

Colorado Revised Statutes 2017

TITLE 5

DEBT MANAGEMENT

ARTICLE 16

Colorado Fair Debt Collection Practices Act

Editor's note: This article was added with relocations in 2017. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Law reviews: For article, "Fair Debt Collection: What Every Lawyer Should Know", see 17 Colo. Law. 453 (1988); for article, "The Impact of the Fair Debt Collection Practices Act on Foreclosures", see 17 Colo. Law. 2361 (1988); for article, "Default Judgments Against Consumers: Has the System Failed?", see 67 Den. U. L. Rev. 357 (1990).

5-16-101. Short title. The short title of this article 16 is the "Colorado Fair Debt Collection Practices Act".

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1079, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-101 as it existed prior to 2017.

5-16-102. Scope of article. (1) This article 16 shall apply to any collection agency, solicitor, or debt collector that has a place of business located:

- (a) Within this state;
- (b) Outside this state and collects or attempts to collect from consumers who reside within this state for a creditor with a place of business located within this state;
- (c) Outside this state and regularly collects or attempts to collect from consumers who reside within this state for a creditor with a place of business located outside this state; or
- (d) Outside this state and solicits or attempts to solicit debts for collection from a creditor with a place of business located within this state.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1079, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-102 as it existed prior to 2017.

5-16-103. Definitions. As used in this article 16, unless the context otherwise requires:

(1) "Administrator" means the administrator of the "Uniform Consumer Credit Code", articles 1 to 9 of this title 5, whose office is created in the department of law in section 5-6-103.

(2) *[Editor's note: This version of subsection (2) is effective until January 1, 2018.]* "Board" means the collection agency board created in section 5-16-116.

(2) *[Editor's note: This version of subsection (2) is effective January 1, 2018.]* Repealed.

(3) (a) "Collection agency" means any:

(I) Person who engages in a business the principal purpose of which is the collection of debts; or

(II) Person who:

(A) Regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another;

(B) Takes assignment of debts for collection purposes;

(C) Directly or indirectly solicits for collection debts owed or due or asserted to be owed or due another;

(D) Collects debt for the department of personnel, but only for the purposes specified in subsection (3)(d) of this section;

(b) "Collection agency" does not include:

(I) Any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(II) Any person while acting as a collection agency for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a collection agency does so only for creditors to whom it is so related or affiliated and if the principal business of the person is not the collection of debts;

(III) Any officer or employee of the United States or any state to the extent that collecting or attempting to collect any debt is in the performance of the officer's or employee's official duties, except as otherwise provided in subsection (9) of this section;

(IV) Any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(V) Any debt-management services provider operating in compliance with or exempt from the "Uniform Debt-Management Services Act", part 2 of article 19 of this title 5;

(VI) Any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent that:

(A) The activity is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;

(B) The activity concerns a debt that was extended by the person;

(C) The activity concerns a debt that was not in default at the time it was obtained by the person; or

(D) The activity concerns a debt obtained by the person as a secured party in a commercial credit transaction involving the creditor;

(VII) Any person whose principal business is the making of loans or the servicing of debt not in default and who acts as a loan correspondent, or seller and servicer for the owner, or

holder of a debt which is secured by a deed of trust on real property whether or not the debt is also secured by an interest in personal property;

(VIII) A limited gaming or racing licensee acting pursuant to part 6 of article 35 of title 24.

(c) Notwithstanding the provisions of subsection (3)(b)(VI) of this section, "collection agency" includes any person who, in the process of collecting his or her own debts, uses another name which would indicate that a third person is collecting or attempting to collect such debts.

(d) For the purposes of section 5-16-108 (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 5-16-104, 5-16-105, 5-16-106, 5-16-107, 5-16-108, and 5-16-109 only, "collection agency" includes a debt collector for the department of personnel.

(e) Notwithstanding subsection (3)(b) of this section, "collection agency" includes any person who engages in any of the following activities; except that the person shall be exempt from provisions of this article 16 that concern licensing and licensees:

(I) Is an attorney-at-law and regularly engages in the collection or attempted collection of debts in this state;

(II) 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 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 the agencies' collection activities are limited in the same manner.

(4) "Communication" means conveying information regarding a debt in written or oral form, directly or indirectly, to any person through any medium.

(5) "Consumer" means any natural person obligated or allegedly obligated to pay any debt.

(6) (a) "Consumer reporting agency" means any person that, 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.

(b) "Consumer reporting agency" shall not include any business entity that provides check verification or check guarantee services only.

(c) "Consumer reporting agency" shall include any persons defined in 15 U.S.C. sec. 1681a (f) or section 5-18-103 (4).

(7) "Creditor" means any person who offers or extends credit creating a debt or to which a debt is owed, but "creditor" does not include any person to the extent the person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of the debt for another.

(8) (a) "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction, whether or not the obligation has been reduced to judgment.

(b) "Debt" does not include a debt for business, investment, commercial, or agricultural purposes or a debt incurred by a business.

(8.5) [*Editor's note: Subsection (8.5) is effective January 1, 2018.*] "Debt buyer" means

a person who engages in the business of purchasing delinquent or defaulted debt for collection purposes, whether it collects the debt itself, hires a third party for collection, or hires an attorney for litigation in order to collect the debt. Debt buyers are collection agencies for the purposes of this article 16.

(9) "Debt collector" means any person employed or engaged by a collection agency to perform the collection of debts owed or due or asserted to be owed or due to another, and includes any person employed by the department of personnel, or any division of that department, when collecting debts due to the state on behalf of another state agency.

(10) "Location information" means a consumer's place of abode and his or her telephone number at such place or his or her place of employment.

(11) "Person" means a natural person, firm, corporation, limited liability company, or partnership.

(12) "Principal" means any individual having a position of responsibility in a collection agency, including but not limited to any manager, director, officer, partner, owner, or shareholder owning ten percent or more of the stock.

(13) "Solicitor" means any person employed or engaged by a collection agency who solicits or attempts to solicit debts for collection by the person or any other person.

(14) "State" means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of them.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1080, § 1, effective August 9; IP amended, (2) repealed, and (8.5) added, (SB 17-216), ch. 285, p. 1578, § 3, effective January 1, 2018.

Editor's note: (1) This section is similar to former § 12-14-103 as it existed prior to 2017.

(2) The introductory portion of this section was amended in SB 17-216, effective January 1, 2018. Those amendments were superseded by the amendment of the introductory portion in HB 17-1238.

(3) Subsections (2) and (8.5) were numbered as § 12-14-103 (1.5) and (6.5), respectively, in SB 17-216 (see L. 2017, p. 1578). Those provisions were harmonized with this section as it appears in HB 17-1238, effective January 1, 2018.

5-16-104. Location information - acquisition. (1) Any debt collector or collection agency communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall:

(a) Identify himself or herself, state that he or she is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his or her employer;

(b) Not state that the consumer owes any debt;

(c) Not communicate with any person more than once unless requested to do so by the person or unless the debt collector or collection agency reasonably believes that the person's earlier response is erroneous or incomplete and that the person now has correct or complete

location information;

(d) Not communicate by postcard;

(e) Not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debtor collector or collection agency is in the debt collection business or that the communication relates to the collection of a debt; and

(f) After the debt collector or collection agency knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, the attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time, not less than thirty days, to communication from the debt collector or collection agency.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1083, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-104 as it existed prior to 2017.

5-16-105. Communication in connection with debt collection -

definition. (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:

(a) At any unusual time, place, or manner known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector or collection agency shall assume that the convenient time for communicating with a consumer is after 8 a.m. and before 9 p.m. local time at the consumer's location.

(b) If the debt collector or collection agency knows the consumer is represented by an attorney with respect to the debt and has knowledge of, or can readily ascertain, the attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or collection agency or unless the attorney consents to direct communication with the consumer; or

(c) At the consumer's place of employment if the debt collector or collection agency knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(2) Except as provided in section 5-16-104, 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 or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector or collection agency shall not communicate, in connection with the collection of any debt, with any person other than the consumer, his or her attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the collection agency.

(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 the debt, except to:

(I) Advise the consumer that the debt collector's or collection agency's further efforts are being terminated;

(II) Notify the consumer that the collection agency or creditor may invoke specified remedies that are ordinarily invoked by the collection agency or creditor; or

(III) Notify the consumer that the collection agency or creditor intends to invoke a specified remedy.

(b) If the 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 the following statement: "FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.AGO.STATE.CO.US/CADC/CADCMAIN.CFM." If the website address is changed, the notification shall be corrected to contain the correct address. 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.

(d) 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.

(4) For the purpose of this section, "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

(5) 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.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1083, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-105 as it existed prior to 2017.

5-16-106. Harassment or abuse. (1) A debt collector or collection agency shall not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt, including, but not limited to, the following conduct:

(a) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person;

(b) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;

(c) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of 15 U.S.C. sec. 1681b (a) (3) and section 5-18-104 (1)(c);

(d) The advertisement for sale of any debt to coerce payment of the debt or agreeing to do so for the purpose of solicitation of claims;

(e) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(f) Except as provided in section 5-16-104, the placement of telephone calls without meaningful disclosure of the caller's identity within the first sixty seconds after the other party to the call is identified as the debtor.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1085, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-106 as it existed prior to 2017.

5-16-107. 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:

(a) The false representation or implication that the debt collector or collection agency is vouched for, bonded by, or affiliated with the United States government or any state government, including the use of any misleading name, badge, uniform, or facsimile thereof;

(b) The false representation of:

(I) The character, amount, or legal status of any debt; or

(II) Any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt;

(c) The false representation or implication that any individual is an attorney or that any communication is from an attorney;

(d) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or in the seizure, garnishment, attachment, or sale of any property or wages of any person unless the action is lawful and the debt collector, collection agency, or creditor intends to take such action;

(e) The threat to take any action that cannot legally be taken or that is not intended to be taken;

(f) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:

(I) Lose any claim or defense to payment of the debt; or

(II) Become subject to any practice prohibited by this article 16;

(g) The false representation or implication that the consumer committed any crime;

(h) The false representation or implication that the consumer has engaged in any disgraceful conduct;

(i) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that

a disputed debt is disputed;

(j) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any state or which creates a false or misleading impression as to its source, authorization, or approval;

(k) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;

(l) Except as otherwise provided for communications to acquire location information under section 5-16-104, 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 subsection (1)(l) shall not apply to a formal pleading made in connection with a legal action;

(m) The false representation or implication that accounts have been turned over to innocent purchasers for value;

(n) The false representation or implication that documents are legal process;

(o) The use of any business, company, or organization name other than the true name of the collection agency's business, company, or organization;

(p) The false representation or implication that documents are not legal process forms or do not require action by the consumer;

(q) The false representation or implication that a debt collector or collection agency operates or is employed by a consumer reporting agency.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1085, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-107 as it existed prior to 2017.

5-16-108. Unfair practices. (1) A debt collector or collection agency shall not use unfair or unconscionable means to collect or attempt to collect any debt, including, but not limited to, the following conduct:

(a) The collection of any amount, including any interest, fee, charge, or expense incidental to the principal obligation, unless the amount is expressly authorized by the agreement creating the debt or permitted by law;

(b) The acceptance by a debt collector or collection agency from any person of a check or other payment instrument postdated by more than five days unless the person is notified in writing of the debt collector's or collection agency's intent to deposit the check or instrument not more than ten nor less than three business days prior to the deposit;

(c) The solicitation by a debt collector or collection agency of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

(d) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on the check or instrument;

(e) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(f) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(I) There is no present right to possession of the property claimed as collateral through an enforceable security interest;

(II) There is no present intention to take possession of the property; or

(III) The property is exempt by law from such dispossession or disablement;

(g) Communicating with a consumer regarding a debt by postcard;

(h) Using any language or symbol, other than the debt collector's or collection agency's address, on any envelope when communicating with a consumer by use of the mails or by telegram; except that a debt collector or collection agency may use his business name if the name does not indicate that he or she is in the debt collection business;

(i) Failing to comply with the provisions of section 13-21-109 regarding the collection of checks, drafts, or orders not paid upon presentment;

(j) Communicating credit information to a consumer reporting agency earlier than thirty days after the initial notice to the consumer has been mailed, unless the consumer's last-known address is known to be invalid. This subsection (1)(j) shall not apply to checks, negotiable instruments, or credit card drafts.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1087, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-108 as it existed prior to 2017.

5-16-109. 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 communication or the consumer has paid the debt, send the consumer a written notice with the disclosures specified in subsections (1)(a) to (1)(e) of this section. If the disclosures are placed on the back of the notice, the front of the notice shall contain a statement notifying consumers of that fact. The disclosures shall state:

(a) The amount of the debt;

(b) The name of the creditor to whom the debt is owed;

(c) That, unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector or collection agency;

(d) That, if the consumer notifies the debt collector or collection agency in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector or collection agency will obtain verification of the debt or a copy of a judgment against the

consumer and a copy of the verification or judgment will be mailed to the consumer by the debt collector or collection agency;

(e) That upon the consumer's written request within the thirty-day period, the debt collector or collection agency will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(2) If the consumer notifies the debt collector or collection agency in writing within the thirty-day period described in subsection (1)(c) of this section that the debt, or any portion thereof, is disputed or that the consumer requests the name and address of the original creditor, the debt collector or collection agency shall cease collection of the debt, or any disputed portion thereof, until the debt collector or collection agency obtains verification of the debt or a copy of a judgment or the name and address of the original creditor and mails a copy of the verification or judgment or name and address of the original creditor to the consumer.

(3) The failure of a consumer to dispute the validity of a debt under this section shall not be construed by any court as an admission of liability by the consumer.

(4) 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.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1088, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-109 as it existed prior to 2017.

5-16-110. Multiple debts. If any consumer owes multiple debts and makes any single payment to any collection agency with respect to such debts, the collection agency shall not apply the payment to any debt which is disputed by the consumer and when so informed shall apply the payment in accordance with the consumer's directions.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1089, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-110 as it existed prior to 2017.

5-16-111. Legal actions by collection agencies. (1) Any debt collector or collection agency who brings any legal action on a debt against any consumer shall:

(a) In the case of an action to enforce an interest in real property securing the consumer's obligation, bring the action only in a judicial district or similar legal entity in which the real property is located; or

(b) In the case of an action not described in subsection (1)(a) of this section, bring the action only in the judicial district or similar legal entity in which:

(I) The consumer signed the contract sued upon;

(II) The consumer resides at the commencement of the action; or

(III) The action may be brought pursuant to article 13 or 13.5 of title 26, section

14-14-104, or article 4 or 6 of title 19, if the action is by a private collection agency acting on behalf of a delegate child support enforcement unit.

(2) [*Editor's note: Subsection (2) is effective January 1, 2018.*] A debt collector or collection agency who brings a legal action on a debt owned by a debt buyer shall attach the following materials to the complaint or form:

(a) (I) A copy of the contract, account-holder agreement, or other writing from the original creditor or the consumer evidencing the consumer's agreement to the original debt;
(II) In the case of a medical debt, a copy of a redacted itemization of charges incurred;
(III) If a signed writing evidencing the original debt does not exist, a copy of the document provided to the consumer while the account was active, demonstrating that the debt was incurred by the consumer; or, for a credit card debt, the most recent monthly statement recording a purchase transaction, payment, or balance transfer; or

(IV) If a claim is based on an electronic transaction for which a signed writing evidencing the original debt never existed, a copy of the records created during the transaction evidencing the consumer's agreement to the debt and recording the date and terms of the transaction and information provided by the consumer during the transaction; and

(b) A copy of the assignment or other writing establishing that the debt buyer is the owner of the debt. If the debt was assigned more than once, each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership, beginning with the original creditor to the first debt buyer and each subsequent sale.

(3) [*Editor's note: Subsection (3) is effective January 1, 2018.*] Prior to entry of a default judgment against a consumer in a legal action on a debt owned by a debt buyer, the plaintiff shall file with the court evidence that satisfies the requirements of rules 803(6) and 902(11) of the Colorado rules of evidence or is otherwise authorized by law or rule that establishes the amount and nature of the debt and include:

(a) The original account number at charge-off;
(b) The original creditor at charge-off;
(c) The amount due at charge-off or, if the balance has not been charged off, an itemization of the amount claimed to be owed, including the principal, interest, fees, and other charges or reductions from payment made or other credits;
(d) An itemization of post charge-off additions, if any;
(e) (I) The date of the last payment, if applicable; or
(II) The date of the last transaction; and
(f) If the account is not a revolving credit account, the date the debt was incurred.

(4) [*Editor's note: Subsection (4) is effective January 1, 2018.*] In the absence of evidence required by subsections (2)(a) or (2)(b) and (3) of this section, an affidavit does not satisfy the requirements of these subsections.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1089, § 1, effective August 9; (2), (3), and (4) added, (SB 17-216), ch. 285, p. 1578, § 4, effective January 1, 2018.

Editor's note: (1) This section is similar to former § 12-14-111 as it existed prior to

2017.

(2) Subsections (2), (3), and (4) were numbered as § 12-14-111 (2), (3), and (4), respectively, in SB 17-216 (see L. 2017, p. 1578). Those provisions were harmonized with this section as it appears in HB 17-1238, effective January 1, 2018.

5-16-112. Deceptive forms. (1) It is unlawful for any person to design, compile, and furnish any form knowing that the form would be used to create the false belief in a consumer that a person other than the creditor of the consumer is participating in the collection or in the attempted collection of a debt that the consumer allegedly owes the creditor, when in fact the person is not so participating.

(2) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector or collection agency under section 5-16-113 for failure to comply with this article 16.

(3) This section shall apply if the person supplying or using the forms or the consumer receiving the forms is located within this state.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1089, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-112 as it existed prior to 2017.

5-16-113. Civil liability. (1) In addition to administrative enforcement pursuant to section 5-16-114 and subject to section 5-16-132 and the limitations provided by subsection (10) 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 16 or private child support collector, as defined in section 5-17-102 (9), who fails to comply with any provision of this article 16 or article 17 of this title 5, with respect to a consumer is liable to the consumer in an amount equal to the sum of:

(a) Any actual damage sustained by the consumer as a result of the failure;

(b) (I) In the case of any action by an individual, additional damages as the court may allow, but not to exceed one thousand dollars;

(II) In the case of a class action, the amount for each named plaintiff as could be recovered under subsection (1)(b)(I) of this section and the amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed five hundred thousand dollars or one percent of the net worth of the debt collector or collection agency, whichever is the lesser; and

(c) In the case of any successful action to enforce such liability, the costs of the action, together with reasonable attorney fees as may be determined by the court.

(2) In the case of any unsuccessful action brought under this section, the plaintiff shall be liable to each defendant in an amount equal to that defendant's cost incurred in defending the action, together with reasonable attorney fees as may be determined by the court.

(3) In determining the amount of liability in any action under subsection (1) of this section, the court shall consider, among other relevant factors:

(a) In any individual action under subsection (1)(b)(I) of this section, the frequency and persistence of noncompliance by the debt collector or collection agency, the nature of noncompliance, and the extent to which noncompliance was intentional;

(b) In any class action under subsection (1)(b)(II) of this section, the frequency and persistence of noncompliance by the debt collector or collection agency, the nature of the noncompliance, the resources of the debt collector or collection agency, the number of persons adversely affected, and the extent to which the debt collector's or collection agency's noncompliance was intentional.

(4) A debt collector, private child support collector, as defined in section 5-17-102 (9), or collection agency may not be held liable in any action brought pursuant to this section if the debt collector or collection agency shows by a preponderance of evidence that the violation was not intentional or grossly negligent and the violation resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(5) A private action to enforce any liability created by this section must be brought in any court of competent jurisdiction within one year from the date on which the violation occurs.

(6) 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 administrator, notwithstanding that, after the act or omission has occurred, the opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(7) The policy of this state is not to award double damages under this article 16 and the federal "Fair Debt Collection Practices Act", 15 U.S.C. sec. 1692 et seq. No damages under this section shall be recovered if damages are recovered for a like provision of said federal act.

(8) Notwithstanding subsection (1) of this section, harassment of the employer or the family of a consumer shall be considered an invasion of privacy and a civil action may be brought which is not subject to the damage limitations of subsection (1) of this section.

(9) It shall be an affirmative defense to any action based upon failure of a debt collector, private child support collector, as defined in section 5-17-102 (9), 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.

(10) There shall be no private cause of action under this section for any alleged violation of section 5-16-125 (4)(a). Violations of section 5-16-125 (4)(a) may be prosecuted only through administrative enforcement pursuant to section 5-16-114.

(11) (a) No provision of this section imposing any liability shall apply to any efforts by a state agency or state employee to recover money owed to the state as provided in section 24-30-202.4.

(b) If the state controller, or a person he or she designates to recover money owed to the state, fails to comply with any provision of this article 16, the controller, or his or her designee, shall be subject to disciplinary action as specified in the rules promulgated by the executive director of the department of personnel pursuant to article 4 of title 24.

Source: L. 2017: (4) and (5) amended, (SB 17-216), ch. 285, p. 1579, § 5, effective June 1; entire article added with relocations, (HB 17-1238), ch. 260, p. 1090, § 1, effective August 9.

Editor's note: (1) This section is similar to former § 12-14-113 as it existed prior to 2017.

(2) Subsections (4) and (5) were numbered as § 12-14-113 (3) and (4), respectively, in SB 17-216 (see L. 2017, p. 1579). Those provisions were harmonized with this section as it appears in HB 17-1238.

5-16-114. Administrative enforcement - rules. Compliance with this article 16 shall be enforced by the administrator. The administrator may make reasonable rules for the administration and enforcement of this article 16, including standards of conduct for licensees and collection notices and forms.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1092, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-114 as it existed prior to 2017.

5-16-115. License - registration - unlawful acts. (1) It is unlawful for any person to:

- (a) Conduct the business of a collection agency or advertise or solicit, either in print, by letter, in person, or otherwise, the right to make collection or obtain payment of any debt on behalf of another without having obtained a license under this article 16; or
- (b) Conduct the business of a collection agency under any name other than that under which licensed.

(2) It is unlawful for a person to act as a collections manager without having complied with sections 5-16-119 and 5-16-122.

(3) It is unlawful for any person to employ a person as a solicitor, collections manager, or debt collector under this article 16 without complying with this section.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1092, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-115 as it existed prior to 2017.

5-16-116. Collection agency board - created. (Repealed)

Source: L. 2017: Entire section repealed, (SB 17-216), ch. 285, p. 1579, § 6, effective June 1; entire article added with relocations, (HB 17-1238), ch. 260, p. 1092, § 1, effective August 9.

Editor's note: This section was numbered as § 12-14-116 in SB 17-216 (see L. 2017, p. 1579). The repeal of that provision was harmonized with this section as it appears in HB 17-1238.

5-16-117. Powers and duties of the administrator - repeal. (1) [*Editor's note: This*

version of subsection (1) is effective until January 1, 2018.] Any provision of this article 16 to the contrary notwithstanding, the board, created by section 5-16-116, is under the supervision and control of the administrator, who may exercise any of the powers granted to the board.

(1) [*Editor's note: This version of subsection (1) is effective January 1, 2018.*] Repealed.

(2) The administrator is authorized to approve or deny any application submitted pursuant to this article 16 and to issue any license authorized by this article 16.

(3) Any complaint received by the administrator regarding violations of this article 16 by an attorney shall be forwarded to the supreme court's attorney regulation counsel.

(4) The administrator shall enforce the provisions of article 17 of this title 5 pursuant to section 5-17-111.

(5) [*Editor's note: Subsection (5) is effective January 1, 2018.*] The administrator shall prepare a report accounting for the efficient discharge of all responsibilities assigned by law and the general administration of the program on a biannual basis. In addition to any other information deemed relevant by the administrator, the biannual report shall address with specificity the following: Enforcement actions completed and whether those actions were appealed or otherwise challenged, the number of complaints processed and details as to outcomes and resolutions of complaints, and changes to the program and how they relate to industry or consumer concerns. The report shall include a description of any significant legal filings such as amicus briefs in any court and a summary of new regulations, legal developments that directly impact the program or program changes, and any significant matters that need to be addressed at the request of the regulated community or public. The report shall be submitted to the senate judiciary committee and the house judiciary committee and published on the attorney general's website by July 1 and December 31 of each year.

(6) [*Editor's note: Subsection (6) is effective January 1, 2018.*] In order to facilitate information sharing, to present the biannual report or similar information, and to solicit information relevant to the general administration of the program, the administrator, or representative designated by the attorney general, shall attend meetings and conferences of interested and relevant groups and associations. Upon attendance, the administrator shall have minutes from those meetings prepared and published on the attorney general's website and made part of the next biannual report. The administrator, or designee, shall attend the following on an annual basis:

(a) At the invitation of the collection agency industry, one local and one national association of collection agencies or other collection agency trade association meeting;

(b) At the invitation of the collection agency industry, one annual meeting of other business entity associations or groups that represent clients of collection agencies, debt buyers, or other related trade associations; and

(c) One annual meeting of a relevant consumer advocacy association.

(7) [*Editor's note: Subsection (7) is effective January 1, 2018.*] The administrator shall host an annual public meeting in January of each year, with direct notice at least one month in advance to consumer advocacy groups and associations and other interested parties. The administrator shall also host an annual public meeting in July of each year with direct notice at least one month in advance to licensees, industry groups, client groups and other interested

parties.

(8) [*Editor's note: Subsection (8) is effective January 1, 2018.*] This subsection (8) and subsections (5), (6), and (7) of this section are repealed, effective July 1, 2020.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1093, § 1, effective August 9; (1) repealed and (5), (6), (7), and (8) added, (SB 17-216), ch. 285, p. 1579, § 7, effective January 1, 2018.

Editor's note: (1) This section is similar to former § 12-14-117 as it existed prior to 2017.

(2) Subsections (1), (5), (6), (7), and (8) were numbered as § 12-14-117 (1), (6), (7), (8), and (9), respectively, in SB 17-216 (see L. 2017, p. 1579). Those provisions were harmonized with this section as it appears in HB 17-1238, effective January 1, 2018.

5-16-118. Collection agency license - required. Any person acting as a collection agency must possess a valid license issued by the administrator in accordance with this article 16 and any rules adopted pursuant thereto.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1093, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-118 as it existed prior to 2017.

5-16-119. Collection agency license - requirements - application - fee - expiration. (1) As requisites for licensure, an applicant for a collection agency license shall:

(a) (I) Be owned by, or employ as collections manager or an executive officer of the agency, at least one individual who has been engaged in a responsible position in an established collection agency for a period of at least two years.

(II) Notwithstanding the requirements of subsection (1)(a)(I) of this section, the administrator may substitute other business experience for requirements where the business experience has provided comparable experience in collections.

(b) (I) Employ a collections manager who shall be responsible for the actions of the debt collectors in that office.

(II) The collections manager may be the same individual specified in subsection (1)(a) of this section if the collections manager also meets the qualifications of subsection (1)(a) of this section.

(c) File a bond in the amount and manner specified in section 5-16-124;

(d) If a foreign corporation, comply fully with the laws of this state to entitle it to do business within the 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:

(a) The location, ownership, and, if applicable, the previous history of the business and the name, address, age, and relevant debt-collection experience of each of the principals of the

business;

(b) A duly verified financial statement for the previous year;

(c) If a corporation, the name of the shareholder and the number of shares held by any shareholder owning ten percent or more of the stock; and

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

(I) The conviction of any felony or the acceptance by a court of competent jurisdiction of a plea of guilty or nolo contendere to any felony;

(II) The denial, revocation, or suspension of any license issued to any collection agency that employed or was owned by such persons, in whole or in part, directly or indirectly, and a statement of their position and authority at the collection agency:

(A) For any license issued pursuant to this article 16; or

(B) For any comparable license issued by any other jurisdiction;

(III) The taking of any other disciplinary or adverse action or the existence of any outstanding complaints against any collection agency which employed or was owned in whole or in part, directly or indirectly, by such persons, and a statement of their position and authority at the collection agency:

(A) For any license issued pursuant to this article 16; or

(B) When the action was taken by any other jurisdiction or the complaint exists in any other jurisdiction, whether or not a license was issued by that jurisdiction;

(IV) The suspension or termination of approval of any collections manager under this article 16 or any other disciplinary or adverse action taken against the applicant, principal, or collections manager in any 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 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.

(5) 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 16 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 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 5-16-121 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 16 that occurred prior to the date of surrender.

(6) A collection agency must obtain a license for its principal place of business, but its branch offices, if any, need not obtain separate licenses. A collection agency with branch offices must notify the administrator in writing of the location of each branch office within thirty days after the branch office commences business.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1093, §

1, effective August 9.

Editor's note: This section is similar to former § 12-14-119 as it existed prior to 2017.

5-16-120. License - issuance - grounds for denial - appeal - contents. (1) Upon the approval of the license application by the administrator and the satisfaction of all application requirements, the administrator shall issue the applicant a license to operate as a collection agency.

(2) The administrator may deny any application for a license or its renewal if any grounds exist that would justify disciplinary action under section 5-16-127, for failure to meet the requirements of section 5-16-119, or if the applicant, the applicant's principals, or the applicant's collections manager have fraudulently obtained or attempted to obtain a license.

(3) If any application for a license or its renewal is denied, the applicant may appeal the decision pursuant to section 24-4-104.

(4) The license shall state the name of the licensee, location by street and number or office building and room number, city, county, and state where the licensee has his or her principal place of business, together with the number and date of the license and the date of expiration of the license, and shall further state that it is issued pursuant to this article 16 and that the licensee is duly authorized under this article 16.

(5) The administrator may deny any application for a license or its renewal if the collection agency has failed to perform the duties enumerated in section 5-16-123.

(6) The administrator may deny any application for a license or its renewal if the collection agency does not have a positive net worth.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1095, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-120 as it existed prior to 2017.

5-16-121. 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.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1096, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-121 as it existed prior to 2017.

5-16-122. 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 the change within thirty days after its occurrence:

(I) Change of business name or address;

(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.

(b) If the licensee fails to provide written notification, the license shall automatically expire on the thirtieth day following the change.

(2) (a) Upon any of the changes specified in subsection (2)(c) of this section, the licensee shall apply for a new license within thirty days of the change. The administrator shall have twenty-five days to review the application and issue or deny the new license. If the administrator denies the license, the administrator shall provide to the licensee a written statement stating why the application for the license was denied, and the licensee shall have fifteen days to cure any defects in the application. The administrator shall approve or deny the resubmitted application within fifteen days.

(b) If the licensee fails to file an application for a new license, the license shall expire on the thirtieth day following the change that necessitated the new license application. If the application is denied and the licensee fails to resubmit the application within fifteen days of the denial, the license shall expire on the fifteenth day following the denial.

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

(I) In a sole proprietorship or partnership, any change in the persons owning the collection agency;

(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 a change and the application required may be more abbreviated than that required for an initial license, as determined by the administrator.

(3) (a) Upon a change of collections manager, the licensee shall notify the administrator in the form and manner designated by the administrator. The licensee shall appoint a new collections manager within thirty days of the change.

(b) The administrator, within fifteen days, shall approve or disapprove the qualifications of the new collections manager.

(c) The licensee may continue to operate as a collection agency unless and until the administrator disapproves the qualifications of the new collections manager.

(4) Any licensee which has submitted an application for a new license may continue to operate as a collection agency until the final decision of the administrator.

(5) The licensee may appeal the final decision of the administrator pursuant to section 24-4-104.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1096, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-122 as it existed prior to 2017.

5-16-123. Duties of collection agencies. (1) A licensee shall:

(a) Maintain, at all times, liquid assets in the form of deposit accounts in the total sum of

not less than two thousand five hundred dollars more than all sums due and owing to all of its clients;

(b) (I) (A) Maintain, at all times, an office within this state that is open to the public during normal business hours, is staffed by at least one full-time employee, keeps a record of all money collected and remitted by the agency for residents of Colorado, and accepts payments physically made at the office for any debt the agency is attempting to collect.

(B) Notify, in each written communication, the consumer from whom the agency is attempting to collect a debt of the address and telephone number of the local office required by this subsection (1)(b)(I).

(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.

(c) Maintain, at all times, a trust account for the benefit of its clients that contains, at all times, sufficient funds to pay all sums due or owing to all of its clients. The licensee shall maintain the trust account in a commercial bank or savings and loan association account in this state or accessible in a branch in this state until disbursed to the creditor. The account must be clearly designated as a trust account and shall be used only for such purposes and not as an operating account. A deposit of all funds received to a trust account followed by a transfer of the agency share of the collection to an operating account is not a violation of this section.

(d) Within thirty days after the last day of the month in which any collections are made for a client, account to the client for all collections made during that month and remit to the client all money owed to the client pursuant to the agreement between the client and the collection agency;

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

(f) Be responsible, pursuant to this article 16, for violations of this article 16 caused by its collections manager, debt collectors, or solicitors.

(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, in part 1, 2, 3, 5, 7, or 9 of article 5, or in article 5.5 of title 18, 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, in part 1, 2, 3, 5, 7, or 9 of article 5, or in article 5.5 of title 18, or any similar crime under the jurisdiction of any federal court or court of another state:

- (I) The owner of a sole proprietorship;
- (II) A partner of a partnership;
- (III) A member of a limited liability company; or
- (IV) An officer or director of a corporation.

(3) Subsections (1)(a), (1)(c), and (1)(d) of this section do not apply to a person collecting or attempting to collect a debt owned by the person collecting or attempting to collect the debt.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1097, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-123 as it existed prior to 2017.

5-16-124. Bond - definition. (1) Each licensee shall maintain at all times and each applicant shall file, prior to the issuance of any license to the 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. 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 administrator. The bond shall be executed by the applicant or licensee as principal and by a corporation 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, the surety immediately shall notify the administrator in writing. The 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 administrator received the notice, or on a 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 administrator, pay over to the administrator for the use of any client from whom any debt is taken or received for collection by the licensee the proceeds of the collection, less the charges for collection in accordance with the terms of the agreement made between the licensee and the client.

(3) A client may file with the administrator a duly verified claim as to money due the client for money collected by a licensee. If the administrator makes a preliminary determination that a claim meets the requirements of this section, the administrator shall make a demand for the amount claimed. The 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, the receiver, upon the written consent of the administrator, may demand and receive payment on the bond from the surety and, upon order of the court, may bring suit upon the bond in the name of the receiver, without joining the administrator as a party to the action.

(5) If a client has filed a duly verified claim with the 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 the licensee without assignment of the bond to the client. Nothing in this section shall preclude a client from making a demand on both the licensee and the surety.

(6) (a) The bond shall include a condition that the licensee shall, upon written demand, turn over to the client any and all notes, valuable papers, or evidence of indebtedness which may

have been deposited with the licensee by the client, but the licensee shall not be required to return any such papers, notes, or evidence of indebtedness on debts in process of collection, unless reimbursed by the client for the services performed on the debt so evidenced.

(b) "Debts in process of collection" means any debts that have been in the licensee's hands for less than nine months, debts on which payments are being made, or on which payments have been promised, debts on which suit has been brought, and claims that have been forwarded to any other collection agency or attorney.

(7) The bond shall cover all matters placed with 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 administrator refuses to act. The aggregate liability of the surety, for any and all claims that may arise under the bond, shall not exceed the penalty of the bond.

(8) Any licensee, at any time, may file a new bond with the administrator. Any surety may file with the administrator notice of withdrawal as surety on the bond of any licensee. Upon filing of a 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 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.

(9) No action shall be brought upon any bond required to be given and filed, after the expiration of two years from the surrender, revocation, or expiration of the license issued thereunder. After the expiration of two years, all liability of the surety upon the bond shall cease if no action has been commenced upon the bond before the expiration of the period.

(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 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.

(11) This section does not apply to a person collecting or attempting to collect a debt owned by the person collecting or attempting to collect the debt.

(12) A bond shall not be required of a debt buyer as long as the debt buyer does not also provide third-party debt collection.

Source: L. 2017: (12) added, (SB 17-216), ch. 285, p. 1581, § 8, effective June 1; entire article added with relocations, (HB 17-1238), ch. 260, p. 1098, § 1, effective August 9.

Editor's note: (1) This section is similar to former § 12-14-124 as it existed prior to 2017.

(2) Subsection (12) was numbered as § 12-14-124 (12) in SB 17-216 (see L. 2017, p. 1581). That provision was harmonized with this section as it appears in HB 17-1238.

5-16-125. Unlawful acts. (1) In addition to the unlawful acts specified in sections 5-16-112 and 5-16-115, it is unlawful and a violation of this article 16 for any person:

(a) To refuse or fail to comply with section 5-16-104, 5-16-105, 5-16-106, 5-16-107, 5-16-108, 5-16-109, 5-16-110, 5-16-118, 5-16-119 (1), or 5-16-123 (1)(b) to (1)(e) or (2);

(b) To aid or abet any person operating or attempting to operate in violation of this article 16, including but not limited to section 5-16-115; except that nothing in this article 16 shall prevent any licensed collection agency from accepting, as forwarder, claims for collection from any collection agency or attorney whose place of business is outside this state;

(c) To recover or attempt to recover treble damages for any check, draft, or order not paid on presentment without complying with the provisions of section 13-21-109.

(2) It is unlawful and a violation of this article 16 for any licensee or any attorney representing a licensee to invoke a cognovit clause in any note so as to confess judgment.

(3) It is unlawful and a violation of this article 16 for any licensee to render or to advertise that it will render legal services; except that a licensee may solicit claims for collection and take assignments and pursue the collection thereof subject to the provisions of law concerning the unauthorized practice of law.

(4) It is unlawful and a violation of this article 16 for any licensee, collections manager, debt collector, or solicitor to:

(a) Refuse or fail to comply with a rule adopted pursuant to this article 16 or any lawful order of the administrator; or

(b) Aid or abet any person in such refusal or failure.

(5) It is unlawful and a violation of this article 16 for any person to falsify any information or make any misleading statements in any application authorized under this article 16.

(6) Any officer or agent of a corporation who personally participates in any violation of this article 16 shall be subject to the penalties prescribed in section 5-16-126 for individuals.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1100, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-128 as it existed prior to 2017.

5-16-125.5. Statute of limitations - actions by administrator. An action or proceeding brought by the administrator pursuant to this article 16 or pursuant to any rule issued by the administrator under this article 16 must be brought within two years after the date on which the violation occurred.

Source: L. 2017: Entire section added, (SB 17-216), ch. 285, p. 1581, § 9, effective June 1.

Editor's note: This section was numbered as § 12-14-128.5 in SB 17-216 (see L. 2017, p. 1581). That provision was relocated and harmonized with this article as it appears in HB 17-1238.

5-16-126. Criminal penalties. Any person who violates any provision of section 5-16-125 (1), (2), (3), or (4) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1101, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-129 as it existed prior to 2017.

5-16-127. Complaint - investigations - powers of administrator - sanctions. (1) Upon filing with the administrator by any interested person a written complaint charging any person with a violation of this article 16, any rule adopted pursuant to this article 16, or any lawful order of the administrator, the administrator shall conduct an investigation.

(2) For reasonable cause, the administrator may, on its own motion, conduct an investigation of the conduct of any person concerning compliance with this article 16. The administrator may also issue subpoenas to require the attendance of witnesses or the production of documents. The subpoenas may be issued to any person, whether located in this state or elsewhere, who has engaged in or is engaging in any violation of this article 16. The administrator may also administer oaths; conduct hearings in aid of any investigation or inquiry necessary to administer the provisions of this article 16; and apply to the appropriate court for an appropriate order to effect the purposes of this article 16.

(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, in part 1, 2, 3, 5, 7, or 9 of article 5, or in article 5.5 of title 18, or any similar crime under the jurisdiction of any federal court or court of another state, the conviction or plea shall constitute grounds for disciplinary action under this section.

(4) In any proceeding held under this section, the 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 that prompted the disciplinary or adverse action by that jurisdiction would be grounds for disciplinary action under this section.

(5) For reasonable cause, the administrator or 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.

(6) (a) For reasonable cause, the 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 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

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 16, the administrator may subpoena witnesses and compel them to give testimony under oath. If any subpoenaed witness fails or refuses to appear or testify, the subpoenaing authority may petition the district court, and, upon proper showing, the court may order the witness to appear and testify. Disobedience of the order of court may be punished as a contempt of court.

(8) The administrator may appoint an administrative law judge pursuant to part 10 of article 30 of title 24 to conduct any proceedings authorized under this article 16.

(9) If the administrator finds cause to believe a licensee or collections manager has violated this article 16, the rules adopted pursuant to this article 16, or any lawful order of the administrator, the administrator shall 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.

(10) (a) If the administrator or the administrative law judge finds that the licensee or collections manager has violated this article 16, the rules adopted pursuant to this article 16, or any lawful order of the administrator, or if the licensee fraudulently obtained a license, the administrator may issue letters of admonition; deny, revoke, or suspend the license of the licensee or approval of the collections manager; place the 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 administrator may issue letters of admonition pursuant to subsection (10)(a) of this section without a hearing; except that the licensee or collections manager receiving the letter of admonition may request a hearing before the administrator to appeal the issuance of the letter.

(c) A letter of admonition may be issued to a licensee or collections manager whether or not a license or approval has been surrendered prior to issuance.

(d) No person whose license has been revoked shall be licensed again under the terms of this article 16 for five years. No person hired as a collections manager whose approval has been terminated by the administrator for a violation of this article 16 shall be hired again as a collections manager for five years.

(11) The court of appeals shall have jurisdiction to review all final actions and orders that are subject to judicial review of the administrator. Proceedings shall be conducted in accordance with section 24-4-106 (11).

(12) The administrator, expert witnesses, and consultants are immune from civil suit when they perform in good faith any duties in connection with any proceedings authorized under this section. Any person who files a complaint in good faith under this section is immune from civil suit.

Source: L. 2017: (12) amended, (SB 17-216), ch. 285, p. 1581, § 10, effective June 1; entire article added with relocations, (HB 17-1238), ch. 260, p. 1101, § 1, effective August 9.

Editor's note: (1) This section is similar to former § 12-14-130 as it existed prior to 2017.

(2) Subsection (12) was numbered as § 12-14-130 (12) in SB 17-216 (see L. 2017, p. 1581). That provision was harmonized with subsection (12) of this section as it appears in HB 17-1238.

5-16-128. Debt collectors for the department of personnel - complaint - disciplinary procedures. (1) Any interested person may file a written complaint with the executive director of the department of personnel charging a debt collector in the employ of the department of personnel with a violation of:

(a) This article 16 or a rule promulgated pursuant to this article 16;
(b) A lawful order of the state board of ethics; or
(c) The standards of conduct set forth in the code of conduct developed by the department of personnel for such debt collectors.

(2) Each complaint filed pursuant to this section shall be referred to the executive director of the department of personnel who shall conduct an investigation to determine if a violation of subsection (1) of this section occurred. If the executive director makes a determination that a violation did occur, the debt collector who is the subject of the complaint shall be subject to the disciplinary procedures set forth in rules adopted by the state personnel board. If a determination made pursuant to this subsection (2) is unsatisfactory to any party, an appeal may be made to the board of ethics for the executive branch of state government in the office of the governor.

(3) If the executive director of the department of personnel, or the board of ethics in the case of an appeal, makes a determination that a debt collector in the employ of the department of personnel has acted in violation of this article 16 or a rule promulgated pursuant to this article 16, a lawful order of the state board of ethics, or the code of conduct described in subsection (1)(c) of this section, the determination shall be made a part of the personnel file of the debt collector against whom the complaint was filed.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1103, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-130.1 as it existed prior to 2017.

5-16-129. Records. The administrator shall keep a suitable record of all license applications and bonds required to be filed. The record shall state whether a license has been issued under the application and bond and, if revoked, the date of the filing of the order of revocation. The administrator shall keep a list of each person who has had a license revoked or has been terminated as a collections manager for a violation of this article 16. In the record, all licenses issued shall be indicated by their serial numbers and the names and addresses of the licensees. This section shall apply to renewal applications and renewal licenses. The record shall be open for inspection as a public record in the office of the administrator.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1104, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-131 as it existed prior to 2017.

5-16-130. Jurisdiction of courts. County courts shall have concurrent jurisdiction with the district courts of this state in all criminal prosecutions for violations of this article 16.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1104, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-132 as it existed prior to 2017.

5-16-131. Duty of district attorney. It is the duty of the district attorney to prosecute all violations of the provisions of this article 16 occurring within his or her district.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1104, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-133 as it existed prior to 2017.

5-16-132. Remedies. The remedies provided in this article 16 are in addition to and not exclusive of any other remedies provided by law.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1104, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-134 as it existed prior to 2017.

5-16-133. Injunction - receiver. The district court in and for the city and county of Denver, upon application of the administrator, may issue an injunction or other appropriate order restraining any person from a violation of this article 16 and may appoint a receiver or award other relief to effectuate the provisions of this article 16; order restitution for consumers or creditors for violations of this article 16; impose civil penalties up to one thousand five hundred dollars per violation of this article 16; and award reasonable costs and attorney fees to the administrator if the administrator prevails in an action brought under this article 16. This provision shall be in addition to any other remedy and shall not prohibit the enforcement of any other law. The administrator shall not be required to show irreparable injury or to post a bond.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1104, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-135 as it existed prior to 2017.

5-16-134. Disposition of fees and fines. (1) (a) All revenue, except fines, collected pursuant to this article 16 shall be collected by the administrator and transmitted to the state

treasurer, who shall credit the same to the collection agency cash fund, which fund is hereby created and referred to in this section as the "fund". The general assembly shall make annual appropriations from the fund for the uses and purposes of this article 16. All revenue credited to the fund, including earned interest, shall be used for the administration and enforcement of this article 16.

(b) Notwithstanding any provision of subsection (1)(a) of this section to the contrary, on March 27, 2002, the state treasurer shall deduct four hundred sixty-two thousand dollars from the fund and transfer such sum to the general fund.

(c) Notwithstanding any provision of subsection (1)(a) of this section to the contrary, on March 5, 2003, the state treasurer shall deduct one hundred twenty thousand dollars from the fund and transfer such sum to the general fund.

(2) All fines collected pursuant to this article 16, including but not limited to fines collected pursuant to section 5-16-127, shall be collected by the administrator and transmitted to the state treasurer, who shall credit the same to the general fund.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1104, § 1, effective August 9.

Editor's note: This section is similar to former § 12-14-136 as it existed prior to 2017.

5-16-134.5. Debts sold or resold after January 1, 2018. This article 16 applies to debt buyers with respect to consumer debts sold or resold on or after January 1, 2018.

Source: L. 2017: Entire section added, (SB 17-216), ch. 285, p. 1581, § 11, effective June 1.

Editor's note: This section was numbered as § 12-14-136.5 in SB 17-216 (see L. 2017, p. 1581). That provision was relocated and harmonized with this article as it appears in HB 17-1238.

5-16-135. Repeal of article. This article 16 is repealed, effective September 1, 2028. Before its repeal, this article 16 is scheduled for review in accordance with section 24-34-104.

Source: L. 2017: Entire section amended, (SB 17-216), ch. 285, p. 1577, § 2, effective June 1; entire article added with relocations, (HB 17-1238), ch. 260, p. 1105, § 1, effective August 9.

Editor's note: (1) This section is similar to former § 12-14-137 as it existed prior to 2017.

(2) This section was numbered as § 12-14-137 in SB 17-216 (see L. 2017, p. 1577). That provision was harmonized with this section as it appears in HB 17-1238.