

## CHAPTER 205

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**CONSUMER AND COMMERCIAL TRANSACTIONS**

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**HOUSE BILL 04-1274**

BY REPRESENTATIVE(S) Marshall, Boyd, Butcher, Carroll, Coleman, Crane, Frangas, Garcia, Hefley, Madden, Merrifield, Mitchell, Pommer, Ragsdale, Romanoff, Spradley, Weissmann, Williams S., Cloer, Johnson R., Miller, Paccione, Sinclair, and Stengel;

also SENATOR(S) Veiga, Anderson, Fitz-Gerald, Groff, Grossman, Hagedorn, Hanna, Hillman, Lamborn, Phillips, Sandoval, Tapia, Taylor, Teck, and Tupa.

**AN ACT****CONCERNING IDENTITY THEFT.**

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

**SECTION 1.** Title 5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

**ARTICLE 3.7**  
**Consumer Credit Solicitation Protection**

**5-3.7-101. Consumer credit solicitation protection.** (1) A SOLICITOR THAT MAKES A FIRM OFFER OF CREDIT FOR A LENDER CREDIT CARD OR A SELLER CREDIT CARD TO A CONSUMER BY MAIL SOLICITATION AND RECEIVES AN ACCEPTANCE OF THAT OFFER THAT LISTS THE ADDRESS OF THE CONSUMER ACCEPTING THE OFFER AS DIFFERENT FROM THE ADDRESS TO WHICH THE OFFER WAS SENT SHALL, PRIOR TO ISSUING OR DIRECTING ISSUANCES OF THE LENDER CREDIT CARD OR SELLER CREDIT CARD, VERIFY THAT THE CONSUMER ACCEPTING THE OFFER IS THE SAME CONSUMER TO WHOM THE OFFER WAS SENT.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "FIRM OFFER OF CREDIT" SHALL HAVE THE SAME MEANING AS SET FORTH IN 15 U.S.C. SEC. 1681a (L).

(b) "SOLICITOR" MEANS THE PERSON MAKING THE OFFER BY MAIL SOLICITATION AND DOES NOT INCLUDE A CARD ISSUER OR OTHER CREDITOR WHEN THAT CREDITOR

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

OR CARD ISSUER RELIES ON AN INDEPENDENT THIRD PARTY TO PROVIDE THE SERVICES.

(c) "VERIFY" MEANS THE USE OF COMMERCIALY REASONABLE EFFORTS TO ASCERTAIN THAT THE CONSUMER RESPONDING TO A MAIL SOLICITATION IS THE SAME CONSUMER TO WHOM THE SOLICITATION WAS DIRECTED. FOR THE PURPOSES OF THIS ARTICLE, A SOLICITOR SHALL BE DEEMED TO VERIFY THAT THE CONSUMER ACCEPTING A MAIL SOLICITATION IS THE SAME CONSUMER TO WHOM THE SOLICITATION WAS DIRECTED IF:

(I) A CONSUMER RESPONDING AT A TELEPHONE NUMBER APPEARING IN A PUBLICLY AVAILABLE DIRECTORY OR DATABASE AS THE TELEPHONE NUMBER OF THE CONSUMER TO WHOM THE SOLICITATION WAS MAILED IDENTIFIES HIMSELF OR HERSELF AS THE CONSUMER TO WHOM THE SOLICITATION WAS MAILED AND ACKNOWLEDGES THE CONSUMER'S ACCEPTANCE OF THE SOLICITATION; OR

(II) A CONSUMER PRESENTS THE SOLICITOR, INCLUDING PRESENTATION BY FACSIMILE TRANSMISSION OR MAIL, THE ORIGINAL OR A COPY OF ONE MORE DOCUMENTS, INCLUDING A DRIVER'S LICENSE, SOCIAL SECURITY CARD, PASSPORT, OR ANY OTHER IDENTIFICATION DOCUMENT ISSUED BY A STATE OR FEDERAL GOVERNMENTAL AGENCY, THAT, ON THE FACE OF THE DOCUMENT OR DOCUMENTS, APPEARS TO CONFIRM SUCH CONSUMER'S IDENTITY AS THE CONSUMER TO WHOM A SOLICITATION WAS MAILED AND THE CONSUMER ACKNOWLEDGES ACCEPTANCE OF THE SOLICITATION; OR

(III) THE SOLICITOR VERIFIED, BY ANY MEANS ADOPTED IN FEDERAL REGULATIONS, THAT THE CONSUMER ACCEPTING THE SOLICITATION IS THE CONSUMER TO WHOM THE SOLICITATION WAS DIRECTED; OR

(IV) THE SOLICITOR VERIFIED BY ANY OTHER MEANS, THAT UNDER THE STANDARDS AND PRACTICES OF THE INDUSTRY IN WHICH THE SOLICITOR IS ENGAGED WOULD BE DEEMED SUFFICIENT, THAT THE CONSUMER ACCEPTING THE SOLICITATION AS THE SAME CONSUMER TO WHOM THE SOLICITATION WAS SENT.

**SECTION 2.** Part 1 of article 21 of title 13, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**13-21-122. Civil liability for unlawful use of personal identifying information.**

(1) NOTWITHSTANDING ANY OTHER REMEDIES PROVIDED UNDER THIS ARTICLE, A PERSON WHO SUFFERS DAMAGES AS A RESULT OF A CRIME DESCRIBED IN ARTICLE 5 OF TITLE 18, C.R.S., IN WHICH PERSONAL IDENTIFYING INFORMATION WAS USED IN THE COMMISSION OF THE CRIME, SHALL HAVE A PRIVATE CIVIL RIGHT OF ACTION AGAINST THE PERPETRATOR WHO COMMITTED THE CRIME, REGARDLESS OF WHETHER THE PERPETRATOR WAS CONVICTED OF THE CRIME. IN SUCH ACTION, THE PLAINTIFF SHALL BE ENTITLED TO ACTUAL DAMAGES, INCLUDING, BUT NOT LIMITED TO DAMAGE TO REPUTATION OR CREDIT RATING, PUNITIVE DAMAGES, AND ATTORNEY FEES AND COSTS.

(2) FOR PURPOSES OF THIS SECTION, "PERSONAL IDENTIFYING INFORMATION" MEANS ANY INFORMATION THAT MAY BE USED, ALONE OR IN CONJUNCTION WITH ANY OTHER INFORMATION, TO IDENTIFY A SPECIFIC INDIVIDUAL, INCLUDING BUT NOT LIMITED TO: NAME; DATE OF BIRTH; SOCIAL SECURITY NUMBER; PERSONAL

IDENTIFICATION NUMBER; PASSWORD; PASS CODE; OFFICIAL STATE-ISSUED OR GOVERNMENT-ISSUED DRIVER'S LICENSE OR IDENTIFICATION CARD NUMBER; GOVERNMENT PASSPORT NUMBER; BIOMETRIC DATA; EMPLOYER, STUDENT, OR MILITARY IDENTIFICATION NUMBER; OR FINANCIAL TRANSACTION DEVICE AS DEFINED IN SECTION 18-5-701 (3), C.R.S.

**SECTION 3. Effective date - applicability.** This act shall take effect July 1, 2004, and shall apply to actions arising on or after said date.

**SECTION 4. 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 26, 2004