

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

REGULATION OF COLLECTION AGENCIES IN COLORADO

COLLECTION AGENCY BOARD
1999 SUNSET REVIEW



October 15, 1999

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Collection Agency Board. I am pleased to submit this written report which will be the basis for my office's oral testimony before the 2000 legislative committees of reference. The report is submitted pursuant to §24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination

The report discusses the question of whether there is a need for the regulation provided under Article 14 of Title 12, C.R.S. The report also discusses the effectiveness of the Department of Law and staff in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

M. Michael Cooke
Executive Director

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Executive Summary

The Department of Regulatory Agencies (DORA) has concluded its 1999 Sunset Review of the regulation of collection agencies as required by §12-14-101, et seq. of the Colorado Revised Statutes (C.R.S.). In Colorado, the licensing of collection agencies began in 1937 by the Collection Agency Board (Board) located in the Secretary of State's Office. Since its creation in 1937, the Board has been moved from the Secretary of State to the Department of Regulatory Agencies and most recently to the Department of Law.

The regulatory authority of the Board has diminished over the years. The Board essentially serves in an advisory capacity to an Assistant Attorney General, titled the Executive Director, appointed by the Attorney General, a statewide elected official.

The sunset review found there is sufficient justification to continue the regulation of collection agencies and recommends continuing the licensing authority of the Executive Director until July 1, 2007. However, the review did not find a need to continue the functions of the Board. Therefore it is recommended the Board be allowed to sunset as scheduled.

In addition to recommendations to continue licensing and allow the Board to sunset, the report makes five statutory and one administrative recommendation. These recommendations are detailed in the Analysis and Recommendations section of the report beginning on page 20. A brief summary and description follows of how implementation of these recommendations will improve the ability of the program to maintain public protection with the least restrictive form of regulation possible. Recommendations include:

- Eliminate the registration of debt collectors and solicitors;
- Clarify when debtor communications must be in writing;
- Amend the Act so terminology is consistent with related statutes;
- Update references to federal and state statutes related to debt collection;
- Clarify the licensing requirements for agencies; and
- Streamline the application process to reduce the administrative burden on prospective licensees.

List of Recommendations

Recommendation 1 - Continue the licensing and regulation of collection agencies by the Administrator of the Uniform Consumer Credit Code in the Department of Law until July 1, 2007 and sunset the Collection Agency Board. 20

Recommendation 2 - Eliminate the requirement for registration of debt collectors and solicitors. 21

Recommendation 3 – In order to clarify when communications between a consumer debtor and an agency must be in writing, the General Assembly should repeal §12-14-105 (3)(D), C.R.S., and amend §12-14-105(3)(A), C.R.S..... 22

Recommendation 4 - Amend the CFDCPA terminology to be consistent with the Uniform Commercial Credit Code (UCCC)..... 23

Recommendation 5 - Make conforming amendments to the statute to update references to federal and state laws..... 23

Recommendation 6 - The General Assembly should clarify the requirements for approval as a collection manager and the licensing standards for principles of an agency. 24

Recommendation 7 – Require all funds collected from administrative fines to be remitted to the General Fund. 25

Administrative Recommendation 1 - The Executive Director should streamline the application process to achieve efficiencies and reduce the burden on the applicant. 26

Background

Article 14 of title 12 of the Colorado Revised Statutes (C.R.S.), the Colorado Fair Debt Collection Practices Act (CFDPCA) is the state version of the federal “Fair Debt Collection Practices Act” (FDCPA) enforced by the Federal Trade Commission (FTC). Both the state and federal acts are intended to protect the public from harassment by third party debt collectors.

The Collection Agency Board (Board) was originally established in 1937 and was located in the Office of the Secretary of State. The Board was moved to the Department of Regulatory Agencies (DORA) as part of the Administrative Reorganization Act of 1968. Following the recommendations in a 1977 report from the Colorado State Auditor’s Office, the General Assembly moved the Board to the Department of Law (Department) by a “Type 2 Transfer”.

This transfer resulted in the statutory authority, powers, duties and functions of the Board being vested in the Executive Director of the Board. The Executive Director of the Board is defined as the administrator of the Uniform Consumer Credit Code (UCCC), also located in the Department of Law. The administrator of the UCCC is an Assistant Attorney General supervised by the Attorney General of Colorado. Following the transfer, the Executive Director delegated the authority back to the Board.

Following the 1989 sunset review of the Board, the General Assembly adopted recommendations to amend the CFDPCA to give the Executive Director all licensing and disciplinary authority. Since 1990, the Board has primarily made determinations regarding bond distributions based on claims by clients of collection agencies. The Board also serves as an advisory body to the Executive Director for legislative issues and as the rule making authority

Summary of Statute and Regulation

FEDERAL REGULATION

The FDCPA places certain restrictions on the collection efforts of a third party collector. The federal government does not license or register individual collection agencies. The Colorado Department of Law has prepared a comparison of the Federal and Colorado Acts. This comparison of the two Acts is included as Table 1 on the following page.

Summary of Statute and Regulation

TABLE 1

Comparison of the Colorado and Federal Fair Debt Collection Practices Acts

COLORADO	FEDERAL
Colorado law requires written notice to the consumer of the <i>right to cessation of contact at the place of employment</i> . [§12-14-105(1)(c), C.R.S., and Rule 2.01] The Colorado consumer can limit collection contact to his or her residence.	Federal law allows only for notice of the right to cessation of all contact which, if exercised, will lead to the filing of a lawsuit or termination of collection efforts. [15 U.S.C. 1692c(c)]
Colorado law requires that the agency notify the consumer in the initial written communication how the consumer can <i>request no telephone calls at work</i> , cessation of all communication, or refuse to pay the debt and the consequences thereof. [§12-14-105(3), C.R.S.]	Federal law establishes similar rights, but does not require that written notice of them be provided to the consumer. [15 U.S.C. 1692c(c)]
Colorado law requires that the validation notice <i>inform consumers that collection agencies are licensed by the Collection Agency Board</i> in the Department of Law, provide the Board's current address, and instruct consumers not to send payments to the Board. [§12-14-109(1)(f) & (g), C.R.S.]	Federal law does not require a similar notice.
Colorado law requires " <i>meaningful disclosure</i> " of a debt collector's identity within 60 seconds of contact with the debtor. [§12-14-106(1)(f), C.R.S.]	Federal law contains no time limitation. [15 U.S.C. 1692d(6)]
Colorado law <i>prohibits a collection agency from invoking a cognitive clause</i> (confession of judgment). [§12-14-128(2), C.R.S.]	Federal law contains no such prohibition.
Colorado law provides a <i>two-year statute of limitations for a consumer to sue a collection agency</i> . [12-14-113(4), C.R.S.]	Federal law provides only for a one-year statute of limitations. [15 U.S.C. 1692k(d)]
Colorado law creates liability in an <i>invasion of privacy action for harassment of a consumer's employer and family</i> . [§12-14-113(7), C.R.S.]	Federal law does not specifically create this remedy in the Act but it may still be actionable.
The CFDCPA <i>requires compliance by attorneys</i> regularly engaged in collecting consumer debts but does not require them to be licensed as collection agencies or registered as debt collectors. [§12-14-103(2)(e)(II), C.R.S.]	Federal law requires attorney compliance if the attorney is regularly engaged in the area of collections.
Colorado law provides for <i>bonds to protect against non-remittance of consumer funds</i> and trust funds for client monies. The CFDCPA contains requirements for how often consumer payments must be disbursed to clients. [§12-14-123(1)(c) & (d) and §12-14-124, C.R.S.]	Federal law provides no creditor protections. Aggrieved creditors have to sue privately in a court action.
Colorado law <i>requires licensure of collection agencies, and registration of debt collectors and solicitors</i> . [§12-14-115, C.R.S.] Licenses may be revoked or suspended, licensees may be issued letters of admonition, or fined \$1000 per violation and certain violations of the act are criminal misdemeanors. [§12-14-129 and §12-14-130(10)(b), C.R.S.] The Board may issue rules and regulations on standards of behavior.	Federal law is primarily enforced by the Federal Trade Commission. [15 U.S.C. 21] It does not issue any rules and there are no licensure requirements. The FTC does not have the authority to impose fines.
Under Colorado law <i>collection agencies may not report debts to consumer reporting agencies and credit bureaus until 30 days</i> after the initial written notice is mailed. This does not apply to check collection or in situations where there is no valid known address for the consumer. [§12-14-108(1)(j), C.R.S.]	Federal law has no similar provision.

Source: Colorado Department of Law

Summary of Statute and Regulation

COLORADO STATUTORY SUMMARY

The CFDCPA identifies the individuals and entities to be regulated, as well as terms used throughout Article 14. Key provisions of the CFDCPA require collectors to identify themselves when contacting debtors and prohibits disclosure of debts to anyone other than the debtor.

The CFDCPA regulates communication between collectors and debtors, and between collectors and third parties when collectors attempt to obtain additional information about the debtor. Collectors must call debtors at reasonable times and may not contact debtors at their place of employment if they are requested not to. Collectors are prohibited from contacting a debtor if the debtor obtains the services of an attorney to dispute the debt or if the debtor otherwise engages in legal remedies to obtain relief.

Collectors may not misrepresent themselves or the amount of the debt to the debtor. Collectors may not use or distribute information that simulates or is represented as a document authorized, issued or approved by any court official or agency of the United States or Colorado governments. Collectors are prohibited from threatening action that cannot legally be, or that is not intended to be, taken. Additional restrictions are contained in §12-14-104, C.R.S.

The CFDCPA provides for a collection agency license, however, approval of a qualified collection manager is a condition of licensure. The CFDCPA also requires registration for debt collectors and solicitors. It is unlawful, under the provision of §12-14-115 C.R.S., for any person to operate a collection agency or act as a collection manager without first obtaining approval required in the CFDCPA. Debt collectors and solicitors must be registered within 15 days of beginning employment with a licensed agency.

The Board is established in section 116 of the CFDCPA. The Board consists of five members, each serving no more than two consecutive three-year terms. Three members of the Board must have been engaged in the collection business within the state as either a collections manager, owner, partner, or officer of a corporation licensed for debt collection for a period of at least five years immediately prior to their appointment. Two members of the Board represent the general public and may not be engaged in the collections business.

Summary of Statute and Regulation

The Board elects a Chairman, Vice-Chairman, and Secretary annually. The Board meets as necessary. Members are allowed a fifty-dollar per diem and are reimbursed for actual expenses.

Section 117 of the CFDCPA defines the powers and duties of the Executive Director. The Board is under the direction and control of the Executive Director, defined in the CFDCPA as the administrator of the "Uniform Consumer Credit Code" (UCCC) established in §5-6-101 C.R.S. et seq. The administrator is defined in the UCCC as "...the assistant attorney general to be designated by the attorney general, with the advice and consent of the commission on consumer credit." The Executive Director may carry out any powers and duties of the Board.

Sections 119 through 123 detail the requirements for licensure as a collection agency, the duties of agencies, grounds for denial, renewal procedures, and notification requirements. Agencies are required by §124 to maintain a bond or satisfactory evidence of a savings account or certificate of deposit meeting the requirements of §11-35-101, C.R.S., in the amount of twelve thousand dollars. The bond is adjusted based on the average monthly collections of the agency during the preceding year. The amount of the bond or other method of financial surety may not exceed twenty thousand dollars. The purpose of the bond is to protect the clients of the agency in the event an agency collects moneys from a debtor and fails to remit the funds to the client.

Sections 125 and 126 detail the registration requirements for debt collectors and solicitors. Debt collectors are those individuals engaged in activities intended to obtain payment on debts owed to clients of the licensed agency. Collectors must be registered by the employing agency within 15 days of initial employment date. Solicitors are those individuals who seek clients on behalf of the collection agency. Solicitors must also be registered within 15 days of initial employment.

Section 128 details unlawful acts, while section 129 establishes that violations of the CFDCPA are Class 1 misdemeanors. The Board has the authority to investigate complaints made by the public or on its own motion. The CFDCPA provides that convictions or nolo contendere pleas for financial crimes in a federal court or any court of another state are grounds for disciplinary action by the Board.

Summary of Statute and Regulation

Debt collectors employed by the State of Colorado are exempt from the registration and disciplinary provisions of the CFDCPA. However, §12-14-130.1, C.R.S., details complaint procedures for the Executive Director of the State Department of Personnel to follow in disciplinary proceedings against a state employee violating provisions of the CFDCPA or ethical standards of the Board.

Local district attorneys are required to prosecute violations of the CFDCPA. County courts have concurrent jurisdiction with district courts in all criminal prosecutions for violations of the CFDCPA. The Board may seek injunctive relief in Denver District Court for violations of the CFDCPA in addition to other allowable disciplinary actions or criminal prosecutions.

All revenue collected under this statute is remitted to the Colorado State Treasurer for deposit in the collection agency board cash fund. The General Assembly appropriates money from this fund annually to finance the operation of the program and enforcement of the statute.

COLORADO REGULATIONS

Regulations promulgated by the Board are found in section 903-1 of chapter four of the Colorado Code of Regulations (CCR). The regulations are available from the Board or can be accessed via the Internet from the state home page.

The regulations are divided into three chapters. Chapter one is entitled Licensing, Registration, and Disciplinary Matters. Issues covered in this section relate to collection manager approval procedures, the registration of debt collectors, the use of aliases, and disciplinary procedures including termination of a license.

Chapter two is entitled Consumer Protection. This chapter focuses on the rights of consumers and the standards which agencies and collectors must adhere to in order to protect those rights. Issues covered in this chapter include notices, payment agreements and schedules, cost of collection, overpayment, cash payment, consumer contact records, non-sufficient fund (NSF) checks, and obligations of debt collectors.

The third chapter of the regulations is Creditor Protections. This chapter addresses protection for the client of the collection agency. The Board has promulgated regulations regarding trust accounts, unidentified accounts, payment records, bonds, and client lists.

Program Description and Administration

The Board is staffed by a total of 2.5 full-time equivalent (FTE) employees of the Department. This consists of one compliance investigator, one program assistant, and .5 Assistant Attorney General. The Executive Director is an Assistant Attorney General who also serves as the administrator of the UCCC and the salary for this position is funded by the UCCC. The program also regularly employs part-time temporary employees to assist with administrative functions including responding to telephone inquiries by consumers and licensees.

The program is cash funded by licensing and registration fees. The program also retains in the cash fund any administrative fines paid by licensees. The program charges an investigation fee for the initial license application. All licenses and registrations expire on June 30 of each year. Agency license fees are reduced if less than six months remain in the licensing period. Fees for the program are as follows:

- Initial investigation \$250
- Initial license \$300
- Agency renewal \$190
- Manager examination \$ 25
- Collector registration \$ 6
- Solicitor registration \$ 6

The program has been operating at a significant surplus for several years. Pursuant to SB 98-194, the Department lowered fees for fiscal year 1999-2000 to reduce the surplus to the required 16.5 percent by July 2003. Table 2 details the revenues and expenditures of the program since fiscal year 1993-94.

TABLE 2
Collection Agency Board Revenues and Expenditures

Fiscal Year	Revenue	Expenditures
1998-99	\$456,233	\$188,575
1997-98	273,994	130,066
1996-97*	206,397	122,940
1995-96	174,103	151,470
1994-95	147,857	128,628
1993-94*	176,160	120,270

*The Department notes that in fiscal years 1993-94 and 1996-97 there were staff vacancies that resulted in lower than anticipated expenses.

Program Description and Administration

LICENSING AND EXAMINATION

To be licensed as a collection agency, an applicant must submit a complete application accompanied by the investigation fee. The application requires information about the business entity as well as personal information about the principals of the business. Required application materials include: financial statement, personal affidavit for each officer, collection manager application, and the collection manager examination fee.

Applications are reviewed for completeness and appropriate fees. The investigation consists of a review of the financial statements to ensure the liquid assets of the entity meet the \$2,500 minimum. If the applicant is licensed in another state, the license status in other states is reviewed to verify the license is in good standing. Applications may be denied if the applicant indicates a conviction for an offense related to financial fraud. A complete criminal background check is not conducted.

Each agency must have an approved collection manager, and may open additional branches by notifying the Department and registering all collectors and solicitors. The approved collection manager must have two years experience as a collector or equivalent experience approved by the Board and a passing score on the collection manager examination. The collection manager examination is conducted once each month in Denver. The examination consists of 30 multiple-choice questions covering the CFDCPA. No applicant has failed to pass the examination in the past three years.

Once the manager of the entity has passed the examination, additional information is requested from the applicant. This information includes:

- A surety bond, or approved alternative in the amount of \$12,000;
- Verification of a Colorado Trust Account;
- Verification of an operating account;
- Certificate of good standing, (if a foreign corporation);
- Articles of Incorporation if a domestic business entity;

Program Description and Administration

- Registered trade name for both foreign and domestic businesses, if applicable;
- Copy of the first written notice, validation of debt statement (must contain consumer rights information from §12-14-109(1)(f), C.R.S.);
- The license fee;
- Notification fee for the Uniform Consumer Credit Code;
- Debt collector and solicitor registrations and fees; and
- The address and telephone number for the business.

If the applicant does not submit all required information and fees within 90 days of the collection manager being approved, the application is voided. Fees are not refunded.

REGISTRATION

All debt collectors and solicitors, including the manager, must be registered. Registration does not require an examination or background check. The registration lists the agency the collector is working for and any alias the collector uses. It is common for collectors to use an alias while working at an agency to protect their privacy.

The number of licenses and registrations issued has increased since the 1989 sunset review. The registration process for debt collectors and solicitors is not as technical as the licensing and testing of agencies and managers. However, because of the volume of registrations, these activities do require significant resources from the staff of the program. Table 3 details licensing and registration activities for the past seven years.

Program Description and Administration

TABLE 3

License and Registration Activity

Fiscal Year	Agency Licenses	Collector Registration	Solicitor Registration	Managers Tested	Total Activity	Percentage Increase
1998-99	317	18,667	614	82	19,680	.27
1997-98	307	14,520	607	83	15,517	.62
1996-97	265	8,567	683	67	9,582	.11
1995-96	*272	7,538	730	62	8,602	<.11>
1994-95	344	7,892	1,148	92	9,476	.18
1993-94	281	6,510	1,142	101	8,034	.68
1992-93	345	3,693	677	72	4,787	.61
1991-92	208	2,186	509	63	2,966	

* Agency licenses decreased after the branch license requirement was eliminated.

COMPLAINTS AND DISCIPLINARY ACTIONS

Violations of the CFDCPA could result in disciplinary actions against the license of an agency. The CFDCPA was amended in 1990 to require agencies to inform debtors that the Board licenses the agency and to provide the address of the Board (§12-14-109(1)(f), C.R.S.). The Department reports that written complaints have more than doubled since this provision was passed by the General Assembly.

The Department receives numerous telephone inquiries and complaints. In 1996, the General Assembly authorized the purchase of an automated telephone system to reduce staff time associated with answering inquiries. For the year ending December 31, 1998, the phone system averaged approximately 1050 calls per month. The phone system provides answers to frequently asked questions and information about filing a formal complaint. The staff of the Board have indicated that the phone system has done little to reduce the staff time involved with consumer questions and issues, since over 50 percent of the phone calls require a response by program staff.

The Department only investigates formal, written complaints. Written complaints by consumers and clients average over 700 each year. When an investigation of a complaint finds a violation of the CFDCPA or regulations of the Board, disciplinary action is considered. Disciplinary options for the Department range from a Letter of Admonition (LOA) to revocation of a license. The Department also has the ability to suspend or place a licensee on probation. Licensees who violate regulatory provisions are subject to fines of up to \$1,000 per violation.

Program Description and Administration

Hearings, when necessary, are conducted by an administrative law judge (ALJ) at the discretion of the Executive Director. The Department is represented by an Assistant Attorney General. All hearings are conducted in accordance with the requirements of the State Administrative Procedure Act (APA) to ensure equitable treatment of the rights of the licensee and complainant.

Many disciplinary actions result in stipulated agreements between the Department and the licensee prior to a hearing. These agreements usually result in less severe penalties. Stipulated agreements save time and resources for the program. Stipulated agreements also remove an element of uncertainty that always exists in an adversarial hearing process. Another advantage of stipulated agreements is that it provides an opportunity to make the complainant or damaged party whole. Agencies that violate the statute or regulations are subject to fines. However, since fines are payable to the Collection Agency Board Fund, this does not compensate the damaged party. A stipulated agreement can include a requirement to compensate parties that have been damaged by the actions of the agency.

The Executive Director has delegated certain regulatory functions to the Board. The Board hears complaints by clients of agencies that involve possible actions against the bond of the agency. If a client can document that an agency collected funds from a debtor and failed to forward those funds to the client, the client is eligible for compensation from the agency. If the agency cannot, or will not honor the collection agreement, the Board may authorize payment from the agency bond. Agencies that have judgements by the Board against their bond are also subject to disciplinary action by the Department. Table 4 summarizes the complaints and disciplinary actions of the Board for the past seven years.

Program Description and Administration

TABLE 4

Complaint and Disciplinary Actions

Fiscal Year	Written Complaints	LOA	Disciplinary Actions	Bond Funds Distributed
1998-99	618	47	15	\$12,000*
1997-98	667	50	11	0
1996-97	863	23	5	12,000
1995-96	1,016	10	7	21,389
1994-95	859	3	8	7,585
1993-94	1,087	9	6	0
1992-93	768	23	10	30,082
1991-92	689	23	9	\$14,107

- An additional \$20,000 ordered by the Board was distributed in the 1999-00 fiscal year.

RESOURCES

The workload for the program staff has increased dramatically over the past five years. License applications, collector and solicitor registrations combined with manager examinations have increased from just under 3,000 in fiscal year 1991-92 to almost 20,000 in fiscal year 1998-99. Complaints, investigations, disciplinary actions, and consumer inquiries have all increased over this same time period. The number of full-time equivalent employees (FTE) allocated by the Department has not changed since 1990. The Department has made previous requests to the General Assembly for additional FTE. These requests have cited the increased workload and demonstrated lower customer service performance by the Department as it relates to collection agency responses.

The sunset criteria (§24-34-104 (9) (b)(III), C.R.S.) specifically asks "...whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters". In the case of the collection agency program, it appears that a lack of resources is impeding the ability of the program staff to respond to consumer inquiries. The agency hotline receives an average of 52 calls per day. In 1993, 95 percent of consumer inquiries were responded to by an individual. By 1996, the majority of inquires were referred to a voice mail system and responded to in the same working day. Last year, the standard for response time was over 24 hours.

Program Description and Administration

The Executive Director has provided information estimating the annual workload for program staff. This information is summarized in Table 5.

TABLE 5
Estimated Program Workload

Activity	Annual Hours
Telephone inquiries	1,250
Mail processing	1,250
Evaluating written consumer complaints	2,200
Initial license processing	237
License renewals	600
Collector/Solicitor registration processing	3,000
Total Hours	8,537

The Text Management Unit (TMU) is responsible for the documentation needs of all 350 employees of the Department of Law, in addition to collector/solicitor registration processing. The Executive Director maintains that this places an unreasonable burden on the TMU, based on a disproportional utilization of resources. Approximately 20 percent of the TMU workload is related to collector/solicitor registration processing.

The use of temporary employees to assist with the administrative needs of the program has several disadvantages. State personnel regulations allow for the employment of temporary employees for a maximum of six months. This requires a training period for new temporary employees at least every six months. There is also a learning curve associated with any newly trained employee. Therefore, the use of temporary employees is inefficient for long term needs.

If the labor hours associated with the TMU are deducted, total estimated labor hours of 5,537 remain. For budgeting purposes, state agencies use 1,850 labor hours to equal one full-time employee (FTE). Dividing the 5,537 estimated labor hours by 1,850 leaves an estimated need for three (3) FTE to perform the program workload.

This information is provided to allow for a discussion by the General Assembly of the Department of Law's request for allocation of additional resources to the program. It is anticipated the Executive Director will advocate for an increase in FTE dedicated to the collection agency program during the course of the legislative process.

External Issues

DEBT PURCHASE COMPANIES

The Board receives complaints from consumers regarding companies that specialize in purchasing defaulted debts and collecting them. These companies do not fall under the definition of collection agencies, since they technically are not collecting third party debts. At one time, these companies were issued “limited” licenses. The Executive Director ceased licensing these companies because of a lack of statutory authority.

Although not licensed, debt purchasing companies are required to follow the requirements of the CFDCPA. Some members of the industry, and the Board, believe these businesses should be licensed. The number of these companies is not known. However, by definition these companies are not third party collectors. The debtors in question owe payment directly to the company that purchased and now owns the debt and is attempting collections. The provisions of the CFDCPA are sufficient to protect consumers.

COMMUNICATION

There are some conflicts in the statute regarding notices that may be made orally and those that must be written. Most communication with debtors by collection agencies is by telephone. Board regulations require collectors to keep detailed notes of telephone contacts, and failure to do so may result in disciplinary action. Agencies are required by §12-14-105(3)(a), C.R.S., to cease communication with a consumer if the consumer makes this request in writing. Section 12-14-105(3)(d), C.R.S., requires agencies to inform consumers making verbal requests that such requests must be in writing. Consumer advocates argue this is an unreasonable burden on the consumer and verbal requests should be honored. Section 12-14-105(3)(a)(II), C.R.S., contains provisions for the collection agency to make one final contact. This provision does not specify if the final contact should be made in writing or may be made by telephone.

POSTDATED PAYMENT AGREEMENTS

Section 108 of the CFDCPA defines unfair practices. Among the unfair practices delineated is the practice of depositing a check or similar instrument postdated by more than five days unless the agency notifies the debtor. Some agencies establish a payment arrangement with a debtor that entails the debtor providing a series of postdated checks. The agreement with the debtor is then to deposit the postdated checks at some regular interval. This provides the agency with assurance that payments will be made as agreed. Agencies are required to notify debtors prior to depositing the checks to provide a reminder that funds will be removed from the debtor's checking account and provide the debtor with the opportunity to contact the agency if there is problem with the withdrawal. This reduces the possibility of a not sufficient funds (NSF) check and associated costs.

It is unclear whether the notification provision includes modern alternative payment instruments, such as electronic fund transfers (EFT). Consumers have complained that agencies have used their bank account numbers to obtain EFTs without notifying the consumer prior to the action. Banking regulations require authorization for EFT withdrawals from a consumer's account. The authorization may be a signature, telephone authorization, ATM authorization through the use of a personal identification number (PIN), or pre-authorized debit, among other forms. However a comparable issue of NSF checks exists if, on the first of a given month, a debtor authorizes an EFT withdrawal on the first of the following month.

BOND HEARINGS

One of the few regulatory functions delegated to the Board is to conduct hearings on bond claims. Agency clients bring these claims when they believe the agency has not forwarded all funds in accordance with their agreement with the agency. These hearings can be expensive and complex, involving legal interpretations and reviews of payment records from debtors and the clients. The complexity can be aggravated when an agency does not have a written contract with the client.

External Issues

There are several proposals to reduce the complexity and expense of bond hearings. First, written agreements between agencies and clients should be required. Second, it should be required that all bond hearings be conducted by an Administrative Law Judge (ALJ). An alternative to holding bond hearings would be to only allow payment of a bond if the client has obtained a judgement in a court of competent jurisdiction. The Board or an ALJ may still be required to hold a hearing to prorate the payment of the bond if more than one claim is submitted and the total exceeds the amount of the bond.

LICENSING STANDARDS

The licensing standards for collection agencies in Colorado are lenient when compared to other licensing programs. For example, motor vehicle dealers undergo a credit check and background investigation. Any conviction, felony or misdemeanor is considered in the licensing process. Dealer applicants with outstanding judgements or liens are required to resolve those issues before being granted a license. However, even though collection agency principals are in business to collect bad debts, there is no requirement for a credit report or consideration of past credit history in the licensing decision. Also, only felony convictions related to financial fraud (§12-14-123 (2), C.R.S.) may be considered in the licensing process. The Executive Director is allowed to ask applicants for information regarding financial fitness and criminal history. However, a recent appeal to an ALJ resulted in a ruling that because the statute does not specifically state that the information can be used to deny, suspend or revoke a license, it can not be considered during the application process.

BOARD MEETINGS

The Board schedules quarterly meetings. However, meetings are frequently canceled or rescheduled for lack of agenda items. Industry advocates believe the Board is being underutilized. They believe the licensing and disciplinary authority held by the Executive Director under the current CFDCPA should be returned to the Board.

External Issues

In past years, regulatory authority was vested in the Board. That authority was gradually shifted to the program administrator who currently is appointed by the Attorney General. The current Board serves primarily in an advisory capacity to the program administrator. Board members maintain they are seldom called upon to advise the administrator on licensing, disciplinary, or policy issues. However, Board members and industry advocates were not able to document any situations where the actions of the program administrator were arbitrary or contrary to the statute or regulations.

Analysis and Recommendations

Recommendation 1 - Continue the licensing and regulation of collection agencies by the Administrator of the Uniform Consumer Credit Code in the Department of Law until July 1, 2007 and sunset the Collection Agency Board.

The licensing of collection agencies protects both debtors and clients of the agencies from abuse and potential financial harm. The licensing of agencies provides a mechanism for enforcement of consumer rights provided for in both the federal and Colorado Fair Debt Collection Practices Acts. The licensing of agencies also provides financial protections for the clients of the agencies by requiring collected funds to be held in trust and a surety bond to provide additional financial recourse.

While the regulation of collection agencies is necessary to protect the public, the existence of the Board can not be shown to be necessary. Since 1992 the Board has essentially functioned in an advisory capacity. Licensing and disciplinary procedures are the responsibility of the Executive Director. The Board conducts rule making and bond hearings only when delegated by the Executive Director. Board meetings have been canceled six times over the last three years because of a lack of agenda items.

Industry representatives argue that the duties and responsibilities of the Board should be expanded. However, there is no documentation that expanding Board authority will provide additional protection to the public. The licensing criteria are clear and there have been few disputes regarding decisions made by the Executive Director.

While it is important to receive input from the regulated community when promulgating new regulations, the need to promulgate new regulations rare. If the Board was eliminated and the Executive Director found a need to promulgate new regulations, industry representatives would be afforded the opportunity to provide input under the provisions of the APA.

The direct fiscal impact of maintaining the Board is minimal. Therefore the financial impact would not be significant. However, the Executive Director reports that there would be increased resources available for other activities if Board meetings were eliminated.

Analysis and Recommendations

While Board meetings generally last only a few hours quarterly, staff resources are devoted to preparing materials, mailing, and attending meetings. The Executive Director, investigator, and the Assistant Attorney General assigned to the Board all attend each meeting. If an average hourly cost of \$30 per staff member is assumed each hour of the Board meeting costs \$90. At three hours, the average Board meeting costs \$270 in staff resources. Each member of the five person Board receives a \$50 per diem, bring the total direct cost of each meeting to approximately \$520. There are additional costs associated with staff preparation time, mailing, and copying expenses. In addition, staff time devoted to preparation for and in Board meeting could be devoted to other activities.

It may be argued that since eliminating the Board will not create cost savings it should be continued. However, the sunset criteria specifically address the issue of efficient use of resources. It is not an efficient use of the program staff time to attend a Board meeting that does not enhance public protection. The Executive Director has the regulatory authority to protect the public. The sunset review has found the Executive Director has used that authority to enforce the regulations adequately without the oversight of a Board. Making the continuation of the Board unnecessary.

Recommendation 2 - Eliminate the requirement for registration of debt collectors and solicitors.

The statute requires registration of debt collectors. The registration of employees of collection agencies does not serve a public protection function. Registration does not require any specific education or experience. There is no background check, examination, or process to evaluate debt collectors knowledge of the CFDCPA. The CFDCPA does prohibit agencies from employing collectors or solicitors who have been convicted of a felony related to criminal fraud (§12-14-123(2), C.R.S.). However, the burden of compliance with this provision rests with the collection agency. The Department does not have an active enforcement role.

Solicitors are sales persons for an agency. Their function is to seek new business for the agency from the business community. Again, there is no special knowledge, education or experience required to be a solicitor. The registration process does not serve a public protection purpose.

Analysis and Recommendations

Solicitors and collectors are employed by a licensed agency. The agency is required to employ a manager who is responsible under §12-14-119 (1)(b)(I)(B) for the actions of debt collectors employed by the agency. The current practice when a collector violates a provision of the CFDCPA is to take disciplinary action against the agency. In fact, the CFDCPA has no provision for taking disciplinary action against a collector or solicitor. The Department does not track complaints against collectors, only the agency the collector works for. As in most employment situations, the employer is ultimately responsible for the actions of an employee in job related activities.

There are approximately 14,000 registered collectors and solicitors. Based on a registration fee of \$6, there would be a negative fiscal impact of \$84,000 for the program. However, the program is in a position of having an excess reserve at this time. If the General Assembly authorized the program to spend from the reserve to cover costs the loss of this revenue will not require an increase in license fees to fund the program. According to the Sunset Statute, the purpose of a regulatory program is to protect the public. Registration of collectors and solicitors is not necessary to protect the public and appears to have more of a revenue enhancement function. The program does not need additional revenue to function at its current level.

Recommendation 3 – In order to clarify when communications between a consumer debtor and an agency must be in writing, the General Assembly should repeal §12-14-105 (3)(d), C.R.S., and amend §12-14-105(3)(a), C.R.S.

Federal law prohibits agencies from continuing contact with a debtor if the debtor notifies the agency that they wish contact ceased. The CFDCPA appears to require that the notification be in writing (§12-14-105 (3)(a), C.R.S.). This conflicts with the intent of the federal Act, and with federal case law.

In addition, the CFDCPA allows the agency a final communication (§12-14-105(3)(a)(II), C.R.S.) to inform the consumer that agency efforts are being terminated or that the agency intends to utilize specific remedies available in law. However, this section of the statute does not specify that the final communication must be in writing. Consumers have complained that these calls frequently become routine collection calls rather than a specific notice.

Analysis and Recommendations

It does not seem reasonable to require consumers to make a written notification then allow agencies to give notice verbally. It would definitely provide better documentation for the agency to have final communications in writing. It also appears that the CFDCPA may provide less public protection in this particular area than the federal Act. If challenged, it is likely the terms of the federal Act would take precedence over the CFDCPA.

The General Assembly should amend §12-14-105 (3)(a), C.R.S., to remove the words “in writing” to allow any form of communication by the debtor. The General assembly should repeal the provision in §12-14-105(3)(d), C.R.S., which requires an agency to inform debtors that communication must be in writing. Section 12-14-105(3)(II), C.R.S., should be amended to add after the word “except” the phrase “the agency may in writing inform the debtor:”.

Recommendation 4 - Amend the CFDCPA terminology to be consistent with the Uniform Commercial Credit Code (UCCC).

The CFDCPA places the regulatory powers in the Executive Director. The Executive Director is defined as the Administrator of the UCCC. Throughout the UCCC statute, the Executive Director is referred to as the Administrator. The title “administrator” appears to be more appropriate in the context of the CFDCPA. Therefore, the title of an Executive Director should be changed to administrator throughout the CFDCPA.

Recommendation 5 - Make conforming amendments to the statute to update references to federal and state laws.

The CFDCPA makes references in several places, for example §12-14-106(1)(c), 12-14-107 (1)(q) and 12-14-108 (1)(j), C.R.S., that refer to federal consumer protection laws, such as the federal “Fair Credit Reporting Act”. Since these provisions were placed in the CFDCPA, the General Assembly has passed related legislation in Colorado. It would be appropriate to refer to the Colorado legislation as well as federal legislation.

Analysis and Recommendations

In addition, some federal legislation has changed since the CFDCPA was amended, making some references incomplete. The General Assembly should update references to include appropriate federal legislation as well as corresponding Colorado Statutes.

Recommendation 6 - The General Assembly should clarify the requirements for approval as a collection manager and the licensing standards for principles of an agency.

It appears that the General Assembly intended for the Executive Director to have the ability to deny, suspend, or revoke a license based on an evaluation of the financial condition and criminal history of the applicant. The statute requires the Executive Director to obtain a verified financial statement and information regarding felony convictions (§12-14-119(2), C.R.S.).

A recent decision by an ALJ (*Veteto v CAB*, 1998) has generated case law which found that although the Executive Director can ask for financial and criminal conviction information, it can not be used to deny a license, since the statute does not specify its use.

The ALJ held that the only reference in statute to financial information is a provision in §12-14-123 (1)(a), C.R.S. that requires an agency to have \$2,500 more in liquid assets than funds owed to clients. In the case of a new applicant, a bank account with \$2,500 on deposit is sufficient financial assets to obtain an agency license even if the applicant has a negative net worth.

Most professional or occupational licensing statutes specifically state that the regulatory authority may consider criminal convictions and or financial stability in licensing decisions. Some professional and occupational statutes specifically prohibit an applicant convicted of a felony within the past five years from obtaining a license in the state. Section 123 of the CFDCPA only prohibits persons with convictions of financially related offenses from obtaining a license.

Analysis and Recommendations

The program administrator should be able to utilize all information obtained on the financial statements and any criminal background information available in determining fitness for licensure or approval as a manager. In addition, the General Assembly should consider allowing the program manager discretion to deny approval based on outstanding financial judgements. It does not seem ethical to approve for licensure to collect defaulted debts individuals that are currently in default on there own debts.

Recommendation 7 – Require all funds collected from administrative fines to be remitted to the General Fund.

Administrative fines collected from collection agencies are currently retained in the Collection Agency Board Fund. Most regulatory programs are required to forward fines and civil penalties to the general fund rather than retain them in the program fund. Other programs divide penalty funds between local government agencies and the general fund. This is usually the situation when enforcement is shared with a local government agency.

A fine or civil penalty serves two purposes, one, it is a deterrent to the licensee, two, it is a punishment when the licensee violates the terms of licensure. Fines should not serve as a means to enhance the revenue stream of the regulating authority. If it could be demonstrated that actions of collection agencies caused financial harm to consumers then the fines should be used to make consumers whole through a victims assistance fund. However, the damage to consumers is usually subjective and therefore impractical to quantify. Clients of collection agencies also can suffer harm. However, clients have access to the agency bond to recover any financial losses. Therefore, the recommendation is to require that all fines and civil penalties collected by the collection agency program be forwarded to the State Treasurer for deposit in the general fund.

Analysis and Recommendations

Administrative Recommendation 1 - The Executive Director should streamline the application process to achieve efficiencies and reduce the burden on the applicant.

Before a collection agency may be granted a license, the agency manager must pass the collection agency examination. The examination is given once each month at the Department of Law offices in downtown Denver. The examination is an open-book, 30 question, multiple choice instrument. Total time allowed to complete the examination is 45 minutes. The purpose of the examination appears to be to verify that the collection manager has read the CFDCPA.

It is undoubtedly a burden on applicants from remote areas of the state to be required to travel to Denver to take a 45 minute, open book test. It would appear to be just as effective to send the applicant the test and have the completed exam mailed back with the application materials.

A second issue in the licensing process is the two staged application process. Currently, applicants submit application material, the investigation fee, a debt collector registration, and an application to take the manager examination. Only after the examination is successfully completed is the remainder of the licensing materials requested.

It is possible that when an application is received on the first day of a given month that the manager will not be scheduled for an exam until the last day of that month. It is only after the exam is completed that the applicant may submit the additional documentation for licensure. Since the examination does not serve as a barrier to licensure (no applicant has failed the test in three years), it is not necessary to wait until the exam is complete to begin processing the application materials.

The statute requires that the licensing fee not be paid until the Executive Director approves the application. This provision does not need to be changed to allow the proposed changes to the application process.

Appendices

Appendix A - Sunset Statutory Evaluation Criteria

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action; and
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Appendix B - Debt Collection Practices Act

12-14-101 - Short title.

This article shall be known and may be cited as the "Colorado Fair Debt Collection Practices Act".

12-14-102 - Scope of article.

(1) This article 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 whose place of business is 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 whose place of business is located outside this state; or

(d) Outside this state and solicits or attempts to solicit debts for collection from a creditor whose place of business is located within this state.

(2) (Deleted by amendment, L. 95, p. 1224, § 1, effective July 1, 1995.)

12-14-103 - Definitions.

As used in this article, unless the context otherwise requires:

(1) "Board" means the collection agency board created in section 12-14-116.

(2) (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 paragraph (d) of this subsection (2).

(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 such 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 such officer's or employee's official duties, except as otherwise provided in subsection (7) 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 nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors;

(VI) Repealed.

(VII) 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) Such activity is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;

(B) Such activity concerns a debt which was extended by such person;

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

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

(VIII) 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 such debt is also secured by an interest in personal property.

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

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

(I) Regularly collects or attempts to collect a debt owed or due, or asserted to be owed or due, to such person if he or she did not extend the credit and if such debt was in default at the time it was obtained by such person; except that such person shall also be exempt from section 12-14-109 (1) (f) and (1) (g);

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

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

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

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

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

(6) (a) "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction, whether or not such 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.

(7) "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 said department, when collecting debts due to the state on behalf of another state agency.

(8) "Executive director" means the administrator of the "Uniform Consumer Credit Code", articles 1 to 9 of title 5, C.R.S., whose office is created in the department of law in section 5-6-103, C.R.S.

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

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

(9.5) "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.

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

(11) "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.

12-14-104 - 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, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

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

(c) Not communicate with any such person more than once unless requested to do so by such person or unless the debt collector or collection agency reasonably believes that the earlier response of such person is erroneous or incomplete and that such 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, such 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.

12-14-105 - Communication in connection with debt collection.

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

(a) At any unusual time or place or a time or place 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 such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time, not less than thirty days, to a communication from the debt collector or collection agency or unless the attorney consents to direct communication with the consumer; or

(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 12-14-104, 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 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:

(I) The consumer wishes the collection agency to cease contact by telephone at the consumer's place of employment, then no such further contact by telephone shall be made;

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

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

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

(C) Where applicable, to notify the consumer that the collection agency or creditor intends to invoke a specified remedy permitted by law.

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

(c) In its initial written communication to a consumer, a collection agency shall include notification of the consumer's rights under this subsection (3). If such notification is placed on the back of the written communication, there shall be a statement on the front notifying the consumer of such fact.

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

(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.

12-14-106 - 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 as defined in 15 U.S.C. 1681a (f) or to persons meeting the requirements of 15 U.S.C. 1681b (3), as such sections existed on July 1, 1985;

(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 12-14-104, 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.

12-14-107 - False or misleading representations.

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

(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:

(l) 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 such 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;

(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 12-14-104, the failure to disclose clearly, in the initial written communication made to collect a debt or obtain information about a consumer, that the debt collector or collection agency is attempting to collect a debt and that any information obtained will be used for that purpose;

(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 as defined by 15 U.S.C. 1681a (f), as it existed on July 1, 1985.

12-14-108 - 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 such 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 such person is notified in writing of the debt collector's or collection agency's intent to deposit such check or instrument not more than ten nor less than three business days prior to such 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 such 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 such name does not indicate that he is in the debt collection business.

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

(j) Communicating credit information to a consumer reporting agency, as defined in the federal "Fair Credit Reporting Act", 15 U.S.C. Sec. 1681a, 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 paragraph (j) shall not apply to checks, negotiable instruments, or credit card drafts.

12-14-109 - Validation of debts.

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

(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 such 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;

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

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

(2) If the consumer notifies the debt collector or collection agency in writing within the thirty-day period described in paragraph (c) of subsection (1) 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 such 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.

12-14-110 - Multiple debts.

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

12-14-111 - Legal actions by debt collectors.

Any debt collector or collection agency who brings any legal action on a debt against any consumer shall comply with all provisions of law concerning the location at which such action may be brought.

12-14-112 - Deceptive forms.

(1) It is unlawful for any person to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection or in the attempted collection of a debt that such consumer allegedly owes such creditor when in fact such 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 12-14-113 for failure to comply with this article.

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

12-14-113 - Civil liability.

(1) In addition to administrative enforcement pursuant to section 12-14-114 and subject to section 12-14-134, and except as otherwise provided by this section, any debt collector or collection agency who fails to comply with any provision of this article with respect to a consumer is liable to such consumer in an amount equal to the sum of:

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

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

(II) In the case of a class action, such amount for each named plaintiff as could be recovered under subparagraph (I) of this paragraph (b) and such 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 such reasonable attorney fees as may be determined by the court.

(1.5) 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 such reasonable attorney fees as may be determined by the court.

(2) 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 subparagraph (I) of paragraph (b) of subsection (1) of this section, the frequency and persistence of noncompliance by the debt collector or collection agency, the nature of such noncompliance, and the extent to which such noncompliance was intentional;

(b) In any class action under subparagraph (II) of paragraph (b) of subsection (1) of this section, the frequency and persistence of noncompliance by the debt collector or collection agency, the nature of such 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.

(3) A debt collector or collection agency may not be held liable in any action brought pursuant to the provisions of this article if the debt collector or collection agency shows by a preponderance of evidence that the violation was not intentional or grossly negligent and which violation resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(4) An action to enforce any liability created by the provisions of this article may be brought in any court of competent jurisdiction within two years from the date on which the violation occurs.

(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, 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.

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

(7) 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 said subsection (1).

12-14-114 - Administrative enforcement.

Compliance with this article shall be enforced by the board. The board has power to make reasonable rules and regulations for the administration and enforcement of this article, including standards of conduct for licensees and registrants and collection notices and forms. The board shall be subject to the provisions of section 24-5-101, C.R.S.

12-14-115 - 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; or

(b) Conduct the business of a collection agency under any name other than that under which licensed.

(2) It is unlawful for any person to act as a solicitor without being registered under this article.

(3) It is unlawful for any person to act as a debt collector without being registered under this article.

(3.5) It is unlawful for a person to act as a collections manager without having complied with sections 12-14-119 and 12-14-122.

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

12-14-116 - Collection agency board - created.

(1) For the purpose of carrying out the provisions of this article, the governor shall appoint five members to the collection agency board, which board is hereby created. The members of the board serving on July 1, 1985, 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.

(2) No person shall be appointed as a member of such board unless such person is a bona fide resident of the state of Colorado. Effective July 1, 1995, board appointments shall ensure that three members of the board have been engaged in the collection business within the state of Colorado, either as collections managers, owners, partners, or officers of a corporation, for a period of at least five years immediately prior to their appointment. Two members of the board shall be representatives of the general public and not engaged in the collection business.

(3) Each member of the board shall be allowed a per diem compensation of fifty dollars and actual expenses for each day of active service, payable from the moneys appropriated to the board.

(4) The board shall meet annually for the purpose of organization by electing a chairman, a vice-chairman, and a secretary of the board for the ensuing year.

(5) The board shall meet regularly at such times and places as the business of the board may necessitate upon full and timely notice to each of the members of the board of the time and place of such meeting. A majority of said board shall constitute a quorum of said board.

12-14-117 - Powers and duties of the executive director.

(1) Any provision of this article to the contrary notwithstanding, the board, created by section 12-14-116, is under the supervision and control of the executive director, who may exercise any of the powers granted to the board.

(2) The executive director is authorized to develop any examination required for the administration of this article and to determine the amount of any examination fee. The executive director shall offer each such examination at least twice a year, or more frequently if demand warrants, and shall establish a passing score for each examination which reflects a minimum level of competency.

(3) The executive director is authorized to approve or deny any application submitted pursuant to this article and to issue any license authorized by this article.

(4) Any complaint received by the executive director regarding violations of this article by an attorney shall be forwarded to the supreme court's disciplinary counsel.

12-14-118 - Collection agency license - required.

Any person acting as a collection agency must possess a valid license issued by the executive director in accordance with this article and any rules and regulations adopted pursuant thereto.

12-14-119 - Collection agency license - requirements - application - fee - expiration.

(1) As requisites for licensure, the 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 subparagraph (I) of this paragraph (a), the board 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 executive director, 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.

(B) Be responsible for the actions of the debt collectors in that office.

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

(c) File a bond in the amount and manner specified in section 12-14-124;

(d) If a foreign corporation, comply fully with the laws of this state so as 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 executive director 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 which employed or was owned by such persons, in whole or in part, directly or indirectly, and a statement of their position and authority at such collection agency:

(A) For any license issued pursuant to this article; 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 such collection agency:

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

(B) When such action was taken by any other jurisdiction or such 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, 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.

(4) When the executive director approves the application, the applicant shall pay a nonrefundable license fee in an amount to be determined by the board.

(5) Each license issued pursuant to this section shall expire on July 1 of each year; except that a licensee, at any time, may voluntarily surrender the license to the executive director to be cancelled.

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

(7) 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 executive director in writing of the location of each branch office within thirty days after the branch office commences business.

12-14-120 - License - issuance - grounds for denial - appeal - contents.

(1) Upon the approval of the license application by the executive director and the satisfaction of all application requirements, the executive director shall issue the applicant a license to operate as a collection agency.

(2) The executive director may deny any application for a license or its renewal if any grounds exist which would justify disciplinary action under section 12-14-130.

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

(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 principal place of business, together with the number and date of such license and the date of expiration of the license, and shall further state that it is issued pursuant to this article and that the licensee is duly authorized under this article.

(5) Repealed.

12-14-121 - Collection agency license - renewals.

(1) Each licensee shall make an application to renew its license on or before June 15 of each year. Said application shall be in the form and manner prescribed by the executive director and shall be accompanied by a nonrefundable renewal fee in an amount determined by the board.

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

(3) If a licensee fails to submit an application or any part of the total fee on or before July 15 of each year, the license may not be renewed and an application for a new license must be submitted.

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

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 executive director in writing of such change within thirty days after its occurrence:

(I) Change of business name or address;

(II) If a corporation, change in ownership of ten or more percent but less than fifty percent of the corporate stock.

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

(2) (a) Upon any of the changes specified in paragraph (c) of this subsection (2), the licensee shall apply for a new license within thirty days of said change. The executive director shall have twenty-five days to review the application and issue or deny the new license. If the executive director denies the license, he 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 said application. The executive director 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 which necessitated the new license application. If the application is denied and the licensee fails to resubmit the application within fifteen days of said denial, the license shall expire on the fifteenth day following the denial.

(c) The changes which 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, any change of ownership of fifty percent or more of the stock 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, 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 executive director.

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

(b) The executive director, 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).

(c) The licensee may continue to operate as a collection agency unless and until the executive director 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 executive director.

(5) The licensee may appeal the final decision of the executive director pursuant to section 24-4-104, C.R.S.

12-14-123 - 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 clients;

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

(c) Maintain, at all times, a trust account for the benefit of its clients which shall contain, at all times, sufficient funds to pay all sums due or owing to clients. The trust account shall be maintained in a commercial bank, industrial bank, or savings and loan association account in this state until disbursed to the creditor. Such account shall 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 moneys owed to the client pursuant to the agreement between the client and the collection agency;

(e) Upon written demand of the board, 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.

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

(2) 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 of article 5 of title 18, C.R.S., or any similar crime under the jurisdiction of any federal court or court of another state.

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 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. Such bond shall be executed by the applicant or licensee as principal and by a corporation which 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 immediately shall notify the board in writing. The board shall give notice to the licensee that the bond has been cancelled or reduced and that the licensee's license will be revoked unless a new or increased bond with proper sureties is filed within thirty days after the date the board 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, pay over to said board for the use of any client from whom any debt is taken or received for collection by said licensee, the proceeds of such collection, less the charges for collection in accordance with the terms of the agreement made between said licensee and the client.

(3) A client may file with the board a duly verified claim as to money due such client for money collected by a licensee. If the board makes a preliminary determination that a claim meets the requirements of this section it 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, may make demand for and receive payment on said bond from the surety on such bond of said licensee and, upon order of court first had and obtained, may bring suit upon said bond in the name of such receiver, without joining the board as a party to said action.

(5) If a client has filed a duly verified claim with the board, which 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.

(6) (a) Said 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 said licensee by the client, but such 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 which have been in said 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 which have been forwarded to any other collection agency or attorney.

(7) Such bond shall cover all matters placed with said 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 refuses to act. The aggregate liability of the surety, for any and all claims which 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. Any surety may file with the board 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 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 said period of two years, all liability of the surety upon the said bond shall cease if no action has been commenced upon said bond before the expiration of the period.

(10) In lieu of an individual surety bond, the executive director 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. Each new and renewal applicant shall pay a fee in an amount determined by the executive director 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.

12-14-125 - Debt collectors - registration required.

(1) Each licensee shall register with the executive director any person acting as a debt collector for such licensee. Such registration shall be made within fifteen days after the debt collector is employed and upon the renewal of each collection agency license. The debt collector's home address, home telephone number, and social security number shall not be open to public inspection under article 72 of title 24, C.R.S. Each initial and renewal registration shall be accompanied by a fee established by the executive director.

(2) (Deleted by amendment, L. 95, p. 1237, § 19, effective July 1, 1995.)

12-14-126 - Solicitor - registration required.

Each licensee shall register with the executive director any person acting as a solicitor for such licensee. Such registration shall be made within fifteen days after such person is employed and upon the renewal of each collection agency license. Each initial and renewal registration shall be accompanied by a fee established by the executive director.

12-14-128 - Unlawful acts.

(1) In addition to the unlawful acts specified in sections 12-14-112 and 12-14-115, it is unlawful and a violation of this article for any person:

(a) To refuse or fail to comply with section 12-14-104, 12-14-105, 12-14-106, 12-14-107, 12-14-108, 12-14-109, 12-14-110, 12-14-118, 12-14-119 (1), 12-14-123 (1) (b), (1) (c), (1) (d), (1) (e), or (2), 12-14-125, or 12-14-126;

(b) To aid or abet any person operating or attempting to operate in violation of this article, including but not limited to section 12-14-115; except that nothing in this article 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, C.R.S.

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

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

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

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

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

(6) Any officer or agent of a corporation who personally participates in any violation of this article shall be subject to the penalties prescribed in section 12-14-129 for individuals.

12-14-129 - Criminal penalties.

Any person who violates any provision of section 12-14-128 (1), (2), (3), or (4) commits a class 1 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

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

(1) Upon the filing with the board 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, the board shall conduct an investigation thereof.

(2) The board 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 of article 5 of title 18, C.R.S., or any similar crime under the jurisdiction of any federal court or court of another state, said conviction or plea shall constitute grounds for disciplinary action under this section.

(4) In any proceeding held under this section, the board may accept as prima facie evidence of grounds for disciplinary or adverse action any disciplinary or adverse action taken against a licensee, debt collector, solicitor, or collections manager by another jurisdiction if the violation which prompted the disciplinary or adverse action by that jurisdiction would be grounds for disciplinary action under this section.

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

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

(b) Any financial statement of any applicant or licensee required to be filed with the board 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 may subpoena witnesses and compel them to give testimony under oath. If any 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 witness to appear and testify. Disobedience of the order of court may be punished as a contempt of court.

(8) The board 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 finds cause to believe a licensee or collections manager has violated this article, any rules adopted pursuant to this article, or any lawful order of the board, the board 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 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, the board 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 dollars per violation on the licensee or collections manager.

(b) The board or the executive director 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 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 said issuance.

(d) No person whose license has been revoked shall be licensed again under the terms of this article for five years. No person hired as a collections manager whose approval has been terminated by the executive director for a violation of this article 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 collection agency board. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

(12) Members of the collection agency board, 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.

12-14-130.1 - 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 or a rule promulgated pursuant thereto;

(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 or a rule promulgated pursuant thereto, a lawful order of the state board of ethics, or the code of conduct described in paragraph (c) of subsection (1) of this section, such determination shall be made a part of the personnel file of the debt collector against whom the complaint was filed.

12-14-131 - Records.

The executive director shall keep a suitable record of all license applications and bonds required to be filed. Such record shall state whether a license has been issued under such application and bond and, if revoked, the date of the filing of the order of revocation. The executive director 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. In such 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, which shall be entered in said record in their proper order in the same manner as original applications and licenses; except that said record shall also show the word "renewal" with the number of the last preceding license granted to the same licensee. Such record shall be open for inspection as a public record in the office of the executive director.

12-14-132 - 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.

12-14-133 - Duty of district attorney.

It is the duty of the district attorney to prosecute all violations of the provisions of this article occurring within his district.

12-14-134 - Remedies.

The remedies provided in this article are in addition to and not exclusive of any other remedies provided by law.

12-14-135 - Injunction - receiver.

The district court in and for the city and county of Denver, upon application of the board, 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 shall not be required to show irreparable injury or to post a bond.

12-14-136 - Disposition of fees.

All revenue under this article shall be collected by the executive director and transmitted to the state treasurer, who shall credit the same to the collection agency board cash fund, which fund is hereby created. The general assembly shall make annual appropriations from such fund for the uses and purposes of this article. All revenue credited to such fund, including earned interest, shall be used for the administration and enforcement of this article.

12-14-137 - Termination of board.

The collection agency board shall be terminated July 1, 2000. Prior to such termination, the board shall be reviewed as provided in section 24-34-104, C.R.S.