12-14-103 (4.5), C.R.S.~~ SECTION 5-16-103 (6).

13 **SECTION 16.** In Colorado Revised Statutes, 11-35-101, **amend**
14 (1) as follows:

15 **11-35-101. Alternatives to surety bonds permitted -**
16 **requirements.** (1) The requirement of a surety bond as a condition to
17 licensure or authority to conduct business or perform duties in this state
18 provided in ~~sections 6-16-104.6, 12-5.5-202 (2) (b), 12-6-111, 12-6-112,~~
19 ~~12-6-112.2, 12-6-512, 12-6-513, 12-14-124 (1), 12-59-115 (1), 12-60-509~~
20 ~~(2.5) (b), 12-61-907, 33-4-101 (1), 33-12-104 (1), 35-55-104 (1),~~
21 ~~37-91-107 (2) and (3), 38-29-119 (2), 39-21-105, 39-27-104 (2) (a), (2)~~
22 ~~(b), (2) (c), (2) (d), (2) (e), (2.1) (a), (2.1) (b), (2.1) (c), (2.5) (a), and (2.5)~~
23 ~~(b), 39-28-105 (1), 42-6-115 (3), and 42-7-301 (6), C.R.S., SECTIONS~~
24 5-16-124 (1), 6-16-104.6, 12-5.5-202 (2)(b), 12-6-111, 12-6-112,
25 12-6-112.2, 12-6-512, 12-6-513, 12-59-115 (1), 12-61-907, 33-4-101 (1),
26 33-12-104 (1), 35-55-104 (1), 37-91-107 (2) AND (3), 38-29-119 (2),
27 39-21-105, 39-27-104 (2)(a), (2)(b), (2)(c), (2)(d), (2)(e), (2.1)(a),

1 (2.1)(b), (2.1)(c), (2.5)(a), AND (2.5)(b), 39-28-105 (1), 42-6-115 (3), AND
2 42-7-301 (6) may be satisfied by a savings account or deposit in or a
3 certificate of deposit issued by a state or national bank doing business in
4 this state or by a savings account or deposit in or a certificate of deposit
5 issued by a state or federal savings and loan association doing business
6 in this state. ~~Such~~ THE savings account, deposit, or certificate of deposit
7 shall be in the amount specified by statute, if any, and shall be assigned
8 to the appropriate state agency for the use of the people of the state of
9 Colorado. The aggregate liability of the bank or savings and loan
10 association shall in no event exceed the amount of the deposit. For the
11 purposes of the sections referred to in this section, "bond" includes the
12 savings account, deposit, or certificate of deposit authorized by this
13 section.

14 **SECTION 17.** In Colorado Revised Statutes, 12-58.5-105,
15 **amend** (1) introductory portion and (1)(a) as follows:

16 **12-58.5-105. Exemptions.** (1) This ~~article~~ ARTICLE 58.5 does not
17 apply to:

18 (a) A collection agency or consumer reporting agency, as defined
19 in ~~section 12-14-103 (2) and (4.5)~~ SECTION 5-16-103 (3) AND (6),
20 respectively;

21 **SECTION 18.** In Colorado Revised Statutes, 13-21-109, **amend**
22 (1) introductory portion and (1)(b)(II) as follows:

23 **13-21-109. Recovery of damages for checks, drafts, or orders**
24 **not paid upon presentment.** (1) Any person who obtains money,
25 merchandise, property, or other thing of value, or who makes any
26 payment of any obligation other than an obligation on a consumer credit
27 transaction as defined in section 5-1-301 ~~C.R.S.~~, by means of making any

1 check, draft, or order for the payment of money upon any bank,
2 depository, person, firm, or corporation ~~which~~ THAT is not paid upon its
3 presentment, is liable to the holder of ~~such~~ THE check, draft, or order or
4 any assignee for collection for one of the following amounts, at the option
5 of the holder or ~~such~~ assignee:

6 (b) An amount equal to the face amount of the check, draft, or
7 order and:

8 (II) If the check, draft, or order has been assigned for collection
9 to a person licensed as a collection agency pursuant to ~~article 14 of title~~
10 ~~12, C.R.S.~~, ARTICLE 16 OF TITLE 5 as costs of collection, twenty percent
11 of the face amount of the check, draft, or order but not less than twenty
12 dollars; or

13 **SECTION 19.** In Colorado Revised Statutes, 24-1-113, **amend**
14 (4)(a) as follows:

15 **24-1-113. Department of law - creation.** (4) (a) The collection
16 agency board, created by ~~article 14 of title 12, C.R.S.~~ ARTICLE 16 OF TITLE
17 5, and its powers, duties, and functions are transferred by a **type 2**
18 transfer to the department of law as a section of the division of legal
19 affairs and shall be under the supervision of the administrator of the
20 "Uniform Consumer Credit Code", whose office is created by section
21 5-6-103. ~~C.R.S.~~

22 **SECTION 20.** In Colorado Revised Statutes, 24-30-202.4,
23 **amend** (6) and (9) introductory portion as follows:

24 **24-30-202.4. Collection of debts due the state - controller's**
25 **duties - creation of debt collection fund - definitions - reciprocal debt**
26 **collection agreements.** (6) Any contract awarded to private counsel or
27 private collection agency shall require that ~~such~~ THE contractee remain

1 licensed under ~~such~~ THE contractee's respective occupational licensing
2 statutes or ~~regulations~~ RULES during the term of the contract. ~~Such~~ THE
3 contract shall require that a private counsel or private collection agency
4 shall at all times act in compliance with the provisions of the "Colorado
5 Fair Debt Collection Practices Act", ~~article 14 of title 12, C.R.S.~~ ARTICLE
6 16 OF TITLE 5, and in compliance with any rules or ~~regulations~~
7 promulgated by the executive director.

8 (9) Except as provided in the "Colorado Fair Debt Collection
9 Practices Act", ~~article 14 of title 12, C.R.S.~~ ARTICLE 16 OF TITLE 5, within
10 five days after the initial communication with a debtor in connection with
11 the collection of any debt, the controller, private counsel, or private
12 collection agency shall, unless the information is contained in the initial
13 communication or the debtor has paid the debt, send the debtor a written
14 notice with the disclosures specified in ~~paragraphs (a) and (b) of this~~
15 ~~subsection (9)~~ SUBSECTIONS (9)(a) AND (9)(b) OF THIS SECTION. If ~~such~~
16 THE disclosures are placed on the back of the notice, the front of the
17 notice shall contain a statement notifying debtors of that fact. ~~Such~~ THE
18 disclosures shall state:

19 **SECTION 21.** In Colorado Revised Statutes, 24-34-104, **amend**
20 (12)(a)(VII), (25)(a) introductory portion, and (25)(a) as follows:

21 **24-34-104. General assembly review of regulatory agencies**
22 **and functions for repeal, continuation, or reestablishment - legislative**
23 **declaration - repeal.** (12) (a) The following agencies, functions, or both,
24 will repeal on July 1, 2017:

25 (VII) The regulation of collection agencies in accordance with
26 ~~article 14 of title 12, C.R.S.~~ ARTICLE 16 OF TITLE 5;

27 (25) (a) The following agencies, functions, or both, ~~will~~ ARE

1 SCHEDULED FOR repeal on September 1, 2024:

2 (I) The division of financial services created in article 44 of title
3 11; ~~C.R.S.~~;

4 (II) The licensing functions of the banking board and the state
5 bank commissioner specified in article 52 of title 12, ~~C.R.S.~~, regarding
6 persons who transmit money;

7 (III) The division of banking and the banking board created in
8 article 102 of title 11; ~~C.R.S.~~;

9 (IV) The state board of licensure for architects, professional
10 engineers, and professional land surveyors in the department of regulatory
11 agencies created in section 12-25-106; ~~C.R.S.~~;

12 (V) The state plumbing board created in article 58 of title 12;
13 ~~C.R.S.~~;

14 (VI) The functions of the broadband deployment board created in
15 section 40-15-509.5, ~~C.R.S.~~, regarding the administration of the
16 broadband fund created in section 40-15-509.5; ~~C.R.S.~~;

17 (VII) The evidential breath-testing cash fund created in section
18 42-4-1301.1 (9); ~~C.R.S.~~;

19 (VIII) The veterans assistance grant program created in section
20 28-5-712; ~~C.R.S.~~;

21 (IX) The underfunded courthouse facility cash fund commission
22 created in part 3 of article 1 of title 13; ~~C.R.S.~~;

23 (X) The regulation of private occupational schools and their
24 agents under article 59 of title 12, ~~C.R.S.~~, including the functions of the
25 private occupational school division created in section 12-59-104.1,
26 ~~C.R.S.~~, and the private occupational school board created in section
27 12-59-105.1; ~~C.R.S.~~;

1 (XI) The licensing and regulation of respiratory therapists by the
2 division of professions and occupations in the department of regulatory
3 agencies in accordance with article 41.5 of title 12; ~~C.R.S.~~;

4 (XII) The Colorado commission for the deaf and hard of hearing
5 created in article 21 of title 26; ~~C.R.S.~~;

6 (XIII) The regulation of persons registered to practice mortuary
7 science by sections 12-54-110 and 12-54-111, ~~C.R.S.~~, and cremation by
8 sections 12-54-303 and 12-54-304, ~~C.R.S.~~, and the administration thereof
9 in accordance with part 4 of article 54 of title 12; ~~C.R.S.~~;

10 (XIV) The functions specified in part 2 of ~~article 14.5 of title 12,~~
11 ~~C.R.S.~~, OF ARTICLE 19 OF TITLE 5 of the administrator designated pursuant
12 to section 5-6-103 ~~C.R.S.~~, and the registration of debt-management
13 service providers.

14 **SECTION 22.** In Colorado Revised Statutes, 24-72-204, **amend**
15 (3.5)(c) introductory portion and (3.5)(c)(V) as follows:

16 **24-72-204. Allowance or denial of inspection - grounds -**
17 **procedure - appeal - definitions.** (3.5) (c) The custodian of any records
18 described in ~~paragraph (a) of this subsection (3.5)~~ SUBSECTION (3.5)(a) OF
19 THIS SECTION that concern an individual who has made a request of
20 confidentiality pursuant to this subsection (3.5) and paid any required
21 processing fee shall deny the right of inspection of the individual's
22 address contained in such records on the ground that disclosure would be
23 contrary to the public interest; except that ~~such~~ THE custodian shall allow
24 the inspection of ~~such~~ THE records by ~~such~~ THE individual, by any person
25 authorized in writing by ~~such~~ THAT individual, and by any individual
26 employed by one of the following entities who makes a request to the
27 custodian to inspect ~~such~~ THE records and who provides evidence

1 satisfactory to the custodian that the inspection is reasonably related to the
2 authorized purpose of the employing entity:

3 (V) A collection agency which has a valid license as required by
4 ~~section 12-14-115 (1), C.R.S.~~ SECTION 5-16-115 (1);

5 **SECTION 23.** In Colorado Revised Statutes, 26-13-116, **amend**
6 (5) as follows:

7 **26-13-116. Debt information made available to consumer**
8 **reporting agencies - notice to noncustodial parent - fees - rules -**
9 **definitions.** (5) The state board shall promulgate rules, ~~and regulations,~~
10 pursuant to section 24-4-103, ~~C.R.S.~~, to implement this section, including
11 but not limited to procedures for contesting the accuracy of the
12 information listed on the notice. ~~Such~~ THE rules shall be in addition to
13 any rights that a person may have to contest a consumer reporting agency
14 report ~~under sections 12-14.3-106 to 12-14.3-108, C.R.S.~~ PURSUANT TO
15 SECTIONS 5-18-110 TO 5-18-117.

16 **SECTION 24.** In Colorado Revised Statutes, 39-10-112, **amend**
17 (1)(a) as follows:

18 **39-10-112. Action to collect unpaid taxes.** (1) (a) In order to
19 collect delinquent personal property taxes and any delinquent interest
20 thereon, the treasurer may, at the treasurer's option, sue the owner of the
21 personal property in any court in the treasurer's county having
22 jurisdiction, enter into a contract to employ the services of any collection
23 agency that is duly licensed pursuant to ~~section 12-14-119 or 12-14-120,~~
24 ~~C.R.S.~~ SECTION 5-16-119 OR 5-16-120, or distrain, seize, and sell the
25 personal property as provided in section 39-10-111.

26 **SECTION 25.** In Colorado Revised Statutes, **repeal** articles 14,
27 14.1, 14.3, and 14.5 of title 12.

1 **SECTION 26. Act subject to petition - effective date.** This act
2 takes effect at 12:01 a.m. on the day following the expiration of the
3 ninety-day period after final adjournment of the general assembly (August
4 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
5 referendum petition is filed pursuant to section 1 (3) of article V of the
6 state constitution against this act or an item, section, or part of this act
7 within such period, then the act, item, section, or part will not take effect
8 unless approved by the people at the general election to be held in
9 November 2018 and, in such case, will take effect on the date of the
10 official declaration of the vote thereon by the governor.