

CHAPTER 371

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 08-1240

BY REPRESENTATIVE(S) Butcher, Liston, Labuda, Stafford, Benefield, Carroll M., and Madden;
also SENATOR(S) Sandoval.

AN ACT

**CONCERNING CONTINUATION OF THE REGULATION OF DEBT COLLECTION, AND, IN CONNECTION
THEREWITH, REPEALING THE COLLECTION AGENCY BOARD.**

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

SECTION 1. Repeal. 24-34-104 (39) (b) (XVIII), Colorado Revised Statutes, is repealed as follows:

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 2. 24-34-104 (48), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (48) The following agencies, functions, or both, shall terminate on July 1, 2017:

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

SECTION 3. 12-14-105 (3) (c), Colorado Revised Statutes, is amended, and the said 12-14-105 (3) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

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

12-14-105. Communication in connection with debt collection. (3) (c) In its initial written communication to a consumer, a collection agency shall include the following statement: "FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.AGO.STATE.CO.US/CADC/CADCMAIN.CFM." IF THE WEB SITE ADDRESS IS CHANGED, THE NOTIFICATION SHALL BE CORRECTED TO CONTAIN THE CORRECT ADDRESS. If ~~such~~ THE notification is placed on the back of the written communication, there shall be a statement on the front notifying the consumer of such fact.

(e) IN ITS INITIAL WRITTEN COMMUNICATION TO A CONSUMER, A COLLECTION AGENCY SHALL INCLUDE THE FOLLOWING STATEMENT: "A CONSUMER HAS THE RIGHT TO REQUEST IN WRITING THAT A DEBT COLLECTOR OR COLLECTION AGENCY CEASE FURTHER COMMUNICATION WITH THE CONSUMER. A WRITTEN REQUEST TO CEASE COMMUNICATION WILL NOT PROHIBIT THE DEBT COLLECTOR OR COLLECTION AGENCY FROM TAKING ANY OTHER ACTION AUTHORIZED BY LAW TO COLLECT THE DEBT." IF THE NOTIFICATION IS PLACED ON THE BACK OF THE WRITTEN COMMUNICATION, THERE SHALL BE A STATEMENT ON THE FRONT NOTIFYING THE CONSUMER OF SUCH FACT.

SECTION 4. 12-14-113 (5), Colorado Revised Statutes, is amended to read:

12-14-113. Civil liability. (5) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the ~~board~~ ADMINISTRATOR, notwithstanding that, after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

SECTION 5. 12-14-114, Colorado Revised Statutes, is amended to read:

12-14-114. Administrative enforcement - rules. Compliance with this article shall be enforced by the ~~board~~ ADMINISTRATOR. The ~~board has power to~~ ADMINISTRATOR MAY make reasonable rules for the administration and enforcement of this article, including standards of conduct for licensees and collection notices and forms.

SECTION 6. 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 SUBJECT TO SECTION 12-14-117 (1), 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, 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 7. 12-14-119 (1) (a) (II), (1) (b) (I) (A), (2) (d) (IV), (3), and (4), Colorado Revised Statutes, are amended to read:

12-14-119. Collection agency license - requirements - application - fee - expiration. (1) As requisites for licensure, the applicant for a collection agency license shall:

(a) (II) Notwithstanding the requirements of subparagraph (I) of this paragraph (a), the ~~board~~ ADMINISTRATOR may substitute other business experience for such requirements where such business experience has provided comparable experience in collections.

(b) (I) Employ a collections manager who shall:

(A) ~~If hired on or after July 1, 1990, pass a written examination administered by the administrator, unless such person was approved by the collection agency board as collections manager before July 1, 1990, and has since been continuously employed by a licensed collection agency in this state.~~

(2) Each applicant for a collection agency license shall submit an application providing all information in the form and manner the administrator shall designate, including, but not limited to:

(d) For the principals and the collections manager of the applicant:

(IV) The suspension or termination of approval of any collections manager under this article, or any other disciplinary or adverse action taken against the applicant, principal, or collections manager ~~by the board~~ or any other jurisdiction.

(3) At the time the application is submitted, the applicant shall pay a nonrefundable investigation fee in an amount to be determined by the ~~board~~ ADMINISTRATOR.

(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.~~

SECTION 8. 12-14-121, Colorado Revised Statutes, is amended to read:

12-14-121. Collection agency license - renewals. Each licensee shall make an application to renew its license in the form and manner prescribed by the administrator. The application shall be accompanied by a nonrefundable renewal fee in an amount determined by the administrator. ~~in consultation with the board.~~

SECTION 9. 12-14-122 (1) (a) (II), (2) (c) (II), (2) (c) (III), and (3) (b), Colorado Revised Statutes, are amended to read:

12-14-122. Collection agency license - notification of change and reapplication requirements. (1) (a) Upon any of the following changes, the licensee shall notify the administrator in writing of such change within thirty days after its occurrence:

(II) If a corporation OR LIMITED LIABILITY COMPANY, change in ownership of ten or more percent but less than fifty percent of the corporate stock OR OWNERSHIP

INTEREST.

(2) (c) The changes which require a new license application are:

(II) In a corporation OR LIMITED LIABILITY COMPANY, any change of ownership of fifty percent or more of the stock OR OWNERSHIP INTEREST in any one transaction or a cumulative change of ownership of fifty percent or more from the date of the issuance of the license or from the date of the latest renewal of the license;

(III) Any change of ownership structure, including but not limited to a change to or from a sole proprietorship, partnership, LIMITED LIABILITY COMPANY, or corporation. No investigation fee shall be required in the event of such a change and the application required may be more abbreviated than that required for an initial license, as determined by the administrator.

(3) (b) The administrator, within fifteen days, shall approve or disapprove the qualifications of the new collections manager. ~~or shall direct the new collections manager to take the examination authorized pursuant to section 12-14-119 (1) (b).~~

SECTION 10. 12-14-123 (1) (b), (1) (e), and (2) (a) and the introductory portion to 12-14-123 (2) (b), Colorado Revised Statutes, are amended to read:

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

(b) (I) (A) Maintain, at all times, an office within this state ~~which~~ THAT is open to the public during normal business hours, ~~and which~~ is staffed by at least one full-time employee, ~~said office to keep~~ AND KEEPS a record of all moneys collected and remitted by ~~such~~ THE agency for residents of Colorado.

(B) THIS SUBPARAGRAPH (I) IS REPEALED, EFFECTIVE JULY 1, 2010. THE DEPARTMENT OF REGULATORY AGENCIES SHALL REVIEW THE REQUIREMENTS OF THIS SUBPARAGRAPH (I) AND SHALL MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY BY OCTOBER 1, 2009, PURSUANT TO SECTION 24-34-104, C.R.S.

(II) MAINTAIN, AT ALL TIMES, A TOLL-FREE TELEPHONE NUMBER THAT SHALL BE AVAILABLE TO ANY CONSUMER WHO NEEDS TO MAKE A TOLL CALL TO REACH THE LICENSEE IN CONNECTION WITH A DEBT.

(e) Upon written demand of the ~~board~~ ADMINISTRATOR, within five days of receipt of such demand, produce a complete set of all form notices or form letters used by the licensee in the collection of accounts;

(2) (a) No collection agency shall employ any collections manager, debt collector, or solicitor who has been convicted of or who has entered a plea of guilty or nolo contendere to any crime specified in part 4 of article 4, ~~or~~ in part 1, 2, 3, 5, ~~or~~ 7, OR 9 of article 5, OR IN ARTICLE 5.5 of title 18, C.R.S., or any similar crime under the jurisdiction of any federal court or court of another state.

(b) No collection agency shall be owned or operated by the following persons who have been convicted of or who have entered a plea of guilty or nolo contendere to any crime specified in part 4 of article 4, ~~or~~ in part 1, 2, 3, 5, ~~or~~ 7, OR 9 of article

5, OR IN ARTICLE 5.5 of title 18, C.R.S., or any similar crime under the jurisdiction of any federal court or court of another state:

SECTION 11. 12-14-124 (1), (2), (3), (4), (5), (7), (8), and (10), Colorado Revised Statutes, are amended to read:

12-14-124. Bond. (1) Each licensee shall maintain at all times and each applicant shall file, prior to the issuance of any license to such applicant, a bond in the sum of twelve thousand dollars plus an additional two thousand dollars for each ten thousand dollars or part thereof by which the average monthly sums remitted or owed to all of its clients during the previous year exceed fifteen thousand dollars; or, in the alternative, an applicant or licensee shall present evidence of a savings account, deposit, or certificate of deposit of the same sum and meeting the requirements of section 11-35-101, C.R.S. The total amount of the bond shall not exceed twenty thousand dollars and shall be in favor of the attorney general of the state of Colorado for use of the people of the state of Colorado and the ~~collection agency board~~ ADMINISTRATOR. Such bond shall be executed by the applicant or licensee as principal and by a corporation ~~which~~ THAT is licensed by the commissioner of insurance to transact the business of fidelity and surety insurance as surety. If any such surety, during the life of the bond, cancels the bond or reduces the penal sum of the bond, ~~it~~ THE SURETY immediately shall notify the ~~board~~ ADMINISTRATOR in writing. The ~~board~~ ADMINISTRATOR shall give notice to the licensee that the bond has been cancelled or reduced and that the licensee's license shall automatically expire unless a new or increased bond with proper sureties is filed within thirty days after the date the ~~board~~ ADMINISTRATOR received the notice, or on such later date as is stated in the surety's notice.

(2) The bond shall include a condition that the licensee shall, upon demand in writing made by the ~~board~~ ADMINISTRATOR, pay over to ~~said board~~ THE ADMINISTRATOR for the use of any client from whom any debt is taken or received for collection by ~~said~~ THE licensee the proceeds of such collection, less the charges for collection in accordance with the terms of the agreement made between ~~said~~ THE licensee and the client.

(3) A client may file with the ~~board~~ ADMINISTRATOR a duly verified claim as to money due such client for money collected by a licensee. If the ~~board~~ ADMINISTRATOR makes a preliminary determination that a claim meets the requirements of this section, ~~it~~ THE ADMINISTRATOR shall make a demand for the amount claimed. Such demand may be made on the licensee, the surety, or both.

(4) If a receiver has been appointed by any court of competent jurisdiction in the state of Colorado to take charge of the assets of any licensee, such receiver, upon the written consent of the ~~board, first had and obtained~~ ADMINISTRATOR, may ~~make~~ demand ~~for~~ and receive payment on ~~said~~ THE bond from the surety ~~on such bond of said licensee~~ and, upon order of court, ~~first had and obtained,~~ may bring suit upon ~~said~~ THE bond in the name of such receiver, without joining the ~~board~~ ADMINISTRATOR as a party to ~~said~~ THE action.

(5) If a client has filed a duly verified claim with the ~~board, which~~ ADMINISTRATOR, WHO has refused to make demand upon the licensee or surety, the client may bring suit against the licensee or surety on the bond for the recovery of

money due from such licensee without assignment of such bond to the client. Nothing in this section shall preclude a client from making a demand on both the licensee and the surety.

(7) Such bond shall cover all matters placed with ~~said~~ THE licensee during the term of the license granted and any renewal, except as provided in this section. Such bond may be enforced in the manner described in this section, by a receiver appointed to take charge of the assets of any licensee, or by any client if the ~~board~~ ADMINISTRATOR refuses to act. The aggregate liability of the surety, for any and all claims ~~which~~ THAT may arise under such bond, shall not exceed the penalty of such bond.

(8) Any licensee, at any time, may file a new bond with the ~~board~~ ADMINISTRATOR. Any surety may file with the ~~board~~ ADMINISTRATOR notice of withdrawal as surety on the bond of any licensee. Upon filing of such new bond or on expiration of thirty days after the filing of notice of withdrawal as surety by the surety, the liability of the former surety for all future acts of the licensee shall terminate, except as provided in subsection (9) of this section. The ~~board~~ ADMINISTRATOR shall cancel the bond given by any surety company upon being advised its license to transact the business of fidelity and surety insurance has been revoked by the commissioner of insurance and shall notify the licensee.

(10) In lieu of an individual surety bond, the administrator may authorize a blanket bond covering qualifying licensees in the sum of two million dollars in favor of the attorney general of the state of Colorado for use of the people of the state of Colorado and the ~~collection agency board~~ ADMINISTRATOR. Each new and renewal applicant shall pay a fee in an amount determined by the administrator to offset the applicant's share of the blanket bond. Conditions and procedures regarding the bond shall be as set forth in this section for individual bonds.

SECTION 12. 12-14-128 (4) (a), Colorado Revised Statutes, is amended to read:

12-14-128. Unlawful acts. (4) It is unlawful and a violation of this article for any licensee, collections manager, debt collector, or solicitor:

(a) To refuse or fail to comply with ~~any~~ A rule ~~and regulation~~ adopted pursuant to this article or any lawful order of the ~~board~~ or administrator; or

SECTION 13. 12-14-130 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10) (a), (10) (b), (11), and (12), Colorado Revised Statutes, are amended to read:

12-14-130. Complaint - investigations - powers of administrator - sanctions.

(1) Upon the filing with the ~~board~~ ADMINISTRATOR by any interested person of a written complaint charging any person with a violation of this article, any rule adopted pursuant to this article, or any lawful order of the ~~board~~ ADMINISTRATOR, the ~~board~~ ADMINISTRATOR shall conduct an investigation thereof.

(2) For reasonable cause, the ~~board~~ ADMINISTRATOR may, on its own motion, conduct an investigation of the conduct of any person concerning compliance with this article.

(3) If any licensee or one of its principals or collections managers is convicted of or enters a plea of guilty or nolo contendere to any crime specified in part 4 of article 4, ~~or~~ in part 1, 2, 3, 5, ~~or~~ 7, OR 9 of article 5, OR IN ARTICLE 5.5 of title 18, C.R.S., or any similar crime under the jurisdiction of any federal court or court of another state, ~~said~~ THE conviction or plea shall constitute grounds for disciplinary action under this section.

(4) In any proceeding held under this section, the ~~board~~ ADMINISTRATOR may accept as prima facie evidence of grounds for disciplinary or adverse action any disciplinary or adverse action taken against a licensee, the licensee's principals, debt collector, solicitor, or collections manager by another jurisdiction that issues professional, occupational, or business licenses, if the conduct ~~which~~ THAT prompted the disciplinary or adverse action by that jurisdiction would be grounds for disciplinary action under this section.

(5) For reasonable cause, the ~~board~~ ADMINISTRATOR, or ~~someone designated by it for such purpose~~ THE ADMINISTRATOR'S DESIGNEE, 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~~ ADMINISTRATOR 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~~ ADMINISTRATOR may also require an audited statement when cause has been shown that an audited statement is needed.

(b) Any financial statement of any applicant or licensee required to be filed with the ~~board~~ ADMINISTRATOR shall not be a public record but may be introduced in evidence in any court action or in any administrative action involving the applicant or licensee.

(7) For the purpose of any proceeding under this article, the ~~board~~ ADMINISTRATOR may subpoena witnesses and compel them to give testimony under oath. If any SUBPOENAED witness ~~subpoenaed by the board or an administrative law judge~~ fails or refuses to appear or testify, the subpoenaing authority may petition the district court, and, upon proper showing, the court may order ~~such~~ THE witness to appear and testify. Disobedience of the order of court may be punished as a contempt of court.

(8) The ~~board~~ ADMINISTRATOR may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to conduct any proceedings authorized under this article.

(9) If the ~~board~~ ADMINISTRATOR finds cause to believe a licensee or collections manager has violated this article, ~~any~~ THE rules adopted pursuant to this article, or any lawful order of the ~~board~~ ADMINISTRATOR, the ~~board~~ ADMINISTRATOR shall so notify the licensee or collections manager and hold a hearing. Any proceedings conducted pursuant to this section shall be in accordance with article 4 of title 24, C.R.S.

(10) (a) If the ~~board~~ ADMINISTRATOR or the administrative law judge finds that the licensee or collections manager has violated this article, the rules adopted pursuant to this article, or any lawful order of the ~~board~~ ADMINISTRATOR, or if the licensee fraudulently obtained a license, the ~~board~~ ADMINISTRATOR may issue letters of admonition; deny, revoke, or suspend the license of such licensee or approval of the collections manager; place such licensee or collections manager on probation; or impose administrative fines in an amount up to one thousand FIVE HUNDRED dollars per violation on the licensee or collections manager.

(b) The ~~board~~ or administrator may issue letters of admonition pursuant to paragraph (a) of this subsection (10) without a hearing; except that the licensee or collections manager receiving the letter of admonition may request a hearing before the ~~board~~ ADMINISTRATOR to appeal the issuance of the letter.

(11) The court of appeals shall have jurisdiction to review all final actions and orders that are subject to judicial review of the ~~collection agency board~~ ADMINISTRATOR. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

(12) Members of the collection agency board, THE ADMINISTRATOR, expert witnesses, and consultants shall be immune from civil suit when they perform any duties in connection with any proceedings authorized under this section in good faith. Any person who files a complaint in good faith under this section shall be immune from civil suit.

SECTION 14. 12-14-135, Colorado Revised Statutes, is amended to read:

12-14-135. Injunction - receiver. The district court in and for the city and county of Denver, upon application of the ~~board~~ ADMINISTRATOR, may issue an injunction or other appropriate order restraining any person from any violation of this article and may appoint a receiver or award ~~any~~ other relief to effectuate the provisions of this article. This provision shall be in addition to any other remedy and shall not prohibit the enforcement of any other law. The ~~board~~ ADMINISTRATOR shall not be required to show irreparable injury or to post a bond.

SECTION 15. 12-14-137, Colorado Revised Statutes, is amended to read:

12-14-137. Repeal of article. ~~The collection agency board shall be terminated July 1, 2008. Prior to such termination, the board shall be reviewed as provided in section 24-34-104, C.R.S.~~ THIS ARTICLE IS REPEALED, EFFECTIVE JULY 1, 2017.

SECTION 16. Effective date. This act shall take effect July 1, 2008.

SECTION 17. 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: June 2, 2008