

CHAPTER 287

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 03-1219

BY REPRESENTATIVE(S) Hall, Fritz, Hoppe, Larson, McCluskey, White, Williams T., Frangas, and Stengel;
also SENATOR(S) Johnson S., Jones, Kester, and Sandoval.

AN ACT

**CONCERNING THE REGULATION OF COLLECTION AGENCIES, AND, IN CONNECTION THEREWITH,
CONTINUING THE COLLECTION AGENCY BOARD.**

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

SECTION 1. 12-14-103 (2) (d), (2) (e) (II), and (2) (e) (III), Colorado Revised Statutes, are amended to read:

12-14-103. Definitions. As used in this article, unless the context otherwise requires:

(2) (d) For the purposes of section 12-14-108 (1) (f), "collection agency" includes any person engaged in any business the principal purpose of which is the enforcement of security interests. For purposes of sections 12-14-104, 12-14-105, 12-14-106, 12-14-107, 12-14-108, and 12-14-109 only, ~~but not for purposes of section 12-14-109 (1) (g);~~ "collection agency" includes a debt collector for the department of personnel.

(e) Notwithstanding paragraph (b) of this subsection (2), "collection agency" includes any person who engages in any of the following activities; except that such person shall be exempt from provisions of this article that concern licensing and licensees:

(II) Is an attorney-at-law and regularly engages in the collection or attempted collection of debts in this state; ~~except that such person shall also be exempt from section 12-14-109 (1) (f) and (1) (g);~~

(III) Is a person located outside this state whose collection activities are limited to collecting debts not incurred in this state from consumers located in this state and

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

whose collection activities are conducted by means of interstate communications, including telephone, mail, or facsimile transmission, and who is located in another state that regulates and licenses collection agencies but does not require Colorado collection agencies to obtain a license to collect debts in their state if such agencies' collection activities are limited in the same manner. ~~except that such person shall also be exempt from section 12-14-109 (1) (f) and (1) (g).~~

SECTION 2. 12-14-105 (1) (b) and (3), Colorado Revised Statutes, are amended to read:

12-14-105. Communication in connection with debt collection. (1) Without the prior consent of the consumer given directly to the debt collector or collection agency or the express permission of a court of competent jurisdiction, a debt collector or collection agency shall not communicate with a consumer in connection with the collection of any debt:

(b) If the debt collector or collection agency knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time ~~not less than thirty days~~, to a communication from the debt collector or collection agency or unless the attorney consents to direct communication with the consumer; or

(3) (a) If a consumer notifies a debt collector or collection agency in writing that THE CONSUMER REFUSES TO PAY A DEBT OR THAT THE CONSUMER WISHES THE DEBT COLLECTOR OR COLLECTION AGENCY TO CEASE FURTHER COMMUNICATION WITH THE CONSUMER, THE DEBT COLLECTOR OR COLLECTION AGENCY SHALL NOT COMMUNICATE FURTHER WITH THE CONSUMER WITH RESPECT TO SUCH DEBT, EXCEPT TO:

(I) ~~The consumer wishes the collection agency to cease contact by telephone at the consumer's residence or place of employment, then no such further contact by telephone shall be made~~ ADVISE THE CONSUMER THAT THE DEBT COLLECTOR'S OR COLLECTION AGENCY'S FURTHER EFFORTS ARE BEING TERMINATED;

(II) ~~The consumer refuses to pay a debt or the consumer wishes the collection agency to cease further communication with the consumer, then the debt collector or collection agency shall not communicate further with the consumer with respect to such debt, except for a written communication:~~

(A) ~~To advise the consumer that the collection agency's further efforts are being terminated;~~

(B) ~~To notify the consumer that the collection agency or creditor may invoke specified remedies which are ordinarily invoked by such collection agency or creditor; or~~

(C) ~~Where applicable, to notify the consumer that the collection agency or creditor intends to invoke a specified remedy permitted by law~~ NOTIFY THE CONSUMER THAT THE COLLECTION AGENCY OR CREDITOR MAY INVOKE SPECIFIED REMEDIES THAT ARE ORDINARILY INVOKED BY SUCH COLLECTION AGENCY OR CREDITOR; OR

(III) NOTIFY THE CONSUMER THAT THE COLLECTION AGENCY OR CREDITOR INTENDS TO INVOKE A SPECIFIED REMEDY.

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

(c) In its initial written communication to a consumer, a collection agency shall include ~~notification of the consumer's rights under this subsection (3). If such notification is placed on the back of the written communication, there shall be a statement on the front notifying the consumer of such fact~~ THE FOLLOWING STATEMENT: "FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.AGO.STATE.CO.US/CAB.HTM." IF SUCH NOTIFICATION IS PLACED ON THE BACK OF THE WRITTEN COMMUNICATION, THERE SHALL BE A STATEMENT ON THE FRONT NOTIFYING THE CONSUMER OF SUCH FACT.

(d) ~~If a consumer orally informs a debt collector or collection agency of any of the matters specified in paragraph (a) of this subsection (3), the debt collector or collection agency shall advise the consumer that such communication must be made in writing.~~

SECTION 3. 12-14-107 (1) (l), Colorado Revised Statutes, is amended to read:

12-14-107. False or misleading representations. (1) A debt collector or collection agency shall not use any false, deceptive, or misleading representation or means in connection with the collection of any debt, including, but not limited to, the following conduct:

(l) Except as otherwise provided for communications to acquire location information under section 12-14-104, the failure to disclose clearly, in the initial written communication made to collect a debt or obtain information about a consumer AND ALSO, IF THE INITIAL COMMUNICATION WITH THE CONSUMER IS ORAL, IN THE INITIAL ORAL COMMUNICATION, that the debt collector or collection agency is attempting to collect a debt and that any information obtained will be used for that purpose, AND, IN SUBSEQUENT COMMUNICATIONS, THAT THE COMMUNICATION IS FROM A DEBT COLLECTOR OR COLLECTION AGENCY; EXCEPT THAT THIS PARAGRAPH (l) SHALL NOT APPLY TO A FORMAL PLEADING MADE IN CONNECTION WITH A LEGAL ACTION;

SECTION 4. The introductory portion to 12-14-109 (1) and 12-14-109 (1) (f) and (1) (g), Colorado Revised Statutes, are amended to read:

12-14-109. Validation of debts. (1) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector or collection agency shall, unless the following information is contained in the initial ~~written~~ communication or the consumer has paid the debt, send the consumer a written notice with the disclosures specified in paragraphs (a) to ~~(g)~~ (e) of this subsection (1). If such disclosures are placed on the back of the notice, the front of the notice shall contain a statement notifying consumers of that fact. Such disclosures shall state:

~~(f) That collection agencies are licensed by the collection agency board. The address of the board shall also be disclosed. If, however, the debt collector is a person employed by the department of personnel for the purpose of collecting debts due to the state on behalf of another state agency, the disclosure required under this paragraph (f) shall state that the activities of such debt collector are subject to sections 12-14-104 to 12-14-109, Colorado Revised Statutes, as contained in the "Colorado Fair Debt Collection Practices Act", that complaints may be filed with the executive director of the department of personnel, and that disciplinary actions will be subject to the rules and regulations of the state personnel system.~~

~~(g) That consumers shall not send payments to the collection agency board.~~

SECTION 5. 12-14-111, Colorado Revised Statutes, is amended to read:

12-14-111. Legal actions by collection agencies. (1) Any debt collector or collection agency who brings any legal action on a debt against any consumer shall: ~~comply with all provisions of law concerning the location at which such action may be brought.~~

(a) IN THE CASE OF AN ACTION TO ENFORCE AN INTEREST IN REAL PROPERTY SECURING THE CONSUMER'S OBLIGATION, BRING SUCH ACTION ONLY IN A JUDICIAL DISTRICT OR SIMILAR LEGAL ENTITY IN WHICH SUCH REAL PROPERTY IS LOCATED; OR

(b) IN THE CASE OF AN ACTION NOT DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1), BRING SUCH ACTION ONLY IN THE JUDICIAL DISTRICT OR SIMILAR LEGAL ENTITY IN WHICH:

(I) SUCH CONSUMER SIGNED THE CONTRACT SUED UPON;

(II) SUCH CONSUMER RESIDES AT THE COMMENCEMENT OF THE ACTION; OR

(III) SUCH ACTION MAY BE BROUGHT PURSUANT TO ARTICLE 13 OR 13.5 OF TITLE 26, C.R.S., SECTION 14-14-104, C.R.S., OR ARTICLE 4 OR 6 OF TITLE 19, C.R.S., IF THE ACTION IS BY A PRIVATE COLLECTION AGENCY ACTING ON BEHALF OF A DELEGATE CHILD SUPPORT ENFORCEMENT UNIT.

SECTION 6. The introductory portion to 12-14-113 (1), Colorado Revised Statutes, is amended, and the said 12-14-113 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

12-14-113. Civil liability. (1) In addition to administrative enforcement pursuant to section 12-14-114 and subject to section 12-14-134 AND THE LIMITATIONS PROVIDED BY SUBSECTION (9) OF THIS SECTION, and except as otherwise provided by this section, any debt collector or collection agency who fails to comply with any provision of this article with respect to a consumer is liable to such consumer in an amount equal to the sum of:

(8) IT SHALL BE AN AFFIRMATIVE DEFENSE TO ANY ACTION BASED UPON FAILURE OF A DEBT COLLECTOR OR COLLECTION AGENCY TO COMPLY WITH THIS SECTION THAT THE DEBT COLLECTOR OR COLLECTION AGENCY BELIEVED, IN GOOD FAITH, THAT THE DEBTOR WAS OTHER THAN A NATURAL PERSON.

(9) THERE SHALL BE NO PRIVATE CAUSE OF ACTION UNDER THIS SECTION FOR ANY ALLEGED VIOLATION OF SECTION 12-14-128 (4) (a). VIOLATIONS OF SECTION 12-14-128 (4) (a) MAY BE PROSECUTED ONLY THROUGH ADMINISTRATIVE ENFORCEMENT PURSUANT TO SECTION 12-14-114.

SECTION 7. 12-14-116 (1), Colorado Revised Statutes, is amended to read:

12-14-116. Collection agency board - created. (1) For the purpose of carrying out the provisions of this article, the governor shall appoint five members to the collection agency board, which board is hereby created. The members of the board serving on July 1, ~~1985~~ 2003, shall continue to serve their appointed terms, and their successors shall be appointed for three-year terms. Upon the death, resignation, or removal of any member of the board, the governor shall appoint a member to fill the unexpired term. Any member of the board may be removed by the governor for misconduct, neglect of duty, or incompetence. No member may serve more than two consecutive terms WITHOUT FIRST A LAPSE OF AT LEAST ONE TERM BEFORE BEING APPOINTED TO ANY ADDITIONAL TERMS.

SECTION 8. 12-14-119 (4), (5), and (6), Colorado Revised Statutes, are amended to read:

12-14-119. Collection agency license - requirements - application - fee - expiration. (4) When the administrator approves the application, the applicant shall pay a nonrefundable license fee in an amount to be determined by the ADMINISTRATOR IN CONSULTATION WITH THE board.

(5) ~~Each license issued pursuant to this section shall expire on July 1 of each year; except that~~ THE ADMINISTRATOR SHALL ESTABLISH PROCEDURES FOR THE MAINTENANCE OF LICENSE LISTS AND THE ESTABLISHMENT OF INITIAL AND RENEWAL LICENSE FEES AND SCHEDULES. THE ADMINISTRATOR MAY CHANGE THE RENEWAL DATE OF ANY LICENSE ISSUED PURSUANT TO THIS ARTICLE TO THE END THAT APPROXIMATELY THE SAME NUMBER OF LICENSES ARE SCHEDULED FOR RENEWAL IN EACH MONTH OF THE YEAR. WHERE ANY RENEWAL DATE IS SO CHANGED, THE FEE FOR THE LICENSE SHALL BE PROPORTIONATELY INCREASED OR DECREASED, AS THE CASE MAY BE. EVERY LICENSEE SHALL PAY THE ADMINISTRATOR A LICENSE FEE TO BE DETERMINED AND COLLECTED PURSUANT TO SECTION 12-14-121 AND SUBSECTION (4) OF THIS SECTION, AND SHALL OBTAIN A LICENSE CERTIFICATE FOR THE CURRENT LICENSE PERIOD. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, a licensee, at any time, may voluntarily surrender the license to the administrator to be cancelled, but such surrender shall not affect the licensee's liability for violations of this article that occurred prior to the date of surrender.

(6) ~~If an application is approved between January 1 and June 30 in any year, the license fee for the remainder of that licensing year shall be one-half the license fee determined by the board.~~

SECTION 9. 12-14-121, Colorado Revised Statutes, is amended to read:

12-14-121. Collection agency license - renewals. (1) Each licensee shall make an application to renew its license ~~on or before June 15 of each year. Said application shall be~~ in the form and manner prescribed by the administrator. ~~and THE~~

APPLICATION shall be accompanied by a nonrefundable renewal fee in an amount determined by the ADMINISTRATOR IN CONSULTATION WITH THE board.

~~(2) If the application is not postmarked on or before June 15, a penalty fee of twenty-five dollars per day shall be assessed and added to the license fee. No license shall be renewed until the total fee is paid.~~

~~(3) If a licensee fails to submit an application or any part of the total fee on or before July 15 of each year, the license shall automatically expire and an application for a new license must be submitted.~~

~~(4) If a licensee submits an application and the total fee on or before July 15 of the renewal year, the licensee may continue to operate as a collection agency until the renewal application is approved or denied.~~

SECTION 10. 12-14-130 (2), (5), and (6) (a), Colorado Revised Statutes, are amended to read:

12-14-130. Complaint - investigations - powers of the board - sanctions.

(2) FOR REASONABLE CAUSE, the board may, on its own motion, conduct an investigation of the conduct of any person concerning compliance with this article.

(5) FOR REASONABLE CAUSE, the board, or someone designated by it for such purpose, has the right, during normal business hours without resort to subpoena, to examine the books, records, and files of any licensee. If the books, records, and files are located outside Colorado, the licensee shall bear all expenses in making them available to the board or its designee.

(6) (a) FOR REASONABLE CAUSE, the board may require the making and filing, by any licensee, at any time, of a written, verified statement of the licensee's assets and liabilities, including, if requested, a detailed statement of amounts due claimants. The board may also require an audited statement when cause has been shown that an audited statement is needed.

SECTION 11. 12-14-136 (2), Colorado Revised Statutes, is amended to read:

12-14-136. Disposition of fees and fines. (2) All fines collected pursuant to this article, including but not limited to fines collected pursuant to section 12-14-130, shall be collected by the administrator and transmitted to the state treasurer, who shall credit the same to the ~~collection agency cash fund, created in subsection (1) of this section~~ GENERAL FUND.

SECTION 12. 12-14-137, Colorado Revised Statutes, is amended to read:

12-14-137. Termination of board. The collection agency board shall be terminated July 1, ~~2003~~ 2008. Prior to such termination, the board shall be reviewed as provided in section 24-34-104, C.R.S.

SECTION 13. Repeal. 24-34-104 (32.5) (f), Colorado Revised Statutes, is repealed as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (32.5) The following agencies, functions, or both, shall terminate on July 1, 2003:

- (f) ~~The collection agency board created in section 12-14-116, C.R.S.;~~

SECTION 14. 24-34-104 (39) (b), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (39) (b) The following agencies, functions, or both, shall terminate on July 1, 2008:

(XVIII) THE REGULATION OF COLLECTION AGENCIES PURSUANT TO ARTICLE 14 OF TITLE 12, C.R.S.

SECTION 15. 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 21, 2003