

CHAPTER 143

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 02-1258

BY REPRESENTATIVE(S) Marshall, Bacon, Borodkin, Boyd, Cadman, Chavez, Cloer, Coleman, Daniel, Fairbank, Fritz, Garcia, Groff, Harvey, Hodge, Jahn, Jameson, King, Lawrence, Lee, Mace, Madden, Miller, Paschall, Plant, Ragsdale, Romanoff, Scott, Stafford, Stengel, Tapia, Veiga, Vigil, Weddig, and Williams S.;

also SENATOR(S) Anderson, Andrews, Arnold, Dyer, Entz, Epps, Fitz-Gerald, Gordon, Hagedorn, Hanna, Hernandez, Isgar, Matsunaka, Nichol, Pascoe, Phillips, Takis, Tate, Teck, Thiebaut, Tupa, and Windels.

AN ACT

CONCERNING INCREASED PROTECTIONS FOR VICTIMS OF IDENTITY THEFT, AND, IN CONNECTION THEREWITH, PROHIBITING THE PROCESSING OF CREDIT REPORT ENTRIES THAT ARE BASED ON IDENTITY THEFT AND EXPEDITING JUDICIAL DETERMINATIONS CONCERNING IDENTITY THEFT.

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

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

12-14.3-106.5. Consumer report information block. (1) (a) A CONSUMER REPORTING AGENCY SHALL, WITHIN THIRTY DAYS AFTER THE RECEIPT OF A POLICE REPORT OR ORDER PURSUANT TO THIS PARAGRAPH (a), PERMANENTLY BLOCK THE REPORTING OF ANY INFORMATION THAT A CONSUMER IDENTIFIES ON HIS OR HER CONSUMER REPORT AS BEING SUBJECT TO EITHER A POLICE REPORT OR A COURT ORDER REFERENCED IN SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH (a) IF THE CONSUMER PROVIDES A CONSUMER REPORTING AGENCY WITH PROOF OF THE CONSUMER'S IDENTIFICATION AND A COPY OF:

(I) A POLICE REPORT THAT ALLEGES THAT A PERSON OTHER THAN THE CONSUMER OBTAINED OR RECORDED, BY MEANS OF FRAUD, THEFT, OR OTHER VIOLATION OF THE "COLORADO CRIMINAL CODE", PERSONAL IDENTIFYING INFORMATION OF THE CONSUMER WITHOUT AUTHORIZATION FROM THE CONSUMER AND THAT THE PERSON USED THE INFORMATION TO OBTAIN, OR ATTEMPT TO OBTAIN, CREDIT, GOODS, SERVICES, OR MONEYS IN THE NAME OF THE CONSUMER WITHOUT THE CONSUMER'S CONSENT; OR

(II) A CERTIFIED COURT ORDER ISSUED PURSUANT TO SECTION 16-18.5-103 (7),

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

C.R.S.

(b) THE CONSUMER REPORTING AGENCY SHALL PROMPTLY NOTIFY THE PERSON WHO FURNISHED THE INFORMATION THAT A POLICE REPORT OR COURT ORDER HAS BEEN FILED, THAT A BLOCK HAS BEEN REQUESTED, AND OF THE EFFECTIVE DATE OF THE BLOCK.

(2) (a) A CONSUMER REPORTING AGENCY MAY DECLINE TO BLOCK OR MAY RESCIND ANY BLOCK OF CONSUMER INFORMATION IF, IN THE EXERCISE OF GOOD FAITH AND REASONABLE JUDGMENT, THE CONSUMER REPORTING AGENCY BELIEVES:

(I) THE INFORMATION WAS BLOCKED DUE TO A MISREPRESENTATION OF FACT BY THE CONSUMER RELEVANT TO THE REQUEST TO BLOCK UNDER THIS SECTION;

(II) THE CONSUMER AGREES THAT THE BLOCKED INFORMATION OR PORTIONS OF THE BLOCKED INFORMATION WERE BLOCKED IN ERROR;

(III) THE CONSUMER KNOWINGLY OBTAINED POSSESSION OF GOODS, SERVICES, OR MONEYS AS A RESULT OF THE BLOCKED TRANSACTION OR TRANSACTIONS OR THE CONSUMER SHOULD HAVE KNOWN THAT HE OR SHE OBTAINED POSSESSION OF GOODS, SERVICES, OR MONEYS AS A RESULT OF THE BLOCKED TRANSACTION OR TRANSACTIONS; OR

(IV) THE CONSUMER SO REQUESTS IN WRITING AND PRESENTS PROOF OF THE CONSUMER'S IDENTITY.

(b) A CONSUMER REPORTING AGENCY SHALL DECLINE TO BLOCK OR SHALL RESCIND ANY BLOCK OF CONSUMER INFORMATION IF, IN THE CASE OF A BLOCK OR BLOCK REQUEST BASED UPON THE FILING OF AN ORDER, THE SENTENCING COURT AMENDS, DISMISSES, OR WITHDRAWS ITS PRIOR ORDER TO CORRECT RECORDS ISSUED PURSUANT TO SECTION 16-18.5-103 (7), C.R.S., AND THE CONSUMER PROVIDES SUCH DOCUMENTATION FROM THE COURT AND PROOF OF THE CONSUMER'S IDENTITY.

(3) IF A BLOCK OF CREDIT INFORMATION IS DECLINED OR RESCINDED PURSUANT TO THIS SECTION, THE CONSUMER REPORTING AGENCY SHALL PROMPTLY NOTIFY THE CONSUMER IN THE SAME MANNER AS CONSUMERS ARE NOTIFIED OF THE REINSERTION OF INFORMATION PURSUANT TO SECTION 12-14.3-106. THE PRIOR PRESENCE OF THE BLOCKED INFORMATION IN THE CONSUMER REPORTING AGENCY'S FILE ON THE CONSUMER IS NOT EVIDENCE OF WHETHER THE CONSUMER KNEW OR SHOULD HAVE KNOWN THAT HE OR SHE OBTAINED POSSESSION OF ANY GOODS, SERVICES, OR MONEYS.

(4) THIS SECTION DOES NOT APPLY TO A CONSUMER REPORTING AGENCY THAT ACTS AS A RESELLER OF INFORMATION BY ASSEMBLING AND MERGING INFORMATION CONTAINED IN THE DATA BASE OF ONE OR MORE OTHER CONSUMER REPORTING AGENCIES AND THAT DOES NOT MAINTAIN A DATA BASE OF THE ASSEMBLED OR MERGED INFORMATION FROM WHICH NEW CONSUMER REPORTS ARE PRODUCED.

SECTION 2. 12-14.3-107, Colorado Revised Statutes, is amended to read:

12-14.3-107. Consumer's right to file action in court or arbitrate disputes.

An action to enforce any obligation of a consumer reporting agency to a consumer under this article may be brought in any court of competent jurisdiction as provided by the federal "Fair Credit Reporting Act" or submitted to binding arbitration after the consumer has followed all dispute procedures in section 12-14.3-106 and has received the notice specified in subsection (6) of said section, OR HAS FOLLOWED ALL OF THE BLOCK PROCEDURES IN SECTION 12-14.3-106.5, in the manner set forth in the rules of the American Arbitration Association to determine whether the consumer reporting agency met its obligations under this article. No decision by an arbitrator pursuant to this section shall affect the validity of any obligations or debts owed to any party. A successful party to any such arbitration proceeding shall be compensated for the costs and attorney fees of the proceeding as determined by the court or arbitration. No consumer may submit more than one action to arbitration against any consumer reporting agency during any one-hundred-twenty-day period. The results of an arbitration action brought against a consumer reporting agency doing business in this state shall be communicated in a timely manner with all other consumer reporting agencies doing business in this state. If, as a result of an arbitration a determination is made in favor of the consumer, any adverse information in such consumer's file or record shall be BLOCKED, removed, or stricken in a timely manner. If such adverse information is not so BLOCKED, removed, or stricken, the consumer may bring an action against the noncomplying agency pursuant to this section notwithstanding the one-hundred-twenty-day waiting period.

SECTION 3. 12-14.3-108, Colorado Revised Statutes, 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 OR UNBLOCKED entry in the consumer's file that was disputed OR ALLEGED TO BE UNAUTHORIZED IN ACCORDANCE WITH SECTION 12-14.3-106.5 by the consumer, whichever is greater, reasonable attorney fees, and costs.

(2) (a) 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 each inaccurate OR UNBLOCKED entry in the consumer's file that was disputed OR ALLEGED TO BE UNAUTHORIZED IN ACCORDANCE WITH SECTION 12-14.3-106.5 by the consumer and affects the consumer's creditworthiness, as defined in section 12-14.3-102 (4.5), 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, 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), OR IF, WITHIN THIRTY DAYS AFTER RECEIVING A COPY OF A POLICE REPORT ALLEGING, OR A CERTIFIED COURT ORDER FINDING, UNAUTHORIZED ACTIVITY, THE CONSUMER REPORTING AGENCY DOES NOT BLOCK THE INFORMATION IN ACCORDANCE WITH SECTION 12-14.3-106.5.

(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 OR UNBLOCKED

entries in the consumer's file that were disputed OR ALLEGED TO BE UNAUTHORIZED IN ACCORDANCE WITH SECTION 12-14.3-106.5 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) OR IF, WITHIN THIRTY DAYS AFTER RECEIVING A COPY OF A POLICE REPORT ALLEGING, OR A CERTIFIED COURT ORDER FINDING, UNAUTHORIZED ACTIVITY, THE CONSUMER REPORTING AGENCY DOES NOT BLOCK THE INFORMATION IN ACCORDANCE WITH SECTION 12-14.3-106.5.

(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 OR BLOCKED by the consumer reporting agency, such assessed damages shall be increased to one thousand dollars per day per inaccurate OR UNBLOCKED entry that remains in the consumer's file until the inaccurate entry is corrected OR BLOCKED.

SECTION 4. 16-18.5-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

16-18.5-103. Assessment of restitution - corrective orders. (7) WHEN A PERSON'S MEANS OF IDENTIFICATION OR FINANCIAL INFORMATION WAS USED WITHOUT THAT PERSON'S AUTHORIZATION IN CONNECTION WITH A CONVICTION FOR ANY CRIME IN VIOLATION OF PART 2, 3, OR 4 OF ARTICLE 4, PART 1, 2, 3, OR 7 OF ARTICLE 5, OR ARTICLE 5.5 OF TITLE 18, THE SENTENCING COURT MAY ISSUE SUCH ORDERS AS ARE NECESSARY TO CORRECT A PUBLIC RECORD THAT CONTAINS FALSE INFORMATION RESULTING FROM ANY VIOLATION OF SUCH LAWS.

SECTION 5. Effective date. This act shall take effect July 1, 2002.

SECTION 6. 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: May 6, 2002