

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 17-0298.01 Kristen Forrestal x4217

SENATE BILL 17-216

SENATE SPONSORSHIP

Gardner,

HOUSE SPONSORSHIP

Becker K. and Lontine,

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING CONTINUATION OF THE REGULATION OF COLLECTION**
102 **AGENCIES UNDER THE "COLORADO FAIR DEBT COLLECTION**
103 **PRACTICES ACT", AND, IN CONNECTION THEREWITH,**
104 **IMPLEMENTING THE RECOMMENDATIONS OF THE 2016 SUNSET**
105 **REPORT OF THE DEPARTMENT OF REGULATORY AGENCIES AND**
106 **REDUCING AN APPROPRIATION.**

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/>.)

Sunset Process - Senate Judiciary Committee. The bill

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.

implements the recommendations of the sunset review and report on the continuation of the "Colorado Fair Debt Collection Practices Act" (Act) by:

- ! Continuing the Act through 2028;
- ! Defining what is expected of a collection agency that purchases, sells, or attempts to collect on a purchased debt;
- ! Clarifying that when a collection agency attempts to collect on a debt, the Act applies, by removing language from the definition of "debt";
- ! Clarifying that the statute of limitations for private actions and actions by the administrator of the Act is 4 years;
- ! Repealing the collection agency board; and
- ! Allowing consumers who have monetary judgments against a collection agency to access surety bond funds.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-34-104, **repeal**
3 (12)(a)(VII); and **add** (29) as follows:

4 **24-34-104. General assembly review of regulatory agencies**
5 **and functions for repeal, continuation, or reestablishment - legislative**
6 **declaration - repeal.** (12) (a) The following agencies, functions, or both,
7 will repeal on July 1, 2017:

8 ~~(VII) The regulation of collection agencies in accordance with~~
9 ~~article 14 of title 12, C.R.S.;~~

10 (29) (a) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, ARE
11 SCHEDULED FOR REPEAL ON SEPTEMBER 1, 2028:

12 (I) THE ADMINISTRATION OF THE "COLORADO FAIR DEBT
13 COLLECTION PRACTICES ACT" BY THE ADMINISTRATOR OF THE "UNIFORM
14 CONSUMER CREDIT CODE", ARTICLES 1 TO 9 OF TITLE 5, IN ACCORDANCE
15 WITH ARTICLE 14 OF TITLE 12.

16 (b) THIS SUBSECTION (29) IS REPEALED, EFFECTIVE SEPTEMBER 1,
17 2030.

1 **SECTION 2.** In Colorado Revised Statutes, **amend** 12-14-137 as
2 follows:

3 **12-14-137. Repeal of article.** This ~~article~~ ARTICLE 14 is repealed,
4 effective ~~July 1, 2017~~ SEPTEMBER 1, 2028. BEFORE ITS REPEAL, THIS
5 ARTICLE 14 IS SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION
6 24-34-104.

7 **SECTION 3.** In Colorado Revised Statutes, 12-14-103, **repeal**
8 (1.5) as follows:

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

11 (1.5) ~~"Board" means the collection agency board created in~~
12 ~~section 12-14-116.~~

13

14 **SECTION 4.** In Colorado Revised Statutes, 12-14-111, **add** (2),
15 (3), and (4) as follows:

16 **12-14-111. Legal actions by collection agencies.** (2) A DEBT
17 COLLECTOR OR COLLECTION AGENCY WHO BRINGS A LEGAL ACTION ON A
18 DEBT OWNED BY A DEBT BUYER SHALL ATTACH THE FOLLOWING
19 MATERIALS TO THE COMPLAINT OR FORM:

20 (a) (I) A COPY OF THE CONTRACT, ACCOUNT-HOLDER AGREEMENT,
21 OR OTHER WRITING FROM THE ORIGINAL CREDITOR OR THE CONSUMER
22 EVIDENCING THE CONSUMER'S AGREEMENT TO THE ORIGINAL DEBT;

23 (II) IN THE CASE OF A MEDICAL DEBT, A COPY OF A REDACTED
24 ITEMIZATION OF CHARGES INCURRED;

25 (III) IF A SIGNED WRITING EVIDENCING THE ORIGINAL DEBT DOES
26 NOT EXIST, A COPY OF THE DOCUMENT PROVIDED TO THE CONSUMER
27 WHILE THE ACCOUNT WAS ACTIVE, DEMONSTRATING THAT THE DEBT WAS

1 INCURRED BY THE CONSUMER; OR, FOR A CREDIT CARD DEBT, THE MOST
2 RECENT MONTHLY STATEMENT RECORDING A PURCHASE TRANSACTION,
3 PAYMENT, OR BALANCE TRANSFER; OR

4 (IV) IF A CLAIM IS BASED ON AN ELECTRONIC TRANSACTION FOR
5 WHICH A SIGNED WRITING EVIDENCING THE ORIGINAL DEBT NEVER
6 EXISTED, A COPY OF THE RECORDS CREATED DURING THE TRANSACTION
7 EVIDENCING THE CONSUMER'S AGREEMENT TO THE DEBT AND RECORDING
8 THE DATE AND TERMS OF THE TRANSACTION AND INFORMATION PROVIDED
9 BY THE CONSUMER DURING THE TRANSACTION; AND

10 (b) A COPY OF THE ASSIGNMENT OR OTHER WRITING ESTABLISHING
11 THAT THE DEBT BUYER IS THE OWNER OF THE DEBT. IF THE DEBT WAS
12 ASSIGNED MORE THAN ONCE, EACH ASSIGNMENT OR OTHER WRITING
13 EVIDENCING TRANSFER OF OWNERSHIP MUST BE ATTACHED TO ESTABLISH
14 AN UNBROKEN CHAIN OF OWNERSHIP, BEGINNING WITH THE ORIGINAL
15 CREDITOR TO THE FIRST DEBT BUYER AND EACH SUBSEQUENT SALE.

16 (3) PRIOR TO ENTRY OF A DEFAULT JUDGMENT AGAINST A
17 CONSUMER IN A LEGAL ACTION ON A DEBT OWNED BY A DEBT BUYER, THE
18 PLAINTIFF SHALL FILE WITH THE COURT EVIDENCE THAT SATISFIES THE
19 REQUIREMENTS OF RULES 803(6) AND 902(11) OF THE COLORADO RULES
20 OF EVIDENCE OR IS OTHERWISE AUTHORIZED BY LAW OR RULE THAT
21 ESTABLISHES THE AMOUNT AND NATURE OF THE DEBT AND INCLUDE:

22 (a) THE ORIGINAL ACCOUNT NUMBER AT CHARGE-OFF;

23 (b) THE ORIGINAL CREDITOR AT CHARGE-OFF;

24 (c) THE AMOUNT DUE AT CHARGE-OFF OR, IF THE BALANCE HAS
25 NOT BEEN CHARGED OFF, AN ITEMIZATION OF THE AMOUNT CLAIMED TO BE
26 OWED, INCLUDING THE PRINCIPAL, INTEREST, FEES, AND OTHER CHARGES
27 OR REDUCTIONS FROM PAYMENT MADE OR OTHER CREDITS;

1 (d) AN ITEMIZATION OF POST CHARGE-OFF ADDITIONS, IF ANY;
2 (e) (I) THE DATE OF THE LAST PAYMENT, IF APPLICABLE; OR
3 (II) THE DATE OF THE LAST TRANSACTION; AND
4 (f) IF THE ACCOUNT IS NOT A REVOLVING CREDIT ACCOUNT, THE
5 DATE THE DEBT WAS INCURRED.

6 (4) IN THE ABSENCE OF EVIDENCE REQUIRED BY SUBSECTIONS
7 (2)(a) OR (2)(b) OF THIS SECTION, AN AFFIDAVIT DOES NOT SATISFY THE
8 REQUIREMENTS OF THESE SUBSECTIONS.

9 **SECTION 5.** In Colorado Revised Statutes, 12-14-113, **amend**
10 (3) and (4) as follows:

11 **12-14-113. Civil liability.** (3) A debt collector, private child
12 support collector, as defined in section 12-14.1-102 (9), or collection
13 agency may not be held liable in any action brought pursuant to ~~the~~
14 ~~provisions of this article~~ THIS SECTION if the debt collector or collection
15 agency shows by a preponderance of evidence that the violation was not
16 intentional or grossly negligent and ~~which~~ THE violation resulted from a
17 bona fide error, notwithstanding the maintenance of procedures
18 reasonably adapted to avoid any such error.

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

23 **SECTION 6.** In Colorado Revised Statutes, **repeal** 12-14-116.

24 **SECTION 7.** In Colorado Revised Statutes, 12-14-117, **repeal**
25 (1); and add (6), (7), and (8) as follows:

26 **12-14-117. Powers and duties of the administrator.** (1) ~~Any~~
27 ~~provision of this article to the contrary notwithstanding, the board, created~~

1 by section 12-14-116, is under the supervision and control of the
2 administrator, who may exercise any of the powers granted to the board.

3 (6) THE ADMINISTRATOR SHALL PREPARE A REPORT ACCOUNTING
4 FOR THE EFFICIENT DISCHARGE OF ALL RESPONSIBILITIES ASSIGNED BY
5 LAW AND THE GENERAL ADMINISTRATION OF THE PROGRAM ON A
6 BIANNUAL BASIS. IN ADDITION TO ANY OTHER INFORMATION DEEMED
7 RELEVANT BY THE ADMINISTRATOR, THE BIANNUAL REPORT SHALL
8 ADDRESS WITH SPECIFICITY THE FOLLOWING: ENFORCEMENT ACTIONS
9 COMPLETED AND WHETHER THOSE ACTIONS WERE APPEALED OR
10 OTHERWISE CHALLENGED, THE NUMBER OF COMPLAINTS PROCESSED AND
11 DETAILS AS TO OUTCOMES AND RESOLUTIONS OF COMPLAINTS, AND
12 CHANGES TO THE PROGRAM AND HOW THEY RELATE TO INDUSTRY OR
13 CONSUMER CONCERNS. THE REPORT SHALL INCLUDE A DESCRIPTION OF
14 ANY SIGNIFICANT LEGAL FILINGS SUCH AS AMICUS BRIEFS IN ANY COURT
15 AND A SUMMARY OF NEW REGULATIONS, LEGAL DEVELOPMENTS THAT
16 DIRECTLY IMPACT THE PROGRAM OR PROGRAM CHANGES, AND ANY
17 SIGNIFICANT MATTERS THAT NEED TO BE ADDRESSED AT THE REQUEST OF
18 THE REGULATED COMMUNITY OR PUBLIC. THE REPORT SHALL BE
19 SUBMITTED TO THE SENATE JUDICIARY COMMITTEE AND THE HOUSE
20 JUDICIARY COMMITTEE AND PUBLISHED ON THE ATTORNEY GENERAL'S
21 WEBSITE BY JULY 1 AND DECEMBER 31 OF EACH YEAR.

22 (7) IN ORDER TO FACILITATE INFORMATION SHARING, TO PRESENT
23 THE BIANNUAL REPORT OR SIMILAR INFORMATION, AND TO SOLICIT
24 INFORMATION RELEVANT TO THE GENERAL ADMINISTRATION OF THE
25 PROGRAM, THE ADMINISTRATOR, OR REPRESENTATIVE DESIGNATED BY THE
26 ATTORNEY GENERAL, SHALL ATTEND MEETINGS AND CONFERENCES OF
27 INTERESTED AND RELEVANT GROUPS AND ASSOCIATIONS. UPON

1 ATTENDANCE, THE ADMINISTRATOR SHALL HAVE MINUTES FROM THOSE
2 MEETINGS PREPARED AND PUBLISHED ON THE ATTORNEY GENERAL'S
3 WEBSITE AND MADE PART OF THE NEXT BIENNIAL REPORT. THE
4 ADMINISTRATOR, OR DESIGNEE, SHALL ATTEND THE FOLLOWING ON AN
5 ANNUAL BASIS:

6 (a) AT THE INVITATION OF THE COLLECTION AGENCY INDUSTRY,
7 ONE LOCAL AND ONE NATIONAL ASSOCIATION OF COLLECTION AGENCIES
8 OR OTHER COLLECTION AGENCY TRADE ASSOCIATION MEETING;

9 (b) AT THE INVITATION OF THE COLLECTION AGENCY INDUSTRY,
10 ONE ANNUAL MEETING OF OTHER BUSINESS ENTITY ASSOCIATIONS OR
11 GROUPS THAT REPRESENT CLIENTS OF COLLECTION AGENCIES, DEBT
12 BUYERS, OR OTHER RELATED TRADE ASSOCIATIONS; AND

13 (c) ONE ANNUAL MEETING OF A RELEVANT CONSUMER ADVOCACY
14 ASSOCIATION.

15 (8) THE ADMINISTRATOR SHALL HOST AN ANNUAL PUBLIC MEETING
16 IN JANUARY OF EACH YEAR, WITH DIRECT NOTICE AT LEAST ONE MONTH IN
17 ADVANCE TO CONSUMER ADVOCACY GROUPS AND ASSOCIATIONS AND
18 OTHER INTERESTED PARTIES. THE ADMINISTRATOR SHALL ALSO HOST AN
19 ANNUAL PUBLIC MEETING IN JULY OF EACH YEAR WITH DIRECT NOTICE AT
20 LEAST ONE MONTH IN ADVANCE TO LICENSEES, INDUSTRY GROUPS, CLIENT
21 GROUPS AND OTHER INTERESTED PARTIES.

22 **SECTION 8.** In Colorado Revised Statutes, 12-14-123, **add**
23 (1)(g), (1)(h), and (1)(i) as follows:

24 **12-14-123. Duties of collection agencies.** (1) A licensee shall:

25 (g) WHEN A DEBT IS SOLD, INCLUDE IN THE TRANSACTION ALL
26 RELEVANT DOCUMENTATION, AS DETERMINED BY RULE OF THE
27 ADMINISTRATOR, CONCERNING THE ORIGINAL TRANSACTION AND THE

1 CREDITOR VERIFYING THE DEBT;

2 (h) IF A DEBT IS UNDER DISPUTE AND BEING SOLD, INCLUDE
3 DOCUMENTATION THAT THE DEBT IS UNDER DISPUTE AND THAT THE
4 CONSUMER MAY NOT BE CONTACTED UNLESS VERIFICATION OF THE DEBT
5 IS DOCUMENTED;

6 (i) NOT SELL A RETIRED DEBT AS AN ACCOUNT RECEIVABLE.

7 **SECTION 9.** In Colorado Revised Statutes, 12-14-124, **amend**
8 (4) as follows:

9 **12-14-124. Bond.** (4) (a) If a receiver has been appointed by any
10 court of competent jurisdiction in the state of Colorado to take charge of
11 the assets of any licensee, ~~such~~ THE receiver, upon the written consent of
12 the administrator, may demand and receive payment on the bond from the
13 surety and, upon order of the court, may bring suit upon the bond in the
14 name of ~~such~~ THE receiver, without joining the administrator as a party to
15 the action.

16 (b) (I) IN A PRIVATE ACTION PURSUANT TO SECTION 12-14-113 (4),
17 THE CONSUMER MAY BRING SUIT UPON THE BOND IN THE NAME OF THE
18 CONSUMER.

19 (II) AN ORDER FOR RESTITUTION FOR A CONSUMER PURSUANT TO
20 SECTION 12-14-135 MAY INCLUDE RESTITUTION MADE THROUGH THE
21 BOND.

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23 **SECTION 10.** In Colorado Revised Statutes, **add** 12-14-128.5 as
24 follows:

25 **12-14-128.5. Statute of limitations - actions by administrator.**
26 AN ACTION OR PROCEEDING BROUGHT BY THE ADMINISTRATOR PURSUANT
27 TO THIS ARTICLE 14 OR PURSUANT TO ANY RULE ISSUED BY THE

1 ADMINISTRATOR UNDER THIS ARTICLE 14 MUST BE BROUGHT WITHIN TWO
2 YEARS AFTER THE DATE ON WHICH THE VIOLATION OCCURRED.

3 **SECTION 11.** In Colorado Revised Statutes, 12-14-130, **amend**
4 (12) as follows:

5 **12-14-130. Complaint - investigations - powers of**
6 **administrator - sanctions.** (12) ~~Members of the collection agency~~
7 ~~board,~~ The administrator, expert witnesses, and consultants ~~shall be~~ ARE
8 immune from civil suit when they perform any duties in connection with
9 any proceedings authorized under this section in good faith. Any person
10 who files a complaint in good faith under this section ~~shall be~~ IS immune
11 from civil suit.

12 **SECTION 12.** In Colorado Revised Statutes, **add 12-14-136.5 as**
13 **follows:**

14 **12-14-136.5. Debts sold or resold after January 1, 2018. THIS**
15 **PART 1 APPLIES TO DEBT BUYERS WITH RESPECT TO CONSUMER DEBTS**
16 **SOLD OR RESOLD ON OR AFTER JANUARY 1, 2018.**

17 **SECTION 13. Appropriation - adjustments to 2017 long bill.**
18 **To implement this act, the cash fund appropriation from the collection**
19 **agency cash fund created in section 12-14-136 (1)(a), C.R.S., made in the**
20 **annual general appropriation act for the 2017-18 state fiscal year to the**
21 **department of law for use by the division of consumer protection for the**
22 **consumer credit unit is decreased by \$860.**

23 **SECTION 14. Effective date.** This act takes effect upon passage;
24 **except that section 4 of this act takes effect January 1, 2018.**

25 **SECTION 15. Safety clause.** The general assembly hereby finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, and safety.