REGULATION OF DEBT ADJUSTERS

Submitted by
The Colorado Department of Regulatory Agencies
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EXECUTIVE SUMMARY

While the primary function of collection agencies is to assist creditors in collecting money from their customers, the primary function of debt adjusting companies is to help financially distressed citizens pay off their debts. This is done by modifying the indebtedness through the services of intermediaries variously known as debt adjusters, debt poolers, budget planners, or credit counselors. A debt adjuster regularly collects certain sums of money from the debtor and distributes it among various creditors according to an agreed plan of modification or extension. This "contract" is entered into between the adjuster and the creditors with the approval of the debtor. Debt adjusters in Colorado also offer a variety of other services to consumers, such as budget planning and counseling. In addition, they offer educational programs which teach consumers how to deal with and avoid debt, unemployment and layoff.

The Division of Banking has been vested with the authority to regulate debt adjusters since 1965, and the Commissioner has possessed statutory authority to "examine, upon five days' notice given the licensee, the condition and affairs of the licensee. . . ."

Although the statute does not require that records of licensees be examined on a regular basis, a review of the Division's debt adjuster examination files establishes that this industry has not been regulated on a predictable, consistent basis. Up until this year, the Division mainly reviewed the records of debt adjusters only when an examiner had a scheduling gap, a sporadic occurrence. Just recently, in April, 1993, the Banking Board promulgated Policy No. 80-1(10) which, for the first time, requires the Division to conduct mandatory, annual, full-scope examinations of all existing licensed debt adjusters. Further, the amount of time which the Division dedicates to the regulation of debt adjusters is minimal. A total of 10% of one full time equivalent (FTE) is assigned to this regulatory function which, until 1992, was adequate since there was only one state-licensed debt adjuster.

However, in 1991, the Division of Banking inadvertently discovered that another debt adjusting company which is not exempt from licensing had been performing debt adjusting services in Colorado for <u>over twenty years</u>. Although the Division's failure to license this company is not necessarily indicative of its regulatory diligence, it does reflect the lack of need for regulation. The Better Business Bureau and the Division had never received any complaints regarding this company, which apparently conducts its business in a responsible manner and according to strict ethics and guidelines.

Debt adjusting companies provide a much needed service to the people of the State of Colorado. However, the need for a full state regulatory and licensing program is not clear. Since relatively few complaints have been registered by Colorado consumers about debt adjusters since 1963, it is appropriate to assume that consumers will not be harmed by an unregulated industry, providing the industry is required to adhere to certain mandatory consumer protection provisions.

Debt adjusters have caused little apparent harm to Colorado consumers throughout their licensed history. Therefore, this report concludes that licensing of debt adjusters by the Division of Banking is not necessary to protect the public interest. Providing certain statutory requirements remain in place, most notably the bond or alternative surety, contract and fee requirements, Colorado consumers will be adequately protected from unscrupulous dealings through the adoption of certain modifications of the Debt Adjuster statute, including:

1) Defining conduct which is actionable as an unfair trade practice pursuant to C.R.S. 6-1-105(3) (Consumer Protection Act);

2) Strengthening the penalties for violation of the statute;

3) Requiring the debt adjuster to disclose information regarding the bond, evidence of a savings account, deposit, or certificate of deposit, insurance or other evidence of financial responsibility in a conspicuous place on the contract, including the amount of the bond, evidence of a savings account, deposit, or certificate of deposit, insurance or other evidence of financial responsibility, the name and address if the bonding company, trust company, or bank, and the manner in which a claim may be filed against the bond, trust, or savings account; and

4) Requiring the debt adjuster to post proof of a $25,000 bond, evidence of a savings account, deposit, or certificate of deposit, insurance or other evidence of financial responsibility, in a conspicuous place in the office.

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CHAPTER 1

INTRODUCTION AND HISTORICAL PERSPECTIVE

The Sunset Process

The Division of Banking (DOB) and its regulatory functions under the Debt Adjuster Statute, C.R.S. 12-20-101, et. seq., C.R.S., will terminate on July 1, 1994, unless continued by the General Assembly pursuant to the Sunset Act, Section 24-34-104(23), C.R.S. The purpose of this sunset report is to evaluate the performance of the DOB's debt adjuster regulatory functions based on statutory evaluation criteria which are attached as Appendix B of this report. The central question this report seeks to answer is whether the continuation of this regulatory program is necessary and beneficial to the public health, safety and welfare of the people of Colorado, and whether, if the program is continued, significant changes are necessary to improve agency operations in order to enhance the public interest.

Research for this report began in January, 1993. The administrator of the program, both licensees, the National Foundation for Consumer Credit Inc. and other interested parties were interviewed. Additionally, the statutes of Colorado and of other states were reviewed.

Historical Review

In the U.S., private sector debt has increased steadily since World War II. The debt to asset ratio for households has increased from seven percent in 1951 to sixteen percent in 1992. Meanwhile, the total credit market has expanded, with debt as a percentage of gross domestic product increasing from less than fifty percent in 1946 to 130 percent or more in 1990. [G. Steuerle, Is the Nation's Private Debt Binge Over?, 57 Tax Notes 813 (Nov. 9, 1992)]. This proliferation of debt has sometimes resulted in pronounced financial difficulties for consumers who are overextended. In Colorado, the 1980's bore witness to an unprecedented number of personal bankruptcy filings by individuals who possessed no recourse other than court-ordered debtor protection and liquidation.

However, many consumers whose financial straits aren't quite as dire possess the alternative of seeking the advice and assistance of debt adjusters who, for a fee or gratuitously, agree on behalf of the consumer to negotiate a modified payment plan with creditors. Debt management services often help the consumer avoid default, ultimately preventing repossession, foreclosure, and the institution of other civil actions.

The Division of Banking has possessed regulatory jurisdiction over debt adjusters operating in Colorado since June 2, 1965. Although the Division is not aware of the circumstances which precipitated its regulatory authority, we can be certain that the General Assembly did not pass this legislation based on the number of businesses performing debt adjusting. In fact, the Division's regulatory oversight was confined to one lone debt adjuster for 25 years, until September 8, 1991, when the Rocky Mountain News ran an article regarding Consumer Credit Counseling Service, entitled "Profiting From Others' Debts". Prior to this newspaper article, the Division was unaware that CCCS was conducting debt management services for a fee, nor had the Better Business Bureau, Rocky Mountain Region, received any complaints against this company.

As the CCCS situation demonstrates, the Division is not always able to detect unregulated debt adjusters and, subsequently, to secure their regulatory compliance.

For instance, CCCS of Greater Denver was incorporated in 1967 and conducted its debt adjusting business for 24 years as a non-profit agency before it was required to submit to the Division's licensing authority. While CCCS of Greater Denver describes itself as a "non-profit" organization, it nevertheless charges fees for its services. Therefore, because CCCS of Greater Denver is not exempt from state licensing regulations pursuant to Section 12-20-103(1)(a), C.R.S., it falls within the purview of the Division's regulatory authority.

When the Division of Banking established in 1991 that CCCS of Greater Denver was unlawfully operating without a license, the Division requested it to submit an application, a request with which the business complied. Over nine months later, on May 21, 1992, the Banking Board approved the application at a public hearing. On June 3, 1992, CCCS of Greater Denver received its license. The examination of their business records was completed by the Division on October 14, 1992.

Presently, the Division's list of debt adjusters establishes that as of September 25, 1992, CCCS of Greater Denver operates eleven branch offices in Colorado. However, none of these offices either receive or distribute funds, instead performing counseling on a limited basis. Once the initial counseling is completed, the collection and disbursement of funds is conducted from the main office, which holds the license.

However, the licensing saga of two other independent CCCS offices is not yet a closed chapter. Both CCCS of Fort Collins and CCCS of Colorado Springs currently collect and disburse funds without a license and, on August 22, 1992, the Division sent these offices cease and desist orders pending licensure. Neither office has ceased operation to date. However, CCCS of Fort Collins did submit an application for licensure on February 3, 1993 but hasn't yet received word from the Banking Board regarding its disposition. The program administrator in charge of Debt Adjuster regulation speculates that the application may not be complete because the officers may not wish to submit either the requisite personal financial

information or the steep $7,500 licensing fee.

CCCS of Colorado Springs just submitted their application this June. However, in April, nine months after the Division issued its cease and desist order, it received a complaint from a debtor alleging that this company is not making timely payments to creditors. Although the Division requested CCCS of Colorado Springs to respond to the allegations, it neglected to mention the fact that this company had yet to submit an application for licensure. Although the Division is now in receipt of its application, the Division has not received a response to these allegations.

The Banking Board has very recently revised its examination policy to require the annual examination of all licensed debt adjuster businesses. The Division also monitors telephone and newspaper listings on an infrequent basis and follows up to determine whether unlicensed debt adjusters are conducting business in Colorado. These efforts have generated several investigations, only one of which has resulted in the discovery of an unlicensed debt adjuster.

In conclusion, the debt adjuster industry has not appeared to have caused Colorado consumer more than minimal harm throughout its regulated life. This observation, when combined with the Division's historically passive regulation of a quiet industry, raises the question whether continued regulation is necessary.

CHAPTER 2

STATUTORY REVIEW

(For the complete text of the Colorado Debt Adjuster Statute, please see Appendix A)

INTRODUCTION

The Debt Adjusters Statute, C.R.S. 12-20-101, et. seq., declares that the business of debt management, whereby the planning and management of the financial affairs of a person in debt is assumed by another individual for a fee, affects the public interest, and the preservation of the safety and welfare of the public from unconscionable dealing requires regulation of such contracts and of the disposition of funds obtained as a result thereof.

Attorneys, banks, similar fiduciaries, title insurers, companies performing escrow functions, employees of licensees, judicial officers, others acting under court orders, and non-profit religious, fraternal or cooperative organizations offering gratuitous debt management services are exempt from this statute.

APPLICATION PROCESS

Applicants who wish to obtain a license must submit an application to the Banking Board, with proof of a bond, evidence of a savings account, deposit, or certificate of deposit, insurance or other evidence of financial responsibility which runs to the people of the State of Colorado. The bond or alternative pledged security must be in an amount which the Banking Board determines by rule to be necessary and appropriate for the protection of debtors, but it need not exceed $25,000. The applicant must also furnish a copy of the contract that is proposed to be used between the company and the debtor, including a schedule of fees to be charged for their services. This fee must not exceed ten percent of the total debts to be adjusted, and is subject to the approval of the Banking Board. Additional pertinent information must be submitted in the application as required by the Banking Board. (Section 12-20-103, C.R.S.)

Once the applicant files the application with the $7,500 license fee, the Banking Board fixes a date and a time for a hearing regarding the application. The Board is statutorily required to investigate relevant facts concerning the application before the hearing. "If the Banking Board finds that the experience, financial responsibility, character, and general fitness of the applicant is such as to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly, and efficiently within the purposes of this article and that the applicant, or if the applicant is an unincorporated association or partnership then the individuals involved, or if the applicant is a corporation then the officers and directors thereof

have not been convicted of a felony or a misdemeanor involving moral turpitude or have not had a record of having defaulted in payment of money collected for others, the Banking Board shall thereupon enter an order granting such application and forthwith issue and deliver a license to the applicant. The Banking Board may require as part of the application a credit report and other information." (Section 12-20-104(3), C.R.S.)

The Banking Board has thirty days from the filing of the complete application in which to grant or deny a license. This period can be extended through a written agreement between the applicant and the Banking Board.

If the Banking Board finds that the applicant does not meet the statutory criteria, it must enter an order denying the application, notify the applicant of the denial, and return the licensing fee. The Board then has 15 days in which to deliver a copy of its written findings to the applicant. (Section 12-20-104, C.R.S.)

RENEWAL

Debt adjusters' licenses are renewed annually, the current fee for which is $100.00. The licensee is also required to submit proof of bond or other evidence of financial responsibility as a prerequisite to license renewal. (Section 12-20-106, C.R.S.)

DUTIES AND BUSINESS PRACTICES OF LICENSEES

The fee that the licensee charges consumers is statutorily required to be agreed upon in advance and stated in a written contract. This contract also must contain a provision for settlement in case of cancellation or prepayment. As stated earlier, the fee for services is not to exceed ten percent of the total debts and the fee is to be prorated monthly over the life of the contract. In addition to the prorated amount, the licensee is allowed to deduct from the first month's payment a reasonable amount for an application fee. This fee cannot exceed twenty-five dollars.

C.R.S. 12-20-107 states that "In the event of total payment of the contract before the term of the contract has expired, the licensee is entitled to an amount equal to twenty-five percent of the remaining fee, or any lesser amount as may be agreed upon. In the event of cancellation of the contract by the debtor, the licensee is entitled to a cancellation fee not to exceed twenty-five dollars. The licensee shall not be entitled to any fee under this article until eighty percent of the creditors as listed in the contract required by C.R.S. 12-20-108(1) have agreed in writing to a schedule of payments as required by C.R.S. 12-20-108(6)".

Section 12-20-108, C.R.S., enumerates the obligations of the licensee. Each licensee who

makes a written contract with a debtor must immediately supply the debtor with a true copy of the contract. The contract is required to list all creditors and the total charges agreed upon for the services of the licensee, and the beginning and expiration date of the contract. Contracts cannot extend for a period longer than twenty-four months.

Licensees are required to maintain separate bank accounts for the debtors in which all payments received are to be deposited. These payments are to remain in separate accounts until a remittance is made to either the debtor or the creditor. Every licensee is required to keep and use in the business, books, accounts, and records which will enable the Commissioner to determine whether the licensee is complying with the provisions of the statute and with the rules and regulations of the Banking Board. Licensees are also required to preserve these books, accounts, and records for at least seven years after making the final entry on any transaction recorded.

Licensees are also required by statute to keep complete and adequate records during the term of the contract and for a period of six years from the date of cancellation or completion of the contract. These records must contain complete information regarding the contract, extensions, payments, disbursements, and charges. The Commissioner or her duly appointed agents may inspect these records during normal business hours.

Licensees were previously required to make payments to creditors within two working days after receiving the money, unless one or more creditors required a larger amount. In this instance, funds could be held in order to accumulate a certain amount. HB 93-1254, which is discussed in the next section of this report, modified this section of the statute to permit licensees to remit such payments to creditors within one month after receipt of funds or within a shorter time as may be provided under the agreed-upon schedule of repayment.

Licensees are also required to furnish debtors with a written statement of their accounts upon request or every ninety days. Debtors also have a right to a verbal accounting at any time.

It is a violation of the statute for a licensee to accept an account if a written and thorough budget analysis indicates that the debtor cannot adequately meet the requirements determined by the budget analysis. If a compromise is arranged by the licensee with one or more creditors, the debtor must have the full benefit of the compromise.

DIVISION'S AUTHORITY

Section 12-20-102.5, C.R.S., provides that the powers, duties, and functions of the Banking Board and Commissioner as stated in Title 11, article 2, (the Banking Code) shall apply to the provisions of the Debt Adjuster statute. Therefore, the Commissioner and the Banking Board may exercise the same powers, duties and functions relative to debt adjusters as they may exercise relative to banks. These powers include:

1. The power to investigate and license applicants;

2. The power to implement by regulation any provision of the code;

3. The power to examine the books and records of debt adjusters; and

4. The power of enforcement, i.e., to order any person to cease violating a provision of the code or a lawful regulation issued thereunder.

The Commissioner has historically possessed discretionary authority to examine the condition and affairs of the business upon five days' notice to the licensee. Pursuant to this authority, the Commissioner is entitled to examine on oath, any licensee, director, officer, employee, customer, creditor, or stockholder, and may order production of books, accounts or records of a licensee concerning that business. The licensees are required to pay the cost of the examination, which is determined by the Commissioner. The current fee is $26.00 per day, and is subject to change, pursuant to section 11-2-103 (11), C.R.S. Failure of the licensee to pay the examination fee within thirty days of receipt of demand from the Commissioner automatically suspends the license until the fee is paid.

Although the statute does not require debt adjusting businesses to be examined on a regular basis, the Banking Board recently amended Policy No. 80-1 to require the Division to examine debt adjusting businesses on an annual basis. Accordingly, the Commissioner's discretionary power has been transformed into a mandatory function by rule.

In addition to its chartering and examination functions, the Banking Board has the authority to deny, revoke, or suspend licenses for any of the following reasons:

(a) For conviction of a felony or of a misdemeanor involving moral turpitude;

(b) For violation of any provisions of the article;

(c) For fraud or deceit in procuring a license or renewal;

(d) For indulging in a continuous course of unfair conduct; and

(e) For insolvency, receivership, or assignment for the benefit of creditors by any licensee or applicant for a license under this article. (Section 12-20-111, C.R.S.)

Denial, revocation, or suspension of a license can only be made upon specific written charges under oath, filed with or by the Banking Board. A hearing must be had as to the reasons for any denial, revocation, or suspension, and a certified copy of the charges must be served on the licensee or applicant for license not less than ten days prior to the hearing.

CRIMINAL PENALTIES AND ILLEGAL ACTS

Section 12-20-112, C.R.S., provides that it is unlawful for any individual, partnership, unincorporated association, or corporation to engage in the business of debt management without first obtaining a license as required by this article.

One who willfully or knowingly engages in the business of debt management without first obtaining a license is guilty of a misdemeanor which may be punished by a fine of not more than one thousand dollars for each violation, or, upon subsequent violations, by imprisonment in the county jail for not more than six months, or by both fine and imprisonment. This same criminal penalty attaches to any licensee who violates any provision of the Act. Specifically, in addition to those mandatory provisions relative to licensing, chartering, and business practices, it is illegal for any licensee:

(a) To purchase from a creditor any obligation of a debtor;

(b) To operate as a collection agent and as a debt manager as to the same debtor's account;

(c) To execute any contract or agreement to be signed by the debtor unless the contract or agreement is fully and completely filled in and finished;

(d) To receive or charge any fee in the form of a promissory note or other promise to pay or to receive or accept any mortgage or other security for any fee, both as to real and personal property;

(e) To pay any bonus or other consideration to any individual, partnership, unincorporated association, or corporation for the referral of a debtor to their business, or to accept or receive any bonus, commission, or other consideration for referring any debtor to any individual, partnership, unincorporated association or corporation for any reason;

(f) To advertise business services, display, distribute, broadcast, or televise or permit to be displayed, distributed, broadcast, or televised business services in any manner inconsistent with law; and

(g) To pay interest on or principal of a debt secured by a mortgage or other security interest on real property owned by a debtor unless the mortgagee or secured party has agreed to a schedule of payments.

Subsection (g) was recently amended to permit licensees to make payments of interest or principal on a mortgage on real property under certain circumstances.

MISCELLANEOUS STATUTORY PROVISIONS

C.R.S. 12-20-113 provides that all actions commenced in any state court pursuant to the Debt Adjuster statute shall be brought within one year, the time period prescribed in Section 13-80-103, C.R.S., a civil statute of limitations. Specifically, Section 13-80-103(f) provides that:

> The following civil actions, regardless of the theory upon which suit is brought, or against whom suit is brought, shall be commenced within one year after the cause of action accrues, and not thereafter:
>
> . . .
>
> (f) All actions for fraud, misrepresentation, concealment, or deceit brought under section 12-20-113, C.R.S.

All licensees are also required to appoint in writing the Commissioner as agent for service of process. (Section 12-20-114, C.R.S.)

Although the Banking Statute was amended two years ago to reflect that the Division is cash funded with respect to all other programs which it administers, the money received by the Division from fees and assessments of debt adjusters is deposited with the state treasurer and credited to the general fund of the state of Colorado.

The final section of the Debt Adjusters statute requires the General Assembly to terminate the licensing functions under this law on July 1, 1994 unless it otherwise sanctions its continuation pursuant to the Sunset Act. (Section 12-20-116, C.R.S.)

NEW LEGISLATION

The Debt Adjuster statute was revised during the 1993 Legislative Session through the efforts of industry representatives and the Commissioner of Banking. The amendments primarily effect the bonding provisions and payment duties of the debt adjuster.

HB 93-1254 "Concerning the regulation of debt management companies" was signed into law by the Governor on March 31, 1993. Debt management companies are now allowed to furnish evidence of a savings account, deposit, or certificate of deposit, or of insurance or other evidence of financial responsibility, as an alternative to a surety bond, in an amount not to exceed $25,000. The modification of the statute pertaining to the expansion of acceptable pledged security is constructive inasmuch as debt management companies have had a difficult time acquiring the necessary bond. Bonding companies have not had experience with the debt adjusting industry and it has also not been clear what the Banking Board considers an adequate bond. For instance, a former Commissioner of Banking once accepted a title to a home as an alternative to the bond.

This bill also modified the requirements regarding the speed with which debt management companies must make payment to creditors. Previously, debt management companies were required to submit payment within two working days of receipt of the money, unless the reasonable payment of one or more of the debtor's obligations required such funds to be held for a longer period in order to accumulate a certain amount. It is now acceptable for debt adjusters to hold money for up to one month after its receipt. This is a also a constructive change since it permits creditors to make payments after receiving complete, rather than partial, payments from debtors. Many creditors were not pleased with the partial payments that they were receiving.

This bill also allows debt management companies to manage a debtor's mortgage payments; however, debt adjusters are still prohibited from obtaining any mortgage or other security interest in the debtor's real property. The rationale for this change, according to one industry spokesperson, is that even if all unsecured retail and credit card creditors are paid in full, a debt management program is unsuccessful if a family loses its residence in the process. However, others in the industry believe that a debt management program should only include unsecured retail and credit card creditors and that debtors must be able to manage the debts that they will always have, such as mortgages, utility and telephone payments.

This amendment was inserted when the Division of Banking discovered that the debt adjuster which was most recently licensed, Consumer Credit Counseling Service of Greater Denver (CCCS), had been making mortgage payments for over twenty years without any problems. In light of this development, the Division of Banking agreed that the policy and purpose of the provision was to prohibit licensees from taking any action which would create a lien or encumbrance on the debtor's residence or other real property. Consequently, a licensee's practice of advancing funds on behalf of a debtor for a monthly mortgage obligation is unrestricted, provided the licensee receives no right, title or interest in the underlying property.

CHAPTER 3

REGULATION IN COLORADO

Structure and Function of the Division's Debt Adjuster Regulatory Program

The structure and function of the Division of Banking is comprehensively outlined in the 1992 Division of Banking Sunset Review. Its operation and allocation of resources relative to the regulation of debt adjusters is straightforward.

The DOB is presently comprised of forty-two full time employees who administer extensive banking and financial statutes, including the Debt Adjuster act. The eight-member Banking Board establishes and directs the important policies and procedures necessary to implement these statutes, while the Commissioner is primarily responsible for their administration and enforcement.

The DOB is broken down into various components which are responsible for the regulation of various regulated entities. Currently, nearly thirty years after the DOB was conferred with regulatory authority over debt adjusters, the Division allocates 5% of a Program Administrator's time to the oversight and implementation of the debt adjuster program. Although the Division also allocates five percent of an examiner's time to the regulation of debt adjusters, the Division states that, on average, two days per year of one examiner's time is spent on debt adjuster regulation.

These DOB employees are primarily responsible for application investigation and processing and for the examination of licensees. The Division's Procedure #90-4-OP-13, issued 8/31/90, requires submission and investigation of financial and biographical data of all officers, investigation and license fees, a copy of the proposed contract, a fee schedule, and proof of a bond or alternative in an amount not to exceed $25,000. The DOB must examine these records prior to granting or denying licensure. The Division reports that no applicant has ever been denied licensure.

Until May of this year, the Commissioner's statutory right to examine debt adjusters was discretionary. Accordingly, the Division did not have an examination schedule that it followed for debt adjusters, although it attempted to adhere to an informal annual examination policy. The Division's records establish that this policy was not always followed since Credit Counselors, the sole licensee until 1992, was not examined in 1986, 1987, and 1991. According to the Division, Credit Counselors' books and records were consistently clean and, therefore, examinations were not a high priority.

On April 30, 1993, the Banking Board amended Policy No. 80-1 to include mandatory examinations of debt adjusters. Now, a new charter must receive a target examination within the first 60 days of operation. This exam is to "focus on seeing that the new institution gets off to a good start and to establish a good working relationship with the Division." A full scope examination is now required within the first 12 months of operation, and annually thereafter.

INVESTIGATIONS OF UNLICENSED DEBT ADJUSTERS BY THE DIVISION

The files stored at the Division establish that, over the last six years, its investigation of unlicensed debt adjusters has resulted in various actions. Certain investigations concluded that companies were exempt as non-profit agencies, while others resulted in the issuance of cease and desist orders pending licensure, some of which were ignored. However, only one investigation resulted in criminal charges. Additionally, outside of Atlantic Financial Group and Colorado Consulting, there has not been economic harm to Colorado consumers.

The chart below reflects each investigation the Division has undertaken with respect to allegedly unlicensed debt adjusters.

BUSINESS	INVESTIGATION BEGAN	RESULTS	REASON	ECONOMIC LOSS	DETECTED
Negotiation Network Credit Crisis Hotline	3/7/88	No action	Non-profit Agency.	No	Publication search
Consumer Financial Management Corporation	3/7/88	No action	Non-Profit Agency	No	Publication search
Colorado Credit Counseling Service	11-16-90	No action	Conducting Debt Counseling & Credit Repair	No	Publication search
Consumer Credit Counseling Service	11/28/90 -	Received a license.	Charges a monthly stipend (fee)	No	Front page of the Rocky Mountain News
Atlantic Financial Group/Credit Consultants of Colorado Springs	5/7/91	Cease & Desist Order issued by the Division of Banking	Conducting business without a license/bond.	Yes	Complaint referred from El Paso District Attorney's Office
Alternative Financial Services	7/23/91	Application for license sent with letter directing	Conducting business without a	No	Newspaper advertisement

		them to Cease and Desist.	license/bond.		
Colorado Consulting	8/22/91	Cease and Desist order issued/Criminal Charges brought by EL Paso County District Attorney.	No license/bond. Charging in excess of 10% of total debt., etc.	Yes	Complaint referred from El Paso County District Attorney's Office
Don Wakefield and Associates	8/24/92	Cease & Desist Order issued.	No license/bond.	No	Complaint mailed to the Division of Banking
CCCS Fort Collins and Colorado Springs	8/22/92	Cease & Desist Order issued.	No license.	Still in operation.	
Debt Relief Consumer Credit Counseling Services~~	3/4/93	Cease & Desist Order issued.	No license/bond.	No	Complaint received by the Division of Banking from CCCS-Colorado Springs

~~ This case is currently under investigation. Mr. Wakefield of Don Wakefield and Associates, and an attorney have now organized a business by the name of Debt Relief Consumer Credit Counseling Services, prompting DRCCCS' claim that it falls under the attorney exemption in the statute. However, an informal Attorney General's opinion states that if there are different addresses and telephone numbers for the law practice and the debt adjusting service, the debt adjusting is not conducted in the regular course of the attorney's work, therefore requiring a license. The Division gave this company three weeks in which to consolidate these businesses or to cease operation. An investigator was dispatched on May 24, 1993 to follow-up with this compliance. This investigation established that the business was, in fact, separate from the law practice and the investigator gave DRCCCS two weeks to either cease operations, file an application for licensure or consolidate the law practice and debt adjusting business.

As the previous chart illustrates, the Division has received complaints regarding debt adjusting companies which have resulted in enforcement actions. The complaint which uncovered the most egregious violation of the statute by an unlicensed company, and the Division's response thereto, is illustrated by the following case study.

November 1989	Division of Banking examiner sent to business in response to a complaint that had been phoned in. This business had been operating illegally since 1984. Verbal **Cease and Desist** Order.

November 17, 1989	Written **Cease and Desist** Order mailed to business.
November 21, 1989	Business responded to C&D Order stating, "since examiner told them they were about 90% in compliance, they should be able to continue operations for current clients only until they could become licensed."
December 28, 1989	Division sent business a bonding form but did not follow up on the company's compliance with the two cease and desist orders for over four months.
May 7, 1990	Another visitation to the business revealed that it was still performing illegal debt adjusting services with no intention of ceasing operation. Examiner recommended that Division of Banking conduct an extensive investigative audit of their business activities. He also recommended financial statements be reviewed by the Division. Also recommended were financial and background checks of related individuals.
May 29, 1990	The Commissioner contacted the attorney for this business, informing him that the business had thirty days in which to comply. It was agreed that this company would cease all debt management activity if they could not come in to compliance within that time period.
June 8, 1990	Business notified Division that it would be applying for non-profit status.
June 18, 1990	After receipt of proof of non-profit status, and acting upon the belief that the company was not charging fees for its services, the Commissioner of Banking notified the company that it was exempt from licensing requirements.
June 20, 1990	The Division received another complaint which was forwarded by Teller County District Attorney's Office. The complaint alleged that this unlicensed debt adjuster had been collecting fees and $250.00 a month for the preceding 11 months and that creditors had not been receiving payments. Some of the creditors had turned the debtors accounts over to collection agencies.
June 25, 1990	The company wrote the Division, confirming that they were not charging fees, rather they were "soliciting contributions" in order to offset the cost of operation. They also stated that these "contributions" were not required in order for clients to receive their services.
June 29, 1990	An investigator from the Division of Insurance accompanied a Division of Banking examiner to the Colorado Springs office. They concluded that the company was "operating a fraudulent business for the purpose of bilking the general public out of their money". This company was also trying to sell life insurance without the necessary license to people in the military.
July 6, 1990	The Division sent another **Cease and Desist** letter to the debt adjuster stating that legal action would be discussed with the Attorney General.
July 25, 1990	The Division again notified the company by mail of its failure to obtain either the license or the bond. The DOB informed the company that, in the Attorney General's opinion, the company was charging fees through its contracts as well as through practices. These fees were also in excess of the amount prescribed by statute. This letter also stated that it was neither a religious, fraternal or cooperative non-profit and was not exempt from regulation. The Commissioner

	reminded the respondent that they were given thirty days in which to comply or **Cease and Desist**.
August 2, 1990	The attorney for the debt management company informed the Commissioner of Banking that the company is not charging fees for its services and therefore, is not required to be licensed.
August 8, 1990	A letter was sent to Senator Wells from the Division of Banking informing him that this debt management company was operating without the required license and bond. Additionally, "they continue to operate in willful disregard to several orders to cease operations" and further discussion should be directed to the Attorney General's Office. On the same date, a letter was sent to the company's attorney notifying him that, in the opinion of the Division's attorney, the company continued to willfully violate Article 20, Title 12, C.R.S.
August, 1990	The Economic Crime Division of the District Attorney's Office in Colorado Springs received three complaints alleging that this company had not been making payments to creditors (in one case, for 1 1/2 years) and that other creditors had received bad checks from the company. The complainants also stated that they were not able to get an accounting of their records without an attorney.
August 20, 1990	The Commissioner of Banking sent a criminal referral letter to the District Attorney's Office in Colorado Springs, declaring that this company was continuing its illegal activity in direct and willful violation of several orders to cease activity.
October 30, 1990	A Complaint and a Motion for Temporary Restraining Order was filed with El Paso County District Court.
August 21, 1991	Three employees of the Division were summoned to testify in this case set for August 22, 1991.
DATE - SENTENCE?	The defendants were convicted of criminal charges.

This chronology demonstrates that, from the time the DOB first issued a cease and desist order, the company was able to operate for ten months before being shut down and for four months without further follow-up or intervention by the Division. And, although the Division issued a total of four cease and desist orders, the company did not cease its operations until the case was turned over to the District Attorney's office and criminal charges were filed.

Apart from investigating complaints which the DOB receives from outside sources, it has in the past contacted businesses that are listed in the phone book and in other publications as debt counselors, credit repair companies, etc. in an effort to discover illegal activity. The Division then determines whether these businesses are collecting fees and/or holding deposits, activities which require a license. Many of the companies which have been contacted in this manner were not holding deposits, but were offering credit advisory services or making loans by which consumers could consolidate their debt. Some of those notified were mortgage brokers or credit reporting services. The Division has recently discovered an unlicensed company that is providing debt adjusting services which falls under its jurisdiction. This case is discussed in greater detail in the Chapter 4 of this report.

The Division also sent letters at one point to major department stores asking for their assistance in tracking down companies performing debt adjusting services without a license. The Division did not discover any illegal debt adjusters using this method.

Finally, the Division has received a few complaints regarding out-of-state debt adjusters. However, the Division has no regulatory authority over companies which do not have a salesperson or representative physically located in Colorado. Owing to its lack of jurisdiction, these complaints were turned over to District Attorney's offices or the FBI for their investigation of possible mail fraud violations.

CHAPTER 4

DEBT ADJUSTER REGULATION IN OTHER STATES

In a number of states, the practice of debt adjusting as a separate business is prohibited by statute in order to minimize the risk that debtors will increase their already heavy financial burdens of spending more money on a third party for debt management assistance. Some states "regulate" debt adjusters by imposing certain mandatory requirements as prerequisites to the lawful conduct of business, such as bonding and disclosure requirements. Under this model, state agencies do not license debt adjusters. Other states only permit non-profit agencies to conduct this type of business. The chart on the following page illustrates various regulatory or statutory models which certain states have adopted with respect to debt adjusters.

STATE	TYPE	REGULATORY BODY	BONDING REQUIRED?	PENALTY FOR VIOLATION OF STATUTE	LICENSE REQUIRED	DISCLOSURE REQUIREMENTS
Colorado	**Debt Adjuster**	**Division of Banking**	**Up to the amount of $25,000**	**Misdemeanor, $1000 first offense - $1000/1 year prison or both for subsequent offenses.**	**Yes**	**Licensee must disclose fee schedule and list of creditors in written contract.**
Illinois	(1) Non-profit debt adjuster corporations	(1) Secretary of State only for purposes of certifying corporation	(1) No	(1) Not specifically set out in statute	(1) No	(1) No
	(2) For-profit financial planners	(2) Director of Financial Institutions	(2) $7,500 set in statute	(2) Yes:	(2) Yes VERIFY	(2) Yes - Licensee must conspicuously post license in the place of business. VERIFY
California *	Credit services organizations	None	Yes, if company charges fees prior to completion of contract.	Civil and injunctive remedies and misdemeanor	No	See Appendix B
Texas	Restricted to Non-profit debt poolers only	Counseled and advised by Consumer Credit Commissioner	No	Misdemeanor with fine in amount of $100 - $500	No	No
New Jersey	Restricted to Non-profits only (although licensee may charge nominal fee)	Department of Banking	To the satisfaction of Commissioner.	$500 penalty for violation of statute.	Yes	No
Nevada[1]	Person, firm, company or association.	Commissioner of Financial Institutions	No less than $10,000	Misdemeanor	Yes	List of creditors, total charges for services, beginning and expiration dates of contract, contract termination provisions.
North Carolina	Restricted to Non-profits or other exempted categories.	None	No	Misdemeanor, $500, imprisonment for 6 months or both.		No
Louisiana	Restricted to Non-profits or other exempted categories.	None	No	Misdemeanor, $500, imprisonment for 6 months or both.		No

CHAPTER 5

IS STATE INTERVENTION NECESSARY?

The first sunset statutory criterion states a fundamental standard by which the need for regulation must by measured, namely:

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.

As this report has already demonstrated, the DOB regulated one licensed debt adjuster for years by conducting sporadic examinations, while another debt adjusting company operated without either license or incident for 24 years. When the spotless and longstanding records of these two businesses are coupled with the handful of problems which Colorado consumers have encountered in the last six years, one must address the question of whether state regulation of this industry is necessary to protect the public interest.

On the one hand, the numbers of these businesses appear to be increasing. Two additional CCCS offices may become licensed soon, bringing the total number of licensed debt adjusting companies to four. On the other hand, each of these debt adjusters have operated for years under the highest industry standards, and three of the four have done so without benefit of state intervention. An examination of the manner in which these four entities operates reveals that they each adhere to certain requirements which benefit the consumer and offer protection against loss. Obviously, the licensed debt adjuster has always been required to post a bond, disclose certain information to the consumer, and to charge fees which do not exceed the statutory cap. The unlicensed companies have also adhered to similar requirements which have at their foundation the protection of the consumers. Some of these companies must also submit an annual independent audit and other information to the federal government yearly, because of their non-profit status and role as federal grant recipients. Moreover, CCCS offices are members of the National Foundation for Consumer Credit, Inc., which requires its members to adhere to the following code:

...provide a non-profit community service dedicated to providing confidential and professional financial and debt counseling.

...aid and rehabilitate financially distressed families and individuals, regardless of race, creed, national origin, color, sex, social position or financial status.

...develop and foster community educational programs on family money management, budgeting, and the intelligent use of credit.

...maintain a broad community based representation on its governing board, with not more than 40% representing the credit grantors of the community.

...limit counseling to financial matters and refrain from giving legal advice. Non-financial problems should be referred to other appropriate agencies.

...deposit client funds in a trust account and shall maintain a separate operations account.

...bond all employees in an amount appropriate to cover potential loss.

...adequately insure all funds, provide for an annual audit and be periodically certified by an independent CPA or accounting firm.

...where state law permits, provide a debt liquidation program based on a nominal client contribution which may not exceed Foundation guidelines.

...provide debt counseling at no charge or at a nominal charge which may not exceed Foundation guidelines.

...provide a debt liquidation program, where required, which is equitable to all creditors and which is most advantageous to the client family.

...develop and maintain a positive working relationship with the credit community, employee assistance programs, labor counselors, and social service agencies within the community.

Therefore, CCCS organizations must protect against consumer loss by complying with private certification requirements similar to state licensing requirements, including bonding, insurance, and auditing requirements.

According to the records maintained by the Division, nine cease and desist orders have been issued to non-licensed entities during the 28 year life of its regulatory authority. Two of the businesses apparently continue to provide debt adjusting services in Colorado without further intervention by the Division, although one of these entities submitted and application of licensure in February, 1993, which the Division has not yet acted upon. Four of the nine orders were issued to one company, which did not cease operation until the case was prosecuted by the District Attorney's Office. This track record is insubstantial and, on the whole, appears to support the conclusion that licensing by the Division is not necessary.

Still, consumers may potentially incur economic loss from unlicensed "fly-by-night" businesses, a concern that requires consideration. State regulation has not prevented such sases in the past but at least provided a starting point at which to begin to refer the problems to local district attorneys or other law enforcement personnel.

WILL COLORADO CONSUMERS BE PROTECTED IN A DEREGULATED MARKET?

While many provisions of the Debt Adjuster Statute are beneficial to consumers, their effectiveness does not appear to be predicated on state regulation. In lieu of regulation, some states have opted to require all debt adjusting companies to adhere to certain statutory requirements which have at their foundation the protection of consumers. These mandatory provisions typically require all debt adjusting companies to:

1. Enter into a written contract with the consumer which discloses various important information, including a complete and detailed description of the services to be performed for the consumer and the total cost of the services;

2. Disclose all pertinent information regarding the mandatory bond or alternative, including a statement explaining the consumer's right to make a claim against the bond, in a conspicuous place in the office and on the contract; and

3. Disclose all pertinent information regarding consumer remedies in the event of a statutory violation.

In addition, certain statutes impose fee caps on the amount which debt adjusters may charge consumers for their services.

In Colorado, the Division of Banking has sporadically regulated an industry which, historically, has not warranted a high degree of regulation to protect consumers from harm. Deregulation of this industry can be accomplished while providing a high degree of consumer protection providing these various disclosures and prophylactic measures are mandated by statute, and if their violation is punishable by stiff civil, criminal, and injunctive penalties. For instance, the statute should be modified to enhance consumer protection by providing that violations of the Debt Adjuster statute are also actionable as a violation of the Deceptive Trade Practices Act. As a result, debt adjusters who violate the law will be subject to treble damage awards in the event of wrongdoing, and to the imposition of the consumer's costs and attorney fees.

The amendment of the statute to include these additional provisions will deter debt adjusters from wrongdoing by requiring them to remain financially solvent and accountable to their clients. It will also give consumers expanded remedial rights and permit District Attorneys and the Office of the Attorney General to exercise increased prosecutorial jurisdiction over violators of the statute. In short, while the possibility of harm to the public warrants amendment of the Debt Adjuster statute to require additional components, there is no evidence that additional harm will result to Colorado consumers in a deregulated market.

Recommendation 1: The General Assembly should allow the regulation of debt adjusters by the Division of Banking to terminate as scheduled.

CHAPTER 6

STATUTORY RECOMMENDATIONS

I. Statutory Modifications Upon Termination of Regulation

Should the General Assembly vote to terminate the regulation of debt adjusters by the Division of Banking, certain amendments to the Debt Adjuster Statute should be adopted to ensure the protection of Colorado consumers.

In general, current statutory provisions which establish exemptions to the statute, Section 12-20-103(1), C.R.S., duties of debt adjusters, Section 12-20-108, C.R.S., and unlawful acts by debt adjusters, Section 12-20-110, C.R.S. should continue, with minor modifications, in full force and effect. Other consumer protection provisions are non-existent or are presently linked to licensure application requirements, provisions which are not applicable in a deregulated market. These provisions need to be established and clarified as requirements for conducting an unregulated debt adjusting service.

DEBT ADJUSTERS MUST POST SECURITY RUNNING TO THE STATE OF COLORADO FOR THE BENEFIT OF CONSUMERS

Before a debt adjuster may be licensed in Colorado, it is currently required by statute to post with the Division of Banking a bond or evidence of a savings account, deposit, certificate of deposit, insurance, or other evidence of financial responsibility in an amount determined by the Banking Board, but not to exceed $25,000, running to the State of Colorado for the benefit of consumers. This requirement obviously benefits consumers by providing an avenue of recovery in the event of harm or loss occasioned by the debt adjuster. It also performs the valuable function of culling those individuals who do not possess the financial stability to post a bond from those debt adjusters which possess the financial security to insure against the occurrence of economic harm befalling consumers as a result of mistakes or errors.

California does not regulate debt adjusters, but it still requires debt adjusters to post surety bonds or their equivalent in favor of the state for the benefit of any person who is damaged by any violation of the law with the office of the Secretary of State. California requires the bond or trust account to be in an amount equal to five percent of the total amount of the fees charged consumers by the credit services organization during the previous twelve months, with a required minimum amount of $5,000 and a required maximum amount of $25,000. The amount is adjusted annually. [Please see Appendix C for complete text of the California Law.]

In the event the Division of Banking's regulation is terminated, debt adjusters should be required to comply with the bonding requirement. Specifically, debt adjusters should be required to post a bond or its equivalent and to file a copy of it with the Division of Banking. If the security is not a bond, the debt adjuster should be required to file a statement listing the name of the depository at which the account is maintained, the account type and number.

In addition, the statute should require the bond or other security to be in favor of the state for the benefit of the person who is damaged by violation of the Debt Adjuster Statute, and it should be in the principal amount of $25,000, the amount which is currently required. Also, the statute should set out the procedures by which a claim may be made against the security, and it should outline the surety's limitations of liability. Finally, a provision such as the one contained in a similar statute governing Credit Service Organizations, (Tex. Stat. Ann. art. 18.04(f)), should be incorporated into the statute to protect consumers whose claims are made against an account:

A depository holding money in a surety account under this chapter may not convey money in the account to the debt adjuster that established the account or a representative of the debt adjuster company unless the debt adjuster or representative presents a statement issued by the Secretary of State and/or Division of Banking indicating that at least two years have expired since the debt adjuster company has ceased operations. The Division of Banking may conduct investigations and require submission of information as necessary to enforce this subsection.

Each of these provisions will ensure that consumers are protected from economic harm and unfair business practices by debt adjusters.

Recommendation 2: The General Assembly should amend Section 12-20-101, et. seq., C.R.S. to include a section which requires any person operating as a debt adjuster to post a good and sufficient bond or to establish a savings account, deposit, or certificate of deposit, insurance or other evidence of financial responsibility in the amount of $25,000 running to the state of Colorado and for the benefit of consumers in the case of wrongdoing and/or loss. This section should also require the debt adjuster to post the bond or to file information relating to the account with the Division of Banking on an annual basis. Finally, the statute should establish procedures for making a claim against the bond or account, limitations of the surety's liability, and provisions requiring the bond or account to be preserved for a period of time after the expiration of the debt adjusting business for which it was posted.

REQUIRE DEBT ADJUSTERS TO DISCLOSE STATUTORILY-REQUIRED INFORMATION BY WAY OF WRITTEN CONTRACTS AND THE POSTING OF INFORMATION IN A CONSPICUOUS PLACE

The current statute requires an applicant to submit a proposed written contract to the Banking Board for its approval, and it requires a debt adjuster who enters into a written contract with a consumer to furnish the consumer with a copy of the contract which must set forth the complete list of creditors, the total charges agreed upon for debt adjusting services, and the beginning and expiration dates of the contract, not to exceed 24 months.

If regulation by the Banking Board is terminated, the disclosure requirements in the contract should be strengthened to include information regarding the statutory fee cap, bonding or alternative bonding information, the debt adjuster's address and the address of its agent for receipt of process, and the consumer's rights regarding cancellation of the contract. As further protection, certain of these disclosures should be posted in a conspicuous place in each office out of which the debt adjuster operates. These disclosures are necessary to ensure that consumers possess necessary information regarding their legal rights and means of recovery.

Recommendation 3: Subsection (1) of section 12-20-108, C.R.S. should be amended to require the debt adjuster to enter into a contract with each consumer which contains specific disclosure information. The subsection should provide:

Each debt adjuster shall make a written contract with each debtor for whom the debt adjuster agrees to provide debt adjusting services. Each such written contract shall be signed and dated by the buyer, and a true and complete copy of such contract shall be furnished to the debtor at the time it is made. Each contract shall set forth:

(a) A complete schedule of all fees to be charged the debtor, which shall not exceed 10% of the total debts to be adjusted;

(b) A complete list of the creditors to which the debt adjuster has agreed to make payments on behalf of the consumer;

(c) The beginning and expiration date of the contract;

(d) The address of the debt adjuster's principal place of business and the name and address of its agent in the state authorized to receive service of process;

(e) A conspicuous statement in boldfaced type, in immediate proximity to the space reserved for the signature of the consumer, which states and explains in plain language the consumer's legal right to cancel the contract without penalty or obligation; and

(f) A conspicuous statement in boldfaced type which discloses the following information to the consumer:

(i) The existence of a good and sufficient bond, evidence of a savings account, deposit, or certificate of deposit, insurance or other evidence of financial responsibility in the amount of $25,000 running to the benefit of the consumer in the event the obligor violates any duty set forth in the contract and/or statute;

(ii) The name and address of the surety company which issued the bond or insurance or, if an account, the name and address of the depository, and the trustee and account number of the account;

(iii) The consumer's right to proceed against the bond or account and the procedure by which a claim may be made against the bond or alternative to the bond; and

(iv) The rights and remedies of the consumer to proceed against the debt adjuster pursuant to section 12-20-112, C.R.S.

Recommendation 4: The General Assembly should amend Section 12-20-108 to require debt adjusters to post the information outlined in Section 12-20-108(1)(d), (e), and (f) in a conspicuous place in the office.

REQUIRE DEBT ADJUSTERS TO MAINTAIN COMPLETE BOOKS, ACCOUNTS, AND RECORDS FOR PURPOSES OF INSPECTION

The statute currently in effect requires the licensee to keep and preserve books, accounts, and records for at least seven years after the completion of a transaction for purposes of inspection and examination by the commissioner. (Section 12-20-108(2), C.R.S.) It likewise requires the licensee to keep "complete and adequate records during the term of the contract and for a period of six years from the date of cancellation or completion of the contract with each debtor, which records shall contain complete information regarding the contract, extensions thereof, payments, disbursements, and charges and shall be open to inspection by the commissioner and his duly appointed agent during normal business hours." (Section 12-20-108(3), C.R.S.)

The California statute provides consumers with the right to review and to receive a copy of any file maintained by the debt adjuster concerning the debtor. [Please see Appendix C at section 1789.15(a)]. Because this requirement adds an additional level of consumer protection in a deregulated market, the two statutory subsections in Colorado's Debt Adjuster act should be amended to require all debt adjusters to continue to keep and preserve such records for purposes of permitting the consumer and his or her representative to inspect and receive a copy of such record.

Recommendation 5: The General Assembly should amend C.R.S. 12-20-108(2) & (3) to eliminate references to the commissioner's power of inspection and examination, but to require the continued maintenance and preservation of all records as stated therein for the purpose of enabling the consumer and his or her representatives to inspect and receive a copy thereof.

REVISE STATUTORY DEFINITIONS

The termination of the Division of Banking's regulatory authority over debt adjusters will require revision of the statute's definitions section to eliminate licensing-related references.

Recommendation 6: The General Assembly should repeal sections 12-20-102(1) and (1.5). In addition, it should amend section 12-20-102(5) to replace the definition of "Licensee" with the definition of "Individual" as any person, partnership, unincorporated association or corporation.

II. Statutory Modifications Upon Termination or Continuation of Regulation

The following statutory recommendations are made with the intent that they be implemented in case of either termination or continuation of regulation. In either case, these recommended modifications enhance the level of protection afforded to the consumer.

THE COLORADO CONSUMER PROTECTION ACT OFFERS ADDITIONAL FINANCIAL PROTECTION TO CONSUMERS

The Colorado Consumer Protect Act, section 6-1-101 et. seq., C.R.S. (1992 Repl. Vol. 2), provides that deceptive trade practices such as false representation of services, and the making of false or misleading statements concerning prices, are actionable. The purpose of this Act is to provide prompt, economical, and readily available remedies against consumer fraud. The Act is enforced by the Attorney General and local district attorneys and such action may be brought in the county where the practice or any portion of the practice occurred, or in the county where the place of business is located. Complainants may recover three times the amount of actual damages sustained, the costs of the action and reasonable attorney fees.

The Debt Adjuster statute should be amended to provide that its violation is actionable as a deceptive trade practice pursuant to the Consumer Protection Act, thereby subjecting violators to investigation, injunctive remedies, triple damages, costs and attorney fees.

Recommendation 7: The General Assembly should amend Section 12-20-112, C.R.S. to provide that violation of any provision of this article shall constitute a deceptive trade practice which is actionable pursuant to section 6-1-101, et. seq., C.R.S.

THE PENALTIES ATTACHING TO VIOLATION OF THIS ACT SHOULD BE CLARIFIED AND EXPANDED.

The Debt Adjuster statute currently creates a unique criminal penalty for the violation of any of its provisions, subjecting a debt adjuster to conviction of a misdemeanor regardless of the scope or nature of the violation. However, under the criminal code an individual is guilty of committing various other crimes depending on various factors, including the defendant's knowledge and intent, the type of act committed, and the amount of property taken, if applicable. For instance, a defendant is guilty of felony theft if he knowingly and intentionally keeps, uses, diverts or misallocates another's funds, in excess of $300.00.

While many states classify offenses committed in violation of their debt adjuster acts as misdemeanors, they also include provisions which state that the remedies provided therein are in addition to other remedies provided by law and shall not be construed to prohibit the

enforcement by any person of any right provided by any other law. Therefore, to protect Colorado consumers, violators of the Debt Adjusters Statute should be subject to the full complement of civil remedies and criminal penalties provided by law.

Recommendation 8: The General Assembly should adopt a new subsection of section 12-20-112, C.R.S., to provide that the criminal penalties in this section for violation of any section of this article are not exclusive and shall be in addition to any other procedures, remedies, or criminal penalties for any violation or conduct provided for in any other law.

AMEND THE STATUTE OF LIMITATIONS

Section 12-20-113, C.R.S., states: "All actions in any of the courts of this state pursuant to this article shall be commenced within the time period prescribed in section 13-80-103, C.R.S." The plain reading of this statute appears to provide an unambiguous limitations period of one year for all actions, civil or criminal, pursuant to section 13-80-103.

However, that section clearly confines the one year limitations period to civil actions which are based upon theories of fraud, misrepresentation, concealment, or deceit, and which are brought under section 12-20-113. Consequently, despite the misleading language in the statute of limitations for debt adjusters, there is a limitations vacuum for all civil or criminal actions which do not lie in the enumerated actions of fraud, misrepresentation, concealment, or deceit.

Recommendation 9: The General Assembly should amend Section 12-20-113, C.R.S. to provide that the statute of limitations for fraud, misrepresentation, concealment, or deceit shall be brought within the time period prescribed in section 13-80-103, C.R.S., and that all other civil and criminal actions shall be brought within the applicable time periods as provided in the laws of the state.

PLACE BURDEN OF PROVING EXEMPTION UPON DEBT ADJUSTER

Section 12-20-103(1), C.R.S. presently exempts certain persons and businesses from the requirements of licensure. If regulation is terminated, this section should be revised to eliminate the reference to licensure, but its exemption provisions should remain in effect to exempt the stated persons and businesses from the requirements established by the Debt Adjuster statute.

In addition, whether regulation is terminated or repealed, this section should be expanded to place the burden of proving an exemption under this section on the person or business claiming the exemption.

Recommendation 10: The General Assembly should amend Section 12-20-103(1) to provide: "In an action under this article the burden of proving an exemption is on the individual claiming the exemption."

MAKE STATUTE GENDER NEUTRAL

The Debt Adjuster statute as written is not gender neutral. This discrepancy should be eliminated by amendment to comport with the General Assembly's goal to draft all statutes with gender neutral language.

Recommendation 11: The General Assembly should amend the entire Debt Adjuster Statute, Section 12-20-101 et. seq., C.R.S., to make it gender neutral.

III. Statutory Revisions upon Continuation of Regulation

In the event the General Assembly votes to continue the Division of Banking's regulatory authority over debt adjusters pursuant to Section 12-20-101, et. seq., C.R.S., the General Assembly should consider amending the statute in the following manner.

MONEY COLLECTED SHOULD GO IN CASH FUND

In 1992, the General Assembly passed Section 11-2-114.5, C.R.S., which states in pertinent part: "All fees and assessments collected by the banking board shall be transmitted to the state treasurer, who shall credit the same to the division of banking cash fund, which fund is hereby created in the state treasury." Notwithstanding this statute, Section 12-20-115 of the Debt Adjuster act states: "All moneys received by the banking board and the commissioner from fees, licenses, and examinations pursuant to this article shall be deposited by the banking board and the commissioner with the state treasurer and credited to the general fund of the state of Colorado."
The Debt Adjusters act is the only statute which the Division administers which does not require that fees received from regulation must be reverted to its cash fund. The adoption of this recommendation will harmonize Section 12-20-115 with Section 11-2-114.5.

Recommendation 12: The General Assembly should amend Section 12-20-115 to allow money received by the Division of Banking to be credited to their cash fund.

CLARIFY WHETHER BRANCH OFFICES OF LICENSEES REQUIRE SEPARATE LICENSURE

Section 12-20-103(1), C.R.S. provides that "[n]o individual, partnership, unincorporated association, or corporation shall engage in the business of debt management in this state . . . without a license therefor as provided for in this article; . . ." Section 12-20-102 defines "licensee" as "any individual, partnership, unincorporated association, or corporation licensed under this article. It further defines "offices" as "each location by street number, building number, city, and state where any person engages in debt management."

Section 12-20-103(2) C.R.S. does not require the applicant to apply for separate licenses for each debt adjusting office but, rather, requires an applicant to provide "information as to any branch office of the applicant." This provision is ambiguous and arguably infers that branch offices operated by a licensee need not be separately licensed or bonded. However, another section of the statute infers to the contrary by requiring applicants to pay licensing fees for each office:

At the time of making such application the applicant shall pay to the banking board an amount set by the banking board pursuant to section 11-2-103(11, C.R.S., as a license fee for each of his offices . . . . (emphasis supplied). (Section 12-20-103(5), C.R.S.)

This ambiguity should be clarified by a statutory amendment which establishes whether branch offices require separate debt adjuster licenses.

Recommendation 13: The General Assembly should amend Section 12-20-103, C.R.S. to provide that each branch office of a debt adjusting company must be separately licensed and comply with all provisions set forth in the Debt Adjuster statute.

APPENDIX A

DEBT ADJUSTER STATUTE

The "Debt Adjusters" statute, C.R.S. 12-20-101 et. seq. was enacted in 1965. It reads:

12-20-101. Legislative Declaration It is declared that the debt management business whereby the planning and management of the financial affairs of a person in debt is assumed by another individual for a fee effects the public interest, and the preservation of the safety and welfare of the public from unconscionable dealing requires regulation of such contracts and of the disposition of funds obtained as a result thereof.

12-20-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Banking Board" means the banking board created in section 11-2-202, C.R.S.

(1.5) "Commissioner" means the state bank commissioner appointed and serving pursuant to section 11-2-101(2), C.R.S.

(2) "Creditor" means a person for whose benefit moneys are being collected and distributed by licensees.

(3) "Debt management" means the planning an management of the financial affairs of a debtor for a fee and the receiving therefrom of money or evidences thereof for the purpose of distributing the same to his creditors in payment or partial payment of his obligations.

(4) "Debtor" means a person, fifty percent or more of whose income is in the form of wages or salaries.

(5) "Licensee means any individual, partnership, unincorporated association, or corporation licensed under this article.

(6) "Office" means each location by street number, building number, city, and state where any person engages in debt management.

12-30-102.5. Applicability of powers of the banking board and bank commissioner to debt adjusters. The powers, duties, and functions of the banking board and the commissioner contained in article 2 of title 11, C.R.S., and the declaration of policy contained in section 11-1-101.5, C.R.S. shall apply to the provisions of this article.

12-20-103. Licensing of debt management companies. (1) No individual, partnership, unincorporated association, or corporation shall engage in the business of debt management in this state, as defined in section 12-20-102, without a license therefor as provided for in this article; except that the following persons are not required to be licensed when engaged in the regular course of their respective businesses and professions:

(a) Attorneys at law;

(b) Banks and similar fiduciaries, as duly authorized and admitted to transact business in this state and performing credit and financial adjusting in the regular course of their principal business, or while performing an escrow function;

(c) Title insurers and abstract companies while performing an escrow function;

(d) Employees of licensees under this article;

(e) Judicial officers or others acting under court orders;

(f) Nonprofit religious, fraternal, or cooperative organizations offering gratuitous debt management service.

(2) The application for such license shall be in writing, under oath, and in the form prescribed by the banking board. The application shall contain the name of the applicant; date of incorporation, if incorporated; the address where the business is to be conducted; and similar information as to any branch office of the applicant; the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and such other pertinent information as the banking board may require. If the applicant is a partnership, a copy of the certificate of assumed name or articles of partnership shall be filed with the application. If the applicant is a corporation, a copy of the articles of incorporation shall be filed with the application.

(3) Each application shall be accompanied by such evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., a surety bond running to the people of the state of Colorado, insurance or other evidence of financial responsibility as the banking board by ruled determines to be necessary and appropriate for the protection of debtors. The amount of the surety bond or the surety bond alternative meeting the requirements of section 11-35-101, C.R.S., shall not exceed twenty-five thousand dollars. The applicant shall attest to faithfully account for all moneys collected upon accounts entrusted to and its employees and agents. No individual, partnership, unincorporated association, or corporation shall engage in the business of debt management until it has complied with this subsection (3) and the rules of the banking board.

(4) Each applicant shall furnish with his application a copy of the contract he proposes to use between himself and the debtor, which shall contain a schedule of fees to be charged the debtor for his services, which shall not exceed ten percent of the total debts to be adjusted, and shall be subject to the approval of the banking board.

(5) At the time of making such application the applicant shall pay to the banking board an amount set by the banking board pursuant to section 11-2-103(11), C.R.S., as a license fee for each of his offices and an investigation fee in an amount set by the banking board pursuant to 11-2-103(11), C.R.S. A separate application shall be made for each office maintained by the applicant.

12-20-104. Investigation of application - license requirements - denial. (1) Upon the filing of such application and the payment of such fees, the banking board shall fix a date and a time for a hearing upon such application and shall make an investigation of the facts concerning the application and the requirements provided for in subsection (3) of this section.

(2) The banking board shall grant or deny each application for a license within thirty days from the filing thereof with the required fee, unless the period is extended by written agreement between the applicant and the banking board.

(3) If the banking board finds that the experience, financial responsibility, character, and general fitness of the applicant is such to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly, and efficiently within the purposes of this article and that the applicant, or if the applicant is an unincorporated association or partnership then the individuals involved, or if the applicant is a corporation then the officers and directors thereof have not been convicted of a felony or a misdemeanor involving moral turpitude or have not had a record of having defaulted in payment of money collected for others, the banking board shall thereupon enter an order granting such application and forthwith issue and deliver a license to the applicant. The banking board may require as part of the application a credit report and other information.

(4) If the banking board does not so find, it shall enter an order denying such application and forthwith notify the applicant of the denial returning the license fee. Within fifteen days after the entry of such an order, the banking board shall prepare written findings and shall forthwith deliver a copy thereof to the applicant.

12-20-105. License expiration. The license issued under this article shall expire on December thirty-first next following its issuance unless sooner surrendered, revoked, or suspended, but may be renewed as provided in section 12-20-106.

12-20-106. License renewal. Each licensee, on or before December thirty-first, may make application to the banking board for renewal of such licensee's license. The application shall be on the form prescribed by the banking board and shall be accompanied by a fee in an amount set by the banking board pursuant to section 11-2-103 (11), C.R.S., together with evidence of financial responsibility as in the case of an original application, except that the original application shall be accompanied by an additional fee in an amount set by the banking board pursuant to section 11-2-103 (11), C.R.S. A separate application shall be made for each office maintained by the applicant.

12-20-107. Fee of the licensee The fee of the licensee shall be agreed upon in advance and stated in the contract, and provision for settlement in case of cancellation or prepayment shall be clearly stated therein. The fee of the licensee shall not exceed ten percent of the total debts to be adjusted. The fee of the licensee shall be prorated monthly over the life of the contract. In addition to the prorated amount, the licensee shall be allowed to deduct from the first month's payment a reasonable amount for an application fee, said amount not to exceed twenty-five dollars. In the event of total payment of the contract before the term of the contract has expired, the licensee is entitled to an amount equal to twenty-five percent of the remaining fee, or any lesser amount as may be agreed upon. In the event of cancellation of the contract by the debtor, the licensee is entitled to a cancellation fee not to exceed twenty-five dollars. The licensee shall not be entitled to any fee under this article until eighty percent of the creditors as listed in the contract required by section 12-20-108 (1) have agreed in writing to a schedule of payments as required by section 12-20-108 (6).

12-20-108. Duties of licensee. (1) Each licensee who makes a written contract between himself and a debtor shall immediately furnish the debtor with a true copy of the contract. The contract shall set forth the complete list of the creditors holding such obligations, the total charges agreed upon for the services of the licensee, and the beginning and expiration date of the contract. No contract shall extend for a period longer that twenty-four months.

(2) Each licensee shall maintain a separate bank account for the benefit of debtors in which all payments received from the debtor for the benefit of creditors shall be deposited and in which all payments shall remain until a remittance is made to either the debtor or the creditor. Every licensee shall keep, and use in his business, books, accounts, and records which will enable the commissioner to determine whether such licensee is complying with the provisions of this article and with the rules and regulations of the banking board. Every licensee shall preserve such books, accounts, and records for at least seven years after making the final entry on any transaction recorded therein.

(3) Each licensee shall keep complete and adequate records during the term of the contract and for a period of six years from the date of cancellation or completion of the contract with each debtor, which records shall contain complete information regarding the contract, extensions thereof, payments, disbursements, and charges and shall be open to inspection by the commissioner and his duly appointed agents during normal business hours.

(4) Each licensee shall make remittances to creditors within one month after receipt of any funds, or such shorter period as may be provided under the schedule of repayment pursuant to section 12-20-107, less fees and costs, unless the reasonable payment of one or more of the debtor's obligations requires that such funds be held for a longer period so as to accumulate a sum certain.

(5) Each licensee shall, upon request, furnish the debtor a written statement of his account each ninety days, or a verbal accounting at any time the debtor may request it during normal business hours.

(6) No licensee shall accept an account unless a written and thorough budget analysis indicates that the debtor can adequately meet the requirements determined by the budget analysis.

(7) In the event a compromise of a debt is arranged by the licensee with any one or more creditors, the debtor shall have the full benefit of such compromise.

12-20-109. Duties and power of the commissioner. (1) The commissioner may examine, upon five days' notice given the licensee, the condition and affairs of said licensee. In connections with any examination, the commissioner may examine on oath, any licensee and any director, officer, employee, customer, creditor, or stockholder of a licensee concerning the affairs and business of the licensee. The commissioner shall ascertain whether the licensee transacts its business in the manner prescribed by law and the rules and regulations of the banking board issued thereunder. The licensee shall pay the cost of the examination as determined by the commissioner, which feel shall not exceed a sum per day of examination set by the banking board pursuant to section 11-2-103 (11), C.R.S. Failure to pay the examination fee within thirty days of receipt of demand from the commissioner shall automatically suspend the license until the fee is paid.

(2) In the investigation of alleged violations of this article, the board or the commissioner may compel the attendance of any person or the production of any books, accounts, records, and files used therein, and may examine under oath all persons in attendance pursuant thereto.

Section 11-2-103, C.R.S., (Banking Statute) gives the Commissioner and the Banking Board the same powers, duties and functions relative to debt adjusters as they may exercise relative to banks. Among the powers are:

1. The power to regulate its own procedure and practice;

2. The power to investigate and license applicants;

3. The power to implement by regulation any provision of the code.;

4. The power to examine the books and records of debt adjusters; and

5. The power of enforcement, i.e., to order any person to cease violating a provision of the code or a lawful regulation issued thereunder.

12-20-110. Unlawful acts by licensee. (1) It is unlawful and a violation of this article for the holder of any license issued under the terms and provisions of this article:

(a) To purchase from a creditor any obligation of a debtor;

(b) To operate as a collection agent and as a licensee as to the same debtor's account;

(c) To execute any contract or agreement to be signed by the debtor unless the contract or agreement is fully and completely filled in and finished;

(d) To receive or charge any fee in the form of a promissory note or other promise to pay or to receive or accept any mortgage or other security for any fee, both as to real and personal property;

(e) To pay any bonus or other consideration to any individual, partnership, unincorporated association, or corporation for the referral of a debtor to his business, or to accept or receive any bonus, commission, or other consideration for referring any debtor to any individual, partnership, unincorporated association or corporation for any reason;

(f) To advertise his services, display, distribute, broadcast, or televise or permit to be displayed, distributed, broadcast, or televised his services in any manner inconsistent with law;

(g) To include within the scope of such licensee's business the payment of interest on or principal of a debt secured by a mortgage or other security interest on real property owned by a debtor unless the mortgagee or secured party has agreed to a schedule of payments pursuant to sections 12-20-107.

(h) To obtain any mortgage or other security interest on real property owned by a debtor.

12-20-111. Denial, revocation, or suspension of a license. (1) The banking board may deny, revoke, or suspend any license issued or applied for under this article for any of the following causes:

(a) For conviction of a felony or of a misdemeanor involving moral turpitude. In considering the conviction of a crime, the banking board shall be governed by the provisions of section 24-5-101, C.R.S.

(b) For violating any of the provisions of this article;

(c) For fraud or deceit in procuring the issuance of a license or renewal under this article;

(d) For indulging in a continuous course of unfair conduct;

(e) For insolvency, receivership, or assigning for the benefit of creditors by any licensee or applicant for a license under this article.

(2) The denial, revocation, or suspension shall only be made upon specific charges in writing, under oath, filed with the banking board or by the banking board, whereupon a hearing shall be had as to the reasons for any denial, revocation, or suspension, and a certified copy of the charges shall be served on the licensee or applicant for license not less than ten days prior to the hearing.

(3) No license shall be transferable or assignable.

12-20-112. Violation. (1) It is unlawful for any individual, partnership, unincorporated association, or corporation to engage in the business of debt management without first obtaining a license as required by this article. Any individual, partnership, unincorporated association, corporation, or any other group of individuals, however organized, or any owner, partner, member, director, employee, agent, or representative thereof who willfully or knowingly engages in the business of debt management without the license required by this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars for each violation, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

(2) Any licensee who violates any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars for the first offense. Upon conviction of each subsequent offense, there may be assessed a fine of not more than one thousand dollars, or imprisonment in the county jail for a period of not more than one year, or both such fine and imprisonment.

12-20-113. Limitation of actions. All actions in any of the courts in this state pursuant to this article shall be commenced within the time period prescribed in section 13-80-103, C.R.S.

12-20-114. Commissioner as agent for service of process. No licensee shall transact business until he has first appointed in writing the commissioner as agent of the licensee for service of process in this state. Service upon the commissioner, or, in the commissioner's absence, the deputy commissioner, is of the same legal force and validity as if served upon any licensee under this article.

(2) Whenever lawful process against any licensee is served upon the banking board or the commissioner, two copies shall be furnished, and the commissioner shall forthwith forward a copy of the process served, by registered mail, postpaid and directed to the licensee. For each service of process the sum of two dollars shall be collected which shall be paid by the plaintiff at the time of such service, the same to be recovered by him as part of the taxable costs if he prevails in the suit.

APPENDIX B

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 of the Department of Regulatory Agencies 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 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;

(IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.

APPENDIX B

CALIFORNIA STATUTE

[1] Nevada's bonding requirement is adjusted semiannually according to the licensee's monthly balance in their trust account. The scale below reflects the amount the Commissioner of Financial Services requires.

Less than $50,000:	$10,000 bond
$50,000 - $100,000:	$25,000 bond
$100,000 - $150,000:	$30,000 bond
$150,000 - $200,000:	$40,000 bond
$200,000 or more:	$50,000 bond

Like Colorado, Nevada also has substitutions for the bond. These include obligations of a bank, savings and loan, thrift company or credit union in the state; and bills, bonds, debentures or other obligations of the United States, guaranteed by the United States.