

CHAPTER 114

PROFESSIONS AND OCCUPATIONS

SENATE BILL 97-133

BY SENATORS Johnson, Chlouber, Hernandez, Ament, Bishop, Martinez, Matsunaka, Phillips, Powers, Reeves, Rizzuto, Schroeder, Thiebaut, Wattenberg, Alexander, Congrove, Dennis, Duke, Hopper, Norton, Pascoe, Perlmutter, Rupert, Tanner, Tebedo, and Wham;
also REPRESENTATIVES Tucker, Adkins, Leyba, Schauer, Allen, Clarke, Entz, Epps, Hagedorn, Kreutz, Mace, McPherson, Morrison, Nichol, Paschall, Reeser, Schwarz, Sullivant, Tate, Tupa, and Young.

AN ACT

CONCERNING THE PROTECTION OF CONSUMERS FROM INACCURATE CONSUMER REPORTS ISSUED BY
CONSUMER REPORTING AGENCIES.

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

SECTION 1. Article 14.3 of title 12, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

12-14.3-101.5. Legislative declaration. THE GENERAL ASSEMBLY FINDS AND DECLARES THAT THE USE OF CONSUMER REPORTING AGENCIES IS INCREASING RAPIDLY AS CONSUMER CREDIT TRANSACTIONS BECOME THE RULE RATHER THAN THE EXCEPTION IN EVERY-DAY CONSUMER PURCHASING. CONSUMER CREDIT REPORTS BY CONSUMER REPORTING AGENCIES MAY REPORT ON A CONSUMER'S CREDIT WORTHINESS, CREDIT STANDING, CREDIT CAPACITY, DEBTS, CHARACTER, GENERAL REPUTATION, PERSONAL CHARACTERISTICS, OR MODE OF LIVING AS FACTORS TO ESTABLISH A CONSUMER'S ELIGIBILITY FOR CREDIT INSURANCE OR EMPLOYMENT. WHEN A CONSUMER REPORTING AGENCY UNDERTAKES A BUSINESS THAT HAS THE POTENTIAL TO PROFOUNDLY AFFECT AN INDIVIDUAL CONSUMER'S LIFE, WHETHER FOR GOOD OR ILL, IT IS INCUMBENT UPON SUCH AGENCIES TO ENSURE THAT THE INFORMATION THEY ARE PROVIDING IS ACCURATE. INACCURATE CONSUMER CREDIT REPORTS DIRECTLY IMPAIR THE EFFICIENCY OF THE BANKING SYSTEM AND UNFAIR CREDIT REPORTING METHODS UNDERMINE THE PUBLIC CONFIDENCE IN THE BANKING SYSTEM. THERE IS A NEED TO ENSURE THAT CONSUMER REPORTING AGENCIES EXERCISE THEIR RESPONSIBILITIES WITH FAIRNESS, IMPARTIALITY, AND RESPECT FOR

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

THE CONSUMER'S RIGHTS. THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT, IN THE EVENT THE INFORMATION PROVIDED BY A CONSUMER REPORTING AGENCY IN A CONSUMER CREDIT REPORT IS INACCURATE, THE CONSUMER HAS THE RIGHT TO HAVE THAT INFORMATION CORRECTED IN A SWIFT AND UNCOMPLICATED WAY.

SECTION 2. 12-14.3-102 (4), Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended, and the said 12-14.3-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

12-14.3-102. Definitions. As used in this article, unless the context otherwise requires:

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

(4.5) "CREDITWORTHINESS" MEANS ANY ENTRY IN A CONSUMER'S CREDIT FILE THAT IMPACTS THE ABILITY OF A CONSUMER TO OBTAIN AND RETAIN CREDIT, EMPLOYMENT, BUSINESS OR PROFESSIONAL LICENSES, INVESTMENT OPPORTUNITIES, OR INSURANCE. ENTRIES CONTAINED IN A CONSUMER FILE OR IN A CONSUMER REPORT THAT AFFECT CREDITWORTHINESS SHALL INCLUDE, BUT NOT BE LIMITED TO, PAYMENT INFORMATION, DEFAULTS, JUDGMENTS, LIENS, BANKRUPTCIES, COLLECTIONS, RECORDS OF ARREST AND INDICTMENTS, AND MULTIPLE-CREDIT INQUIRIES.

SECTION 3. 12-14.3-103 (1) (c) (I), (1) (c) (II), (1) (c) (III), and (2), Colorado Revised Statutes, 1991 Repl. Vol., as amended, are amended to read:

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

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

(I) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving an extension of credit to, or review or collection of an account of, the consumer; AND IF THE CONSUMER CHOOSES TO PROVIDE THEIR SOCIAL SECURITY NUMBER TO THE USER, THE USER SHALL INCLUDE THE SOCIAL SECURITY NUMBER WITH, OR AS A SUPPLEMENT TO, A REQUEST FOR A CONSUMER REPORT, AND INCLUDE THE SOCIAL SECURITY NUMBER WHEN TRANSMITTING SUBSEQUENT CREDIT INFORMATION TO A CONSUMER REPORTING AGENCY; or

(II) Intends to use the information for employment purposes ONLY IF AN APPLICANT OR EMPLOYEE IS FIRST INFORMED THAT A CREDIT REPORT MAY BE REQUESTED IN CONNECTION WITH HIS OR HER APPLICATION FOR EMPLOYMENT AND THE CONSUMER CONSENTS IN WRITING TO THE SAME; or

(III) Intends to use the information in connection with the underwriting of

insurance involving the consumer AND SUCH PERSON ESTABLISHES THAT THE CONSUMER HAS RECEIVED WRITTEN NOTIFICATION, OR NOTIFICATION IN THE SAME MEDIUM AS THE APPLICATION FOR INSURANCE, THAT A CREDIT REPORT MAY BE REQUESTED IN CONNECTION WITH HIS OR HER APPLICATION FOR INSURANCE; or

(2) A consumer reporting agency may not, by contract or otherwise, prohibit a user of any consumer report or investigative consumer report from, upon request of the consumer, disclosing AND EXPLAINING the contents of such report OR PROVIDING A COPY OF THE REPORT to the consumer to whom it relates if adverse action against the consumer has been taken or is contemplated by the user of the consumer report or investigative consumer report, based in whole or in part on such report. No user or consumer reporting agency shall be held liable or otherwise responsible for a disclosed OR COPIED report when acting pursuant to this subsection (2) nor shall such disclosure OR PROVISION OF A COPY OF THE REPORT, by itself THEMSELVES, make the user a consumer reporting agency.

SECTION 4. The introductory portion to 12-14.3-104 (1) and 12-14.3-104 (1) (b), Colorado Revised Statutes, 1991 Repl. Vol., as amended, are amended, and the said 12-14.3-104 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

12-14.3-104. Disclosures to consumers. (1) A consumer reporting agency shall, upon written or verbal request and proper identification of any consumer, clearly, ~~and~~ accurately, AND IN A MANNER THAT IS UNDERSTANDABLE TO THE CONSUMER, disclose to the consumer, in writing, all information in its files at the time of the request pertaining to the consumer, including but not limited to:

(b) A set of instructions, PRESENTED IN A MANNER THAT IS UNDERSTANDABLE TO THE CONSUMER, describing how information is presented on its written disclosure of the file; and

(2) (a) A CONSUMER REPORTING AGENCY SHALL NOTIFY A CONSUMER, BY LETTER SENT BY FIRST-CLASS MAIL, THAT THE CONSUMER REPORTING AGENCY WILL PROVIDE THE CONSUMER WITH A DISCLOSURE COPY OF HIS OR HER CONSUMER FILE AT NO CHARGE AND A TOLL-FREE TELEPHONE NUMBER TO CALL TO REQUEST SUCH COPY, WHEN ONE OF THE FOLLOWING EVENTS OCCURS WITHIN A TWELVE-MONTH PERIOD:

(I) THE CONSUMER REPORTING AGENCY HAS RECEIVED THREE CREDIT INQUIRIES PERTAINING TO THE CONSUMER; OR

(II) THE CONSUMER REPORTING AGENCY HAS RECEIVED A REPORT THAT WOULD ADD NEGATIVE INFORMATION TO A CONSUMER'S FILE.

(b) A CONSUMER REPORTING AGENCY NEED ONLY SEND ONE LETTER TO A CONSUMER PER TWELVE-MONTH PERIOD PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) EVEN IF MORE THAN ONE SUCH EVENT OCCURS IN THAT PERIOD.

(c) ANY LETTER MAILED TO A CONSUMER PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL NOT CONTAIN ANY IDENTIFYING INFORMATION PARTICULAR TO THAT CONSUMER INCLUDING, BUT NOT LIMITED TO, SOCIAL SECURITY NUMBER, PLACE OF EMPLOYMENT, DATE OF BIRTH, OR MOTHER'S MAIDEN NAME.

(d) ANY LETTER MAILED TO A CONSUMER PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) MAY BE A FORM LETTER; EXCEPT THAT EACH LETTER SHALL ADVISE THE CONSUMER OF THE NUMBER AND TYPE OF EVENTS THAT OCCURRED RELATING TO THE CONSUMER THAT INITIATED THE LETTER.

(e) EACH CONSUMER REPORTING AGENCY SHALL, UPON REQUEST OF A CONSUMER, PROVIDE THE CONSUMER WITH ONE DISCLOSURE COPY OF HIS OR HER FILE PER YEAR AT NO CHARGE WHETHER OR NOT THE CONSUMER HAS MADE THE REQUEST IN RESPONSE TO THE NOTIFICATION REQUIRED IN PARAGRAPH (a) OF THIS SUBSECTION (2). IF THE CONSUMER REQUESTS MORE THAN ONE DISCLOSURE COPY OF HIS OR HER FILE PER YEAR PURSUANT TO THIS PARAGRAPH (e), THE CONSUMER REPORTING AGENCY MAY CHARGE THE CONSUMER UP TO EIGHT DOLLARS FOR EACH ADDITIONAL DISCLOSURE COPY.

SECTION 5. 12-14.3-105 (1), Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

12-14.3-105. Charges for certain disclosures. (1) A consumer reporting agency shall not impose a charge for:

(d) THE FIRST COPY OF A CONSUMER DISCLOSURE PROVIDED TO A CONSUMER EACH CALENDAR YEAR PURSUANT TO SECTION 12-14.3-104 (2) (a).

SECTION 6. Article 14.3 of title 12, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

12-14.3-105.3. Reporting of information prohibited. (1) EXCEPT AS AUTHORIZED UNDER SUBSECTION (2) OF THIS SECTION, NO CONSUMER REPORTING AGENCY SHALL MAKE ANY CONSUMER REPORT CONTAINING ANY OF THE FOLLOWING ITEMS OF INFORMATION:

(a) CASES UNDER TITLE 11 OF THE UNITED STATES CODE, OR UNDER THE FEDERAL BANKRUPTCY ACT THAT, FROM THE DATE OF ENTRY OF THE ORDER FOR RELIEF OR THE DATE OF ADJUDICATION, PREDATE THE REPORT BY MORE THAN TEN YEARS;

(b) SUITS AND JUDGMENTS THAT, FROM THE DATE OF ENTRY, PREDATE THE REPORT BY MORE THAN SEVEN YEARS OR BY MORE THAN THE GOVERNING STATUTE OF LIMITATIONS, WHICHEVER IS THE LONGER PERIOD;

(c) PAID TAX LIENS THAT, FROM THE DATE OF PAYMENT, PREDATE THE REPORT BY MORE THAN SEVEN YEARS;

(d) ACCOUNTS PLACED FOR COLLECTION OR CHARGED TO PROFIT AND LOSS THAT PREDATE THE REPORT BY MORE THAN SEVEN YEARS;

(e) RECORDS OF ARREST, INDICTMENT, OR CONVICTION OF A CRIME THAT, FROM THE DATE OF DISPOSITION, RELEASE, OR PAROLE, PREDATE THE REPORT BY MORE THAN SEVEN YEARS;

(f) ANY OTHER ADVERSE ITEM OF INFORMATION THAT PREDATES THE REPORT BY MORE THAN SEVEN YEARS.

(2) THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION DO NOT APPLY TO THE CASE OF ANY CONSUMER REPORT TO BE USED IN CONNECTION WITH:

(a) A CREDIT TRANSACTION INVOLVING, OR THAT MAY REASONABLY BE EXPECTED TO INVOLVE, A PRINCIPAL AMOUNT OF ONE HUNDRED FIFTY THOUSAND DOLLARS OR MORE;

(b) THE UNDERWRITING OF LIFE INSURANCE INVOLVING, OR THAT MAY REASONABLY BE EXPECTED TO INVOLVE, A FACE AMOUNT OF ONE HUNDRED FIFTY THOUSAND DOLLARS OR MORE; OR

(c) THE EMPLOYMENT OF AN INDIVIDUAL AT AN ANNUAL SALARY THAT EQUALS OR IS REASONABLY EXPECTED TO EQUAL SEVENTY-FIVE THOUSAND DOLLARS OR MORE.

(3) A CONSUMER REPORTING AGENCY SHALL NOT FURNISH FOR EMPLOYMENT PURPOSES, OR IN CONNECTION WITH A CREDIT OR INSURANCE TRANSACTION OR A DIRECT MARKETING TRANSACTION, A CONSUMER REPORT THAT CONTAINS MEDICAL INFORMATION ABOUT A CONSUMER UNLESS THE CONSUMER CONSENTS TO THE FURNISHING OF THE REPORT.

(4) A CONSUMER REPORTING AGENCY SHALL NOT INCLUDE, IN A CONSUMER REPORT MADE TO A PERSON REQUESTING CREDIT INFORMATION PERTAINING TO A CONSUMER, THE NAMES OF ANY OTHER PERSONS WHO HAVE REQUESTED CREDIT INFORMATION PERTAINING TO THAT CONSUMER OR THE NUMBER OF SUCH INQUIRIES MADE MORE THAN ONE YEAR PRECEDING THE DATE OF THE CONSUMER REPORT; EXCEPT THAT SUCH INFORMATION SHALL BE RETAINED FOR TWO YEARS AND PROVIDED TO THE CONSUMER AS PROVIDED IN THIS ARTICLE.

SECTION 7. 12-14.3-106 (1) and (4), Colorado Revised Statutes, 1991 Repl. Vol., as amended, are amended, and the said 12-14.3-106 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

12-14.3-106. Procedure for disputed information. (1) If the completeness or accuracy of any item of information contained in the consumer's file is disputed by the consumer and the consumer notifies the consumer reporting agency directly of such dispute, the agency shall reinvestigate the item free of charge and record the current status of the disputed information on or before thirty business days after the date the agency receives notice conveyed by the consumer. THE CONSUMER REPORTING AGENCY SHALL PROVIDE THE CONSUMER WITH THE OPTION OF SPEAKING DIRECTLY TO A REPRESENTATIVE OF THE AGENCY TO NOTIFY THE AGENCY OF DISPUTED INFORMATION CONTAINED IN THE CONSUMER'S FILE.

(4) If, after a reinvestigation under subsection (1) of this section of any information disputed by a consumer, the information is found to be inaccurate or cannot be verified, the consumer reporting agency shall promptly delete such information from the consumer's file, revise the file, PROVIDE THE CONSUMER AND, AT THE REQUEST OF THE CONSUMER, ANY PERSON THAT, WITHIN THE LAST TWELVE MONTHS, REQUESTED THE DISPUTED INFORMATION WITH A REVISED CONSUMER REPORT INDICATING THAT IT IS A REVISED CONSUMER REPORT, and refrain from reporting the information in subsequent reports. THE CONSUMER REPORTING AGENCY SHALL ADVISE THE CONSUMER THAT HE OR SHE HAS THE RIGHT TO HAVE A COPY OF THE REVISED

CONSUMER REPORT SENT BY THE CONSUMER REPORTING AGENCY TO ANY PERSON THAT REQUESTED THE DISPUTED INFORMATION WITHIN THE LAST TWELVE MONTHS.

(7) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE A PERSON WHO OBTAINS A CONSUMER REPORT FOR RESALE TO ALTER OR CORRECT ANY INACCURACY IN SUCH CONSUMER REPORT IF THE CONSUMER REPORT WAS NOT ASSEMBLED OR PREPARED BY SUCH PERSON.

(8) THE CONSUMER REPORTING AGENCY SHALL PROVIDE A PERSON WHO PROVIDES CREDIT INFORMATION TO THE AGENCY WITH THE OPTION TO SPEAK DIRECTLY WITH A REPRESENTATIVE OF THE AGENCY OR TO SUBMIT CORRECTIONS TO PREVIOUSLY REPORTED INFORMATION BY FACSIMILE OR OTHER AUTOMATED MEANS WHEN INACCURATE INFORMATION THAT WAS REPORTED BY SUCH CREDIT INFORMATION PROVIDER APPEARS ON A CONSUMER'S FILE. THE CONSUMER REPORTING AGENCY SHALL, IN A PERIOD NOT TO EXCEED FIVE BUSINESS DAYS FROM THE RECEIPT OF SUCH FAXED OR AUTOMATED INFORMATION REGARDING SUCH CORRECTIONS, CORRECT SUCH INACCURACIES ON THE CONSUMER'S FILE AND, UPON REQUEST, COMMUNICATE SUCH CORRECTIONS TO THE PERSON WHO SUBMITTED THE INITIAL REQUEST FOR CORRECTIONS. THE CREDIT INFORMATION PROVIDER'S COMMUNICATION SHALL INCLUDE INFORMATION ESTABLISHED BY THE CONSUMER REPORTING AGENCY THAT IDENTIFIES HIM OR HER AS THE CREDIT INFORMATION PROVIDER WHO PROVIDED THE ORIGINAL INACCURATE INFORMATION. NOTHING IN THIS SUBSECTION (8) SHALL BE CONSTRUED TO PROHIBIT A CONSUMER REPORTING AGENCY FROM CORRECTING INACCURATE INFORMATION IN A CONSUMER'S FILE OR A CONSUMER REPORT AT ANY TIME.

SECTION 8. 12-14.3-108, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-14.3-108. Violations. (1) Any consumer reporting agency that willfully violates any provision of this article, OR THE FEDERAL "FAIR CREDIT REPORTING ACT", SEC. 1681c, AS AMENDED, shall be liable for three times the amount of actual damages or one thousand dollars FOR EACH INACCURATE ENTRY IN THE CONSUMER'S FILE THAT WAS DISPUTED BY THE CONSUMER, whichever is greater, reasonable attorney fees, and costs.

(2) (a) Any consumer reporting agency ~~which~~ THAT negligently violates this article, OR THE FEDERAL "FAIR CREDIT REPORTING ACT", SEC. 1681c, AS AMENDED, shall be liable for THE GREATER OF actual damages or ~~five hundred~~ ONE THOUSAND dollars FOR EACH INACCURATE ENTRY IN THE CONSUMER'S FILE THAT WAS DISPUTED BY THE CONSUMER AND AFFECTS THE CONSUMER'S CREDITWORTHINESS, AS DEFINED IN SECTION 12-14.3-104 (4.5), ~~whichever is greater,~~ reasonable attorney fees, and costs, ~~A consumer reporting agency has no liability under this subsection (2) if within sixty~~ THIRTY days after receiving notice of dispute from a consumer, in accordance with section 12-14.3-106, the consumer reporting agency DOES NOT ~~corrects~~ CORRECT the complained of ~~item~~ ITEMS or ~~activity~~ ACTIVITIES and DOES NOT ~~sends~~ SEND the consumer AND, UPON REQUEST OF THE CONSUMER, ANY PERSON WHO HAS REQUESTED THE CONSUMER INFORMATION, written notification of such corrective action, in accordance with section 12-14.3-106 (6).

(b) ANY CONSUMER REPORTING AGENCY THAT NEGLIGENTLY VIOLATES THIS

ARTICLE, OR THE FEDERAL "FAIR CREDIT REPORTING ACT", SEC. 1681c, AS AMENDED, SHALL BE LIABLE FOR THE GREATER OF ACTUAL DAMAGES OR ONE THOUSAND DOLLARS FOR ALL INACCURATE ENTRIES IN THE CONSUMER'S FILE THAT WERE DISPUTED BY THE CONSUMER BUT DID NOT AFFECT THE CONSUMER'S CREDITWORTHINESS, REASONABLE ATTORNEY FEES, AND COSTS, IF WITHIN THIRTY DAYS AFTER RECEIVING NOTICE OF DISPUTE FROM A CONSUMER, IN ACCORDANCE WITH SECTION 12-14.3-106, THE CONSUMER REPORTING AGENCY DOES NOT CORRECT THE COMPLAINED OF ITEMS OR ACTIVITIES AND DOES NOT SEND THE CONSUMER AND, IF REQUESTED BY THE CONSUMER, ANY PERSON WHO HAS REQUESTED THE CONSUMER INFORMATION, WRITTEN NOTIFICATION OF SUCH CORRECTIVE ACTION, IN ACCORDANCE WITH SECTION 12-14.3-106 (6).

(3) IN ADDITION TO THE DAMAGES ASSESSED UNDER SUBSECTIONS (1) AND (2) OF THIS SECTION, IF, TEN DAYS AFTER THE ENTRY OF ANY JUDGMENT FOR DAMAGES, THE CONSUMER'S FILE IS STILL NOT CORRECTED BY THE CONSUMER REPORTING AGENCY, SUCH ASSESSED DAMAGES SHALL BE INCREASED TO ONE THOUSAND DOLLARS PER DAY PER INACCURATE ENTRY THAT REMAINS IN THE CONSUMER'S FILE UNTIL THE INACCURATE ENTRY IS CORRECTED.

SECTION 9. Effective date. This act shall take effect August 1, 1997.

SECTION 10. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 21, 1997