

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

COLORADO COLLECTION AGENCY BOARD

2002 SUNSET REVIEW



STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
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Bill Owens
Governor

October 15, 2002

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

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Colorado Collection Agency Board. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2003 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

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

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

The report discusses the question of whether there is a need for the regulation provided under Article 14 of Title 12, C.R.S. The report also discusses the effectiveness of the Collection Agency Board and staff of the Attorney General's Office in carrying out the intent of the statutes, and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

A handwritten signature in cursive script that reads "M. Michael Cooke".

M. Michael Cooke
Executive Director

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Background

The Sunset Process

The regulatory functions of the Colorado Collection Agency Board (Board), in accordance with Article 14 of Title 12 of the Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2003, unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies (DORA) to conduct an analysis and evaluation of the Board pursuant to section 24-34-104(9)(b), C.R.S.

The purpose of this review is to determine whether the Board should be continued for the protection of the public and to evaluate the performance of the Board and staff of the Attorney General's Office (AGO). During this review, the AGO must demonstrate that there is still a need for the Board and that the regulation is the least restrictive regulation consistent with the public interest. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly. Statutory criteria used in sunset reviews may be found in Appendix A on page 35.

Methodology

As part of this review, DORA staff conducted a literature review, attended Board meetings and interviewed Board members, interviewed AGO staff and representatives of collection agencies, reviewed Board records and minutes including complaint and disciplinary actions, interviewed officials with state and national professional associations, reviewed Colorado statutes and Board rules, and reviewed the laws of other states.

Profile of the Profession

The Board participates in the regulation of an industry, rather than a profession, *per se*. A collection agency is a third party debt collector, hired by a creditor (the collection agency's client, which can be a large corporation, a small business or anything in between) to secure payment of a debt (sometimes referred to as an "account") by a debtor (a consumer). Although payment arrangements may vary, the client generally pays the collection agency a percentage of the debt upon payment/collection of the debt by the debtor.

A collection agency may employ one or several individuals, who operate in various capacities. The collections manager runs the collection agency and is familiar with the myriad provisions of the Colorado and federal Fair Debt Collection Practices Acts. A solicitor meets with clients and potential clients, to arrange for the client to hire the collection agency to collect an account or group of accounts. A debt collector is the individual who makes contact with the debtor and facilitates the attempts to collect the debt.

The manner in which the collection agency collects the debt from the debtor may be extreme. Typically, a client hires a collection agency to collect a debt only after it has been unable to secure payment from the debtor on its own. Thus, by the time a collection agency becomes involved, the debtor has already demonstrated a reluctance to pay the debt, for whatever reason.

In cases where the debtor acknowledges the validity of the debt but is unable or unwilling to pay it in full, the collection agency may arrange a payment plan or may arrange for the debtor to pay a percentage of the debt in exchange for forgiving the balance. In cases where the debtor disputes the debt, the collection agency may work with the client and the debtor to determine the validity of the debt.

If the debt is valid and the debtor still refuses to pay the debt, the collection agency may employ a variety of tools to compel payment. In some cases, simply threatening to use a particular tool will compel the debtor to pay. A collection agency may report the incident to the credit bureaus, thus damaging the debtor's credit record and making it more difficult to obtain credit in the future, or it may initiate a legal action in court to compel payment.

History of Regulation

The Colorado Fair Debt Collection Practices Act (CFDCPA) can be found at Article 14 of Title 12, C.R.S. The CFDCPA is the state version of the federal Fair Debt Collection Practices Act. The goal of both acts is to protect the public from harassment by third party debt collectors.

The Board was originally established in 1937, in the Office of the Secretary of State. The Board was subsequently moved to DORA in conjunction with the Administrative Reorganization Act of 1968. Following the recommendations of a 1977 report from the Colorado State Auditor's Office, the General Assembly moved the Board to the AGO by a Type 2 transfer.

Because this transfer placed the Board under the direct supervision and control of the Board's administrator (Administrator), the transfer had the practical effect of vesting the Board's statutory authority, powers, duties and functions in the Administrator. The Administrator was defined as the administrator of the Uniform Consumer Credit Code (UCCC), also administered by the AGO. The administrator of the UCCC, and thus the Administrator, is an Assistant Attorney General. Following the Type 2 transfer, the Administrator delegated a great deal of authority back to the Board.

During the 1990 legislative session, the General Assembly amended the CFDCPA to authorize the Administrator to develop and administer examinations and expressly vested all licensing authority in the Administrator. Since then, the Board has served as an advisory body to the Administrator and has primarily made determinations regarding bond distributions based on claims by clients of collection agencies.

A number of contentious issues arose during the 1999 sunset review of the CFDCPA, including DORA's recommendation to discontinue the Board because of its limited effect on regulation. In the 2000 legislative session, the General Assembly re-enacted the CFDCPA, with several DORA-recommended modifications, and postponed the issue of whether to discontinue the Board itself until 2003.

Legal Framework

The Colorado Fair Debt Collection Practices Act (CFDCPA) is nearly identical to the federal Fair Debt Collection Practices Act on substantive issues regarding the collection of debts. The CFDCPA contains additional provisions that create the Colorado Collection Agency Board (Board) and that direct the Attorney General's Office (AGO) to regulate collection agencies.

Because the substantive consumer protection provisions of both acts are beyond the scope of this report, a comparison of such provisions can be found in the table in Appendix B on page 36, for reference. While the acts are very similar, the CFDCPA provides a few additional consumer protections. For example, the CFDCPA:

- Requires a collection agency to identify itself as such within the first 60 seconds of a telephone call.
- Requires a collection agency's initial communication with a debtor to also inform the debtor of his/her rights under the CFDCPA.
- Allows the debtor to direct the collection agency to cease all contact, for any or no reason.
- Prohibits a collection agency from communicating with a consumer-reporting agency earlier than 30 days after sending the initial notice to the debtor.
- Requires a collection agency's initial written communication with the debtor to contain the name and address of the Board.

Pursuant to section 12-14-114, Colorado Revised Statutes (C.R.S.), administrative enforcement of the CFDCPA is vested in the Board. The five members of the Board are appointed by the Governor to three-year terms, and no member may serve more than two consecutive terms. §12-14-116(1), C.R.S. Three of the Board members must have been engaged in the collection business in Colorado and two of the members represent the general public. §12-14-116(2), C.R.S. Board members receive a \$50-per diem and reimbursement of actual expenses for attending Board meetings. §12-14-116(3), C.R.S.

The Board must meet at least once per year so that its members can elect its chairperson, vice-chairperson and secretary. §12-14-116(4), C.R.S. Beyond this annual meeting, the Board is only required to meet “regularly” as the business of the Board may necessitate. §12-14-116(5), C.R.S.

However, the Board is under the direct supervision and control of the Board’s administrator (Administrator), who may exercise any of the powers granted to the Board. §12-14-117(1), C.R.S. The Administrator of the Board is also the administrator of the Uniform Consumer Credit Code. §12-14-103(1), C.R.S.

The Administrator is authorized to develop any examination required for the administration of the CFDCPA, and to establish any fees associated with, and the passing score for, such examination. Any such examination must be offered at least twice per year. §12-14-117(2), C.R.S. Additionally, the Administrator is authorized to approve or deny any license application. §12-14-117(3), C.R.S.

Any person acting as a collection agency must obtain and maintain a valid license issued by the Administrator. §§12-14-115(1)(a), 12-14-118, C.R.S. It is unlawful for a collection agency to operate under any name other than that under which it is licensed. §12-14-115(1)(b), C.R.S.

To obtain a license, the collection agency must:

- Be owned by, or employ as a collections manager or executive officer, at least one person who has held a position of responsibility in an established collection agency for at least two years, or other, similar experience as determined by the Board. §12-14-119(1)(a), C.R.S.
- Employ a collections manager who has passed the examination administered by the Administrator and who shall be responsible for the actions of the individual debt collectors in the collection agency’s office. §12-14-119(1)(b), C.R.S.
- File a bond in the amount of \$12,000, plus \$2,000 for each \$10,000 remitted or owed to all clients during the previous year, but not to exceed \$20,000. §§12-14-119(1)(c), 12-14-124(1), C.R.S.

In addition, the collection agency must provide to the Administrator:

- The location, ownership and previous history of the business and name, address, age and relevant debt-collection experience of each of the principals of the business. §12-14-119(2)(a), C.R.S.
- A duly verified financial statement for the previous year. §12-14-119(2)(b), C.R.S.
- If a corporation, the name(s) of the shareholder(s) and number of shares held by any shareholder owning 10 percent or more of the stock. §12-14-119(2)(c), C.R.S.
- for each principal and the collections manager, information relating to:
 - The conviction for any felony or the acceptance by a court of a plea of not guilty or *nolo contendere* to any felony. §12-14-119(2)(d)(I), C.R.S.
 - The denial, revocation or suspension of any license issued to any collection agency that employed or was owned by such persons. §12-14-119(2)(d)(II), C.R.S.
 - Any other disciplinary or adverse actions taken against any collection agency that employed or was owned by such persons. §12-14-119(2)(d)(III), C.R.S.
 - The suspension or termination of approval of any collections manager under the CFDCPA, or any other disciplinary or adverse action taken against the applicant, its principals or collections manager by the Board or any other jurisdiction. §12-14-119(2)(d)(IV), C.R.S.

A collection agency must obtain a license for its principal place of business, but if the collection agency maintains branch offices, it need only notify the Administrator of the location of each branch office within 30 days of the commencement of business at each branch office. §12-14-119(7), C.R.S.

Finally, a nonrefundable investigation fee, as determined by the Board, must accompany the license application. §12-14-119(3), C.R.S. Once the application is approved, the collection agency must pay a nonrefundable license fee, as determined by the Board. §12-14-119(4), C.R.S.

The Administrator may deny a license or license renewal if any of the grounds for disciplinary action exist; for failure to satisfy the application requirements; if the applicant attempted to obtain or obtained the license fraudulently or if the collection agency lacks a positive net worth. §12-14-120, C.R.S. Any such decision by the Administrator may be appealed pursuant to the State Administrative Procedure Act. § 12-14-120(3), C.R.S.

All collection agency licenses expire on July 1 of each year. §12-14-119(5), C.R.S. If an application is approved after January 1, the license fee for that year shall be one-half the license fee determined by the Board. §12-14-119(6), C.R.S.

An application for license renewal must be postmarked on or before June 15. A fee of \$25 per day is assessed for each day after June 15, and is added to the license renewal fee. If a licensed collection agency fails to submit an application or any part of the total fee before July 15, the license is deemed to have lapsed and the collection agency must apply for a new license if it intends to continue operating as such. §12-14-121, C.R.S.

If a licensed collection agency is a corporation and there is a change in ownership of 50 percent or more of the stock, or if there is a change in the ownership structure of the collection agency (i.e., changing to or from a sole proprietorship, partnership or corporation), then the collection agency must apply for a new license. §12-14-122(2)(c), C.R.S.

At all times, collection agencies are obligated to maintain: liquid assets, the value of which shall not be less than \$2,500 more than all sums due and owing to all of its clients; an office in this state that is open during normal business hours and staffed by at least one full-time employee; and a trust account for the benefit of its clients that contains funds sufficient to pay all sums due or owing to all of its clients. In addition, all funds collected for a client must be remitted to that client within 30 days after the last day of the month in which such funds were collected. A licensed

collection agency must produce, upon demand of the Board, a complete set of form notices or form letters used by the collection agency. A licensed collection agency is liable for the violations caused by its employees, including its collections manager, debt collectors and solicitors. §12-14-123(1), C.R.S.

The owner of a sole proprietorship, partner of a partnership, member of a limited liability company or officer or director of a corporation that is a licensed collection agency may not have been convicted of, pleaded guilty to or entered a plea of *nolo contendere* in any crime involving fraud, as delineated in Part 4 of Article 4 or in Parts 1, 2, 3, 5 or 7 of Article 5 of Title 18, C.R.S. §12-14-123(2)(b), C.R.S.

The Board may receive complaints regarding violation of the CFDCPA by any interested person, or it may launch investigations on its own motion. §§12-14-130(1) and (2), C.R.S. During the course of an investigation, the Board may examine the books, records and files of any licensee; require the licensee to provide a verified statement of assets and liabilities, including a detailed statement of amounts due claimants; issue subpoenas to witnesses and compel them to give testimony under oath. §§12-14-130(5), (6) and (7), C.R.S.

If the Board finds cause to believe that a violation of the CFDCPA or the rules and regulations promulgated thereunder has occurred and determines to take disciplinary action other than issuing a letter of admonition, it must notify the licensee and either hold a hearing itself, or refer the matter to the Division of Administrative Hearings for a hearing before an administrative law judge. §§12-14-130(8), (9) and (10)(b), C.R.S. The issuance of a letter of admonition does not require a hearing prior to such issuance. §12-14-130(10)(b), C.R.S.

Upon a finding that a collection agency or a collections manager has violated the CFDCPA or the rules and regulations promulgated thereunder, available sanctions include: issuing a letter of admonition; revocation or suspension of the license of such collection agency or the approval of such collections manager; placing such collection agency or collections manager on probation or imposing an administrative fine of up to \$1,000 per violation. §12-14-130(10)(a), C.R.S. Similarly, such a finding may also serve as the basis for denying a license. §12-14-130(10)(a), C.R.S.

Either the Board or the Administrator may issue a letter of admonition without a hearing, except that the collection agency or the collections manager receiving such letter may request a hearing before the Board or an administrative law judge to appeal the issuance of the letter. §12-14-130(10)(b), C.R.S.

If a collection agency's license, or a collections manager's approval, is revoked, that person may not be relicensed or reapproved until five years have passed. §12-14-130(10)(d), C.R.S.

Appeals of any final agency action are within the jurisdiction of the Colorado Court of Appeals. §12-14-130(11), C.R.S.

All funds collected pursuant to the CFDCPA are collected by the Administrator and transmitted to the State Treasurer for deposit in the Collection Agency Cash Fund. §12-14-136, C.R.S.

A licensed collection agency must notify the Administrator within 30 days if the collection agency changes its business name or, if a corporation, any change in ownership of 10 percent or more, but less than 50 percent occurred. §12-14-122(1)(a), C.R.S. The license of the collection agency expires on the 30th day after such occurrence if the collection agency fails to submit the proper notifications. §12-14-122(1)(b), C.R.S.

Upon the change of a collections manager, a licensed collection agency must notify the Administrator and appoint a new collections manager within 30 days. The Administrator has 15 days in which to approve or deny the qualifications of the new collections manager. §12-14-122(3), C.R.S.

Pursuant to sections 12-14-128(1) and 12-14-129, C.R.S., it is a Class 1 misdemeanor for any person to:

- Refuse or fail to comply with the CFDCPA.
- Aid or abet any person in operating or attempting to operate a collection agency in violation of the CFDCPA.
- Recover or attempt to recover treble damages for any bounced check without complying with section 13-21-109, C.R.S.

Pursuant to sections 12-14-128(2)-(4) and 12-14-129, C.R.S., it is also a Class 1 misdemeanor:

- For any licensed collection agency or any attorney representing a licensed collection agency to invoke a cognovit clause.
- For any licensed collection agency to render legal services, or to advertise that it will render legal services.
- For any licensed collection agency, collections manager, debt collector or solicitor to refuse or fail to comply with any rule or regulation promulgated under the CFDCPA, or to aid or abet any person in such refusal or failure.

The Board has promulgated rules and regulations concerning licensing and disciplinary matters, consumer protection, and creditor protections.

Although collections managers are not licensed, they are required to take and pass a written examination. A person may take the collections manager examination up to three times. If the person cannot pass in three attempts, the collection agency must designate someone else as its collections manager. Board Rule 1.01.

The Administrator will not issue a license to a collection agency until all required documents have been filed, all fees paid and the designated collections manager has passed the required examination. A collection agency with an incomplete application has 90 days to provide the required items from the time the Administrator notifies it of any deficiencies. The collection agency may not engage in collections activities until the license is issued. Board Rule 1.02.

If a licensed collection agency's debt collectors use aliases while engaging in collection activities, the collection agency must ensure that each debt collector uses only one alias and the collection agency must keep records for up to two years detailing the aliases and the true names of the debt collectors. Board Rule 1.03.

If the Administrator issues a letter of admonition, it must be mailed by first-class certified mail. The recipient may appeal the issuance of the letter within 40 days of the date of the letter. Board Rule 1.04.

Upon the revocation, expiration or surrender of a license, the collection agency must cease all collection activities and return all client accounts within 30 days, and file an affidavit with the Administrator attesting that this has been done. Additionally, any consumer payments received after the revocation, expiration or surrender of the license must be immediately forwarded, in full, to the client. Board Rule 1.05.

The Board has also promulgated rules that are intended to offer protection to debtors. Every collection notice must contain the collection agency's name, mailing address and telephone number, as well as the name and address of the Board. Board Rule 2.01.

Once the collection agency and the debtor enter into a payment agreement or schedule, the collection agency is prohibited from engaging in unnecessary, additional collection activities on that debt. Board Rule 2.02.

Unless authorized by statute or the instrument creating the debt, a collection agency is prohibited from collecting or attempting to collect from any debtor any charge for collection. Board Rule 2.03.

If a debtor overpays a debt to a collection agency by more than five dollars, the collection agency must refund the overpayment within 30 days of the end of the month in which the overpayment was made. Board Rule 2.04.

If a debtor pays cash to a collection agency, the collection agency must issue a receipt to the debtor within five business days of receiving the payment. Board Rule 2.05.

A collection agency must provide to a debtor, within ten days of any written request to do so, a written statement of the debtor's payments. The debtor is entitled to one free written statement during any 12-month period. Additional statements may be provided at a cost not to exceed \$5. However, once a debt has been paid or settled in full, and the debtor requests it, the collection agency must provide to the debtor, free of charge, a written statement or receipt within five business days. Board Rule 2.06.

Collection agencies must maintain accurate and contemporaneous records of all communications with a debtor for two years. Board Rule 2.07. Similarly, collection agencies must maintain records of payments for two years. Board Rule 3.03.

To better protect the privacy of the debtor, when obtaining or attempting to obtain information as to the location of a debtor, collection agencies are prohibited from using business cards that indicate that the collection agency is engaged in the business of collections. Board Rule 2.08.

A collection agency must post a payment to a debtor's account on the day the payment is received, unless payment is made by post-dated check. Board Rule 2.12. If a debtor verbally authorizes electronic payment to the collection agency, the collection agency must obtain the debtor's written permission prior to the date of the payment, record the verbal authorization or transfer the phone call to a manager or other debt collector to verify the amount, means and verbal authorization. If the debtor disputes the purported oral authorization, the collection agency must refund the full payment amount within five business days. Board Rule 2.14.

If a collection agency receives any payment, but is unable to identify the client account on whose behalf payment was made, the collection agency must return the entire payment within 30 days after the end of the month in which the payment was made. Board Rule 3.02.

To better protect creditors, the Board has promulgated several rules. While section 12-14-123(1)(c), C.R.S., requires all licensed collection agencies to maintain trust accounts, a collection agency that maintains one or more trust accounts in another state need not maintain such an account in Colorado. Similarly, if the collection agency does not receive payments from debtors (because payments are remitted directly to the creditor), the collection agency does not need to maintain a trust account. Board Rule 3.01.

The CFDCPA requires a licensed collection agency to post a bond to better protect its clients in the event the collection agency fails to remit payments to its clients. However, in lieu of a bond, the collection agency may maintain a savings account, deposit or certificate of deposit with a bank in Colorado so long as such account is assigned to the Board for a period ending two years after the revocation, expiration or surrender of the collection agency's license. Board Rule 3.04.

Program Description and Administration

The Colorado Collection Agency Board (Board) is a Type 2 board that serves in a largely advisory capacity to the Board's administrator (Administrator). The Administrator is an Assistant Attorney General who is also the administrator of the Uniform Consumer Credit Code (UCCC).

The Administrator and the Attorney General's Office (AGO) are not legally required to solicit the Board's input regarding licensing and disciplinary matters, rule-making proceedings or bond hearings. Because the Board may only make recommendations on such issues, the Administrator and the AGO may adopt the Board's recommendations, disregard such recommendations or avoid soliciting the Board's input altogether. There is substantial anecdotal evidence, both from the AGO and the regulated community, to suggest that the relationship between the AGO and the Board is strained.

Prior to 2002, the Board officially met on a quarterly basis. However, during fiscal year 00-01, the Board met five times (July, September, March, April and June) and held a rulemaking hearing in November 2000. For the most part, these meetings consisted of the Administrator updating Board members on disciplinary actions taken and reciting various other statistics, as well as discussions regarding possible rule changes.

Beginning in January 2002, the Board and the Administrator decided to schedule monthly meetings on a tentative basis to better facilitate a new process for issuing letters of admonition (this process is discussed in detail below). However, if there are no letters of admonition to discuss and if there is no business for the Board to address, these meetings are canceled. During fiscal year 01-02, the Board met five times (September, November, December, January and June).

Board meetings typically last two or three hours. Although rule-making hearings and bond hearings usually draw the largest audiences, an average meeting draws up to four members of the public. In addition, the Board's agendas include time for public comments and questions.

License/Registration

The Colorado Fair Debt Collection Practices Act (CFDCPA) does not excuse or otherwise protect debtors from paying lawfully owed debts and makes no attempt to address whether a debt is owed. Rather, the CFDCPA merely establishes the parameters within which collection agencies may attempt to collect payment of the debt. It accomplishes this by prohibiting collection agencies from engaging in certain types of unfair and/or abusive practices. Thus, the program has a three-fold mission: to protect debtors, to protect clients and to regulate collection agencies.

To protect debtors, the Board, through its statutes, rules and regulations, prohibits unfair, deceptive and abusive collection practices and disclosure of the debt by collection agencies to third parties (such as neighbors, employers, etc.), places limits on the hours during which collection agencies may contact debtors and ensures that the debtor may obtain verification of the debt and may refuse to pay the debt. In addition, the Board helps to preserve the rights of the debtor by requiring the collection agency to cease communicating with the consumer/debtor upon written request.

To protect clients, the Board, through its statutes, rules and regulations, requires collection agencies to: maintain trust accounts for client funds; provide clients with monthly accountings and remittances; and post surety bonds to partially compensate clients in the event of non-remittance.

The Board regulates collection agencies through licensing the collection agencies themselves and by requiring collections managers to pass a jurisprudence examination to ensure that they understand the intricacies of the CFDCPA.

The Board is cash funded from license and exam fees, and other revenue, including fines. With the exception of the license renewal late fee, which statute sets at \$25 per day, all fees are set administratively. Between fiscal years 96-97 and 99-00, the fee for a new license investigation was \$250. This fee was decreased in fiscal year 00-01 to \$150. Between fiscal years 96-97 and 00-01, the license fee for a full year was \$300, \$150 for half of a year and \$25 for the Collections Manager Examination fee. License renewal fees were \$200 from fiscal years 96-97 through 98-99, \$190 in fiscal year 99-00 and \$100 in fiscal year 00-01.

Until fiscal year 99-00, individual debt collectors and solicitors were required to register with the Board. The fee for this registration was six dollars per year. The registration requirement, however, was repealed by the General Assembly effective July 1, 2000.

A new license investigation consists of reviewing the application for completeness and accuracy, and verifying that the applicant's financial statements balance properly. In addition, AGO staff confirms the applicant's license status in other states, if applicable, and may also review public documents on file with the Department of Revenue and/or the Office of the Secretary of State. If the applicant, or any of its principals, were previously licensed, prior licensing records are also reviewed.

Since July 1, 1990, the AGO has employed 2.5 full-time equivalent (FTE) employees to staff the Board. These include 1 FTE Program Assistant, 1 FTE Compliance Investigator and 0.5 FTE Assistant Attorney General, who represents the Board in disciplinary and other legal matters. The position of the Board's Administrator, who is also the administrator of the UCCC, is entirely funded by the UCCC. The percentage of time the Administrator actually spends working on Board-related issues has steadily increased since fiscal year 97-98, from 18 percent to 33 percent. Thus, as a practical matter, approximately 2.8 FTE staff the Board.

In addition to the FTE the AGO permanently utilizes for the Board, the program also regularly employs a temporary employee or work-study student on either a part-time or full-time basis, depending on availability of funds. However, due to the state's fiscal rules, any such employee cannot work more than six months in any 12-month period. Thus, constant retraining is required.

The temporary employee is primarily used to answer incoming consumer complaint and inquiry calls, which number approximately 52 per day. The temporary employee provides these consumers with information on how to exercise their rights under the CFDCPA. The temporary employee thus allows the Board's permanent staff to perform its duties with minimal telephonic interruption.

Table 1 illustrates the Board's total expenditures over the last five fiscal years. Spending decreases in fiscal years 96-97 and 97-98 and again in fiscal year 99-00 were due to vacant employee positions.

**Table 1
Board Expenditures**

Fiscal Year	Total Board Expenditure	FTE
96-97	\$122,940	2.5
97-98	\$130,066	2.5
98-99	\$188,575	2.5
99-00	\$156,593	2.5
00-01	\$171,992	2.5

The AGO regulates approximately 350 collection agencies across the state. Table 2 illustrates the number of new and renewal licenses issued to collection agencies during the last five fiscal years.

**Table 2
Number of Licensees**

Fiscal Year	Number of Licenses			TOTAL
	New	Endorsement	Renewal	
96-97	41	N/A	224	265
97-98	74	N/A	233	307
98-99	74	N/A	243	317
99-00	61	N/A	253	314
00-01	85	N/A	261	346

Prior to fiscal year 99-00, the AGO also registered individual debt collectors and solicitors, which numbered 9,250 in fiscal year 96-97, 15,127 in fiscal year 97-98, and 19,281 in fiscal year 98-99.

On average, approximately 70 days pass from the time a collection agency license application is filed until the time the license is actually issued. However, the Administrator reports that this lengthy delay is primarily due to the fact that most, if not all, applications are incomplete when originally submitted. Each licensee's collections manager must take and pass the written competency evaluation, which is given monthly. New collection

agencies typically wait to obtain their surety bond until the collections manager passes this examination. Thus, license applications are often incomplete when originally submitted because either the collections manager has not yet passed the examination or the collection agency has not yet obtained its surety bond, or both. Once an application is complete, however, a license is typically issued within ten days.

Examination

The CFDCPA requires all licensed collection agencies to employ at least one collections manager who has taken and passed a written examination administered by the AGO.

The AGO administers the Collections Manager Examination, which is a jurisprudence examination, in its Denver offices on the second Friday of each month. Prior to March 2002, the examination was an open book examination. However, since that time, the AGO has made it a closed book examination. The 45-minute test consists of 30 multiple-choice questions.

Although test scores have tended to decline over the last few years, no one has failed the examination in the last five fiscal years. Table 3 illustrates the number of examinations given for each of the last five fiscal years.

**Table 3
Examination Information**

Fiscal Year	Number of Written Examinations Given	Pass / Fail	
96-97	67	67	0
97-98	83	83	0
98-99	82	82	0
99-00	60	60	0
00-01	69	69	0

When an examinee passes the examination, the AGO issues a letter attesting to that fact within ten days of the examination. This letter, in turn, can be used to demonstrate to a collection agency that the individual has passed the examination, and it can be used by a collection agency to demonstrate to the AGO that its collections manager has passed the required examination.

In addition, the AGO sends a second letter, under separate cover, to the examinee, informing the examinee of the questions that were answered incorrectly. So that the examinee may learn, this letter provides the relevant statutory citations and language, as well as brief explanations of the questions that were missed. Although this takes additional staff time and is not required by law or rule, the practice helps to ensure that collections managers possess a minimal understanding of the CFDCPA.

Complaints/Disciplinary Actions

The AGO receives, on average, approximately 700 formal complaints each year. Table 4 provides an illustration of the number and types of allegations contained in the complaints that the AGO has received over the course of the last five fiscal years. The total number of allegations exceeds the total number of complaints because some complaints assert more than a single allegation.

**Table 4
Complaint and Allegation Information**

Nature of Allegations	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01
Costs/Interest Added to Debt	22	33	7	32	26
Credit Reporting	143	136	113	111	88
Failure to Cease Communications	65	69	44	41	53
False or Misleading Representations	123	182	215	19	40
Harassment & Abuse	220	223	173	128	117
NSF Check Collection	75	53	40	20	19
Payment Arrangements	31	42	22	39	18
Third-Party Contact or Disclosure	17	11	8	24	29
Verification Problems	506	385	377	475	262
TOTAL ALLEGATIONS	1,202	1,134	999	889	652
TOTAL COMPLAINTS	863	667	618	752	593
Average Days to Resolve	69	67	53	80	69

Clearly, the most common complaints concern harassment and abuse, and debt verification problems. One of the original justifications for enacting the CFDCPA was to help prevent the harassment and abuse of debtors by collection agencies. The complaint figures in Table 4 demonstrate that this justification continues to be valid.

When a complaint is initially received by the AGO, the Program Assistant reviews it to ensure that AGO jurisdiction is proper. If the AGO has jurisdiction, a copy of the complaint is mailed to the collection agency, which is given 20 days in which to respond.

The Compliance Investigator reviews the complaint and the collection agency's response, and decides whether additional investigation is necessary to determine whether the law has been violated. If the Compliance Investigator concludes that the law has not been violated, that a violation will be difficult to prove or that there is no corroborating evidence of pattern, a letter is sent to the complainant advising the consumer of his/her rights, including the right to sue. Additionally, the closure letter explains why the AGO is unable to take disciplinary action. A copy of this letter is also sent to the collection agency.

However, if the Compliance Investigator determines that the law has been violated, the case file is forwarded to the Administrator, who may issue an advisory letter or a letter of admonition.

Unlike a letter of admonition, an advisory letter does not constitute formal discipline. Advisory letters are not officially kept confidential, because they are subject to the state's open records laws. However, if someone inquires of the AGO as to whether a particular collection agency has been disciplined and the only discipline-related document in the collection agency's file is an advisory letter, the AGO's staff has been instructed to state that the collection agency has not been disciplined.

If the circumstances warrant, the Administrator may negotiate a stipulation, usually accompanied by a fine, or file a Notice of Charges with the Division of Administrative Hearings to pursue license suspension, revocation or fines. This entire process, from the time the written complaint is received until final disposition, usually takes no more than 70 days.

Although the number of complaints received by the AGO is rather high, Table 5 clearly demonstrates that the number of disciplinary actions taken is not.

**Table 5
Disciplinary Information**

Type of Disciplinary Action Taken	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01
Revocations	1	0	0	0	0
Summary Suspensions	0	1	2	1	0
Suspensions	0	0	0	0	0
Probations	0	0	0	0	0
Surrender of License / Retirement	1	0	1	0	0
Letter of Admonition	23	50	47	43	69
License Denied after Hearing	1	0	1	1	0
Injunction / Stipulated Agreement (with or without fines)	1	7	8	8	8
Surety Bond Hearings	1	2	2	1	0
Cease & Desist Orders	14	15	10	17	53
Closures – No Action	821	592	548	681	463
TOTAL	42	75	70	71	130

The AGO prefers to refer to “dismissals” as “closures without action.” This is because both the CFDCPA and the federal Fair Debt Collection Practices Act (Federal Act) provide for private rights of actions for consumers against collection agencies for the same types of actions for which the AGO may proceed administratively. The AGO prefers to refer to its dismissals as “closure – no action” so as not to inhibit a debtor’s ability to take civil action against a collection agency.

Additionally, the term “dismissal” carries the connotation that the actions complained of did not constitute a violation, and this is not always the case. Due to limited resources, the AGO is not able to fully investigate and take disciplinary action on all of the complaints it receives. If an allegation or complaint is going to be particularly difficult to prove and the collection agency has not established a pattern of similar practice, the AGO may close the case without action so that it may dedicate its limited resources to cases that it can prove. An example of this would be where a debtor alleges that the debt collector used profanity during a telephone conversation, the debt collector denies such conduct and the conversation was not recorded. Rather than expend the resources necessary to determine which party is telling the truth, the AGO closes the complaint without action, which does not impact, as a practical matter, the debtor’s ability to sue the collection agency in court.

The AGO closes a considerable number of cases without taking action. This is due, in large part, to the fact that the vast majority of complaints it receives do not clearly establish violations of the CFDCPA. Rather, many complaints are filed by debtors who are angry that a particular collection agency did something that was lawful, but that the debtor dislikes, such as reporting debt information to a credit-reporting bureau.

At the other end of the spectrum, other than summary suspensions, which may be imposed only when there is imminent public harm and do not require hearings before imposition, the AGO did not suspend a single collection agency license during the review period. Similarly, it did not place any licensees on probation. The CFDCPA requires the AGO to hold a hearing before taking any disciplinary action other than issuing a letter of admonition. Since the AGO offers to settle cases against collection agencies before going to a hearing by offering a stipulation that typically includes a fine, the collection agencies affected accept the stipulation.

To a greater degree than other licensing programs, suspending a collection agency’s license effects not just the licensee, but all of its employees as well. If a collection agency’s license were suspended, it would not be able to legally engage in collection activities, requiring it to either furlough its employees during the period of suspension or pay them for not working. Thus, collection agencies facing a suspension are particularly agreeable to paying a fine and accepting a stipulation.

It is worth noting that an administrative law judge's Initial Decision subsequently overturned the single license that the Administrator denied in fiscal year 98-99.

In fiscal year 00-01, there was a sizeable increase in the number of cease and desist orders issued. During that fiscal year, the Compliance Investigator proactively sought out unlicensed collection agencies that specialize in judgment recovery services, rather than relying exclusively on filed complaints.

Though fines may be imposed for a variety of reasons, most fines, and those with the largest dollar figures, are typically imposed for unlicensed activity. In determining the amount of such a fine, the Administrator considers the number of accounts the unlicensed collection agency has obtained, the number of consumers contacted, the number of debts collected and the length of time the unlicensed collection agency has been operating as a collection agency. Table 6 more clearly illustrates the amounts of fines imposed during the last five fiscal years.

Table 6
Fine Information

Fiscal Year	Total Number of Fines	Total Amount of Fines	Range of Fines
96-97	1	\$250	\$250
97-98	9	\$23,250	\$250 - \$10,000
98-99	4	\$79,138	\$500 - \$22,000
99-00	10	\$25,000	\$500 - \$7,000
00-01	5	\$29,960	\$500 - \$15,000

As Table 5 illustrates, the number of letters of admonition issued has steadily increased over the last five fiscal years, while other forms of disciplinary action, except fines, have remained relatively constant.

Late in 2001, licensees complained to the AGO that letters of admonition were being issued for what they termed "technical" violations of the CFDCPA. For example, a debtor directs the licensee, in writing, to cease communication. However, the licensee, due to an alleged clerical error, fails to note the request in the debtor's computer file, so the licensee's employees continue to contact the debtor to pursue collection in violation of the CFDCPA.

The AGO views this scenario as a violation of the CFDCPA, but since it is not a major violation, it issues only a letter of admonition. Many licensees, however, view this practice as overzealous.

To help resolve the tension, in early 2002, the AGO and the Board developed a process whereby a licensee who is to receive a letter of admonition, now receives a draft of the letter and is invited to appear before the Board and the Administrator to discuss the matter before the final letter of admonition is issued. The Board then provides the Administrator with its recommendation on the matter (i.e., whether to issue the letter of admonition). If the letter of admonition is issued, the licensee retains the right to request a hearing before an ALJ.

Since this process was instituted, only one licensee has accepted the invitation to appear before the Board. In that case, the licensee admitted to the violation, but the Board recommended against issuing the letter of admonition. The Administrator disagreed and issued the letter of admonition.

The AGO and the Board developed an additional compromise to help smooth the friction between them. In addition to formal discipline, in 2001, the AGO began issuing advisory letters. Advisory letters are issued in those cases in which minor violations are found to have occurred, but there is no evidence of harm to the consumer. Since advisory letters are not formal discipline, they are not retained in a licensee's file. Between May 2001, and June 2002, the AGO issued approximately 15 advisory letters.

Analysis and Recommendations

Recommendation 1 - Continue the Collection Agency Board until 2008, and transfer it to the Department of Regulatory Agencies, Division of Registrations, effective January 1, 2004. The statutory revisions made in this Recommendation 1, should be made effective January 1, 2004.

Amend section 12-14-103(1), C.R.S., to read as follows:

~~“Administrator” means the administrator of the “Uniform Consumer Credit Code”, articles 1 to 9 of title 5, C.R.S., whose office is created in the department of law in section 5-6-103, C.R.S.~~

Enact section 12-14-103(7.5), C.R.S., to read as follows:

“DIRECTOR” MEANS THE DIRECTOR OF THE DIVISION OF REGISTRATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES

Amend section 12-14-116(1), C.R.S., to read as follows:

For the purpose of PROVIDING ADVICE TO THE DIRECTOR IN carrying out the provisions of this article, the governor shall appoint five members to the collection agency board . . .

Amend section 12-14-117, C.R.S., to read as follows:

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

Amend sections 12-14-119(5) and (6), C.R.S., to read as follows:

~~(5) Each license issued pursuant to this section shall expire on July 1 of each year; except that THE DIRECTOR SHALL ESTABLISH PROCEDURES FOR THE MAINTENANCE OF LICENSE LISTS AND THE ESTABLISHMENT OF INITIAL AND RENEWAL~~

LICENSE FEES AND SCHEDULES, WHICH FEES AND SCHEDULES SHALL BE ESTABLISHED SUBJECT TO SECTION 24-34-102(8), C.R.S. EVERY LICENSEE SHALL PAY THE DIRECTOR A LICENSE FEE TO BE DETERMINED AND COLLECTED PURSUANT TO SECTION 24-34-105, C.R.S., AND SHALL OBTAIN A LICENSE CERTIFICATE FOR THE CURRENT LICENSE PERIOD. NOTHING IN THIS SECTION NOTWITHSTANDING, a licensee, at any time, may voluntarily surrender the license to the administrator to be cancelled, but such surrender shall not affect the licensee's liability for violations of this article that occurred prior to the date of surrender.

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

Amend section 12-14-121, C.R.S., to read as follows:

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

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

~~(3) If a licensee fails to submit an application or any part of the total fee on or before July 15 of each year, the license shall automatically expire and an application for a new license must be submitted.~~

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

Amend the remainder of Article 14 of Title 12, C.R.S., to change all references to either the “administrator” or the “board,” to the “director,” except that section 12-14-116, C.R.S., should be amended only as indicated above so that the Board may be created.

Amend all other sections of the Colorado Revised Statutes to conform to the foregoing amendments and to effect the transfer of the Collection Agency Board from the Department of Law to the Department of Regulatory Agencies, Division of Registrations by means of a Type 2 transfer.

The first sunset criterion asks whether regulation by the agency is necessary to protect the public health, safety or welfare. Clearly, when discussing collection agencies, the issue of welfare is at the heart of any justification for regulation. What is equally clear is the fact that the Colorado Collection Agency Board (Board), as it currently exists, does little to protect the public welfare.

Importantly, the scope of this sunset review is confined to addressing the regulatory functions of the Board, not whether collection agencies should be regulated.

The laws creating the Board are unclear and confusing. Section 24-1-113(4)(a), C.R.S., which codified Senate Bill 77-410, places the Board in the Attorney General’s Office (AGO) by a Type 2 transfer. Pursuant to section 24-1-105(4), C.R.S., when an agency is transferred by a Type 2 transfer, all of that agency’s prescribed powers, duties and functions, including rule-making, regulation, licensing and the rendering of findings, orders and adjudications are transferred to the head of the department into which the agency has been transferred. In the case of the Board, all rule-making, licensing and disciplinary authority should be vested in the Attorney General.

However, the Board’s organic statute expressly vests the Board with the authority to investigate complaints and to deny, revoke or suspend the license of a collection agency that either the Board or an administrative law judge has found to have violated the Colorado Fair Debt Collection Practices Act (CFDCPA). §12-14-130, C.R.S. Additionally, section 12-14-114, C.R.S., states that the CFDCPA “shall be enforced by the board,” and vests in the Board the power to make reasonable rules and regulations.

These provisions are inconsistent with a Type 2 transfer in that they remove authority that was transferred to the Attorney General by virtue of the Type 2 transfer, and place those powers with the Board.

The CFDCPA vests in the Board's administrator (Administrator), the authority to develop and administer examinations and to issue licenses. §§12-14-117 and 12-14-118, C.R.S. More importantly, section 12-14-117(1), C.R.S., states, "Any provision of this article to the contrary notwithstanding, the board . . . is under the supervision and control of the administrator, who may exercise any of the powers granted to the board." These provisions are confusing because, by virtue of the Type 2 transfer, the AGO already possessed such powers. Finally, they are inconsistent with section 12-14-130, C.R.S., in that they expressly revoke from the Board those powers vested in the Board in that statutory section.

It is reasonable to conclude that some of the tensions between the Board and the AGO can be attributed to the confusing and conflicting nature of the CFDCPA. The Board argues that its statutory authority has been usurped by the AGO, and the AGO argues that it is acting within its statutory authority to assume those powers vested in the Board. Arguably, they are both correct.

All of this is not to say that the Board serves no function. At the Administrator's discretion, the Board offers input and advice on selected disciplinary matters, and is allowed to conduct bond hearings and rule-making hearings. The AGO is under no legal obligation to heed the advice or input of the Board, and frequently, it is argued, does not.

As Table 5 on page 20 illustrates, the Board has conducted six bond hearings during the five-year period under review. Bond hearings are held when a collection agency is unable to remit payments to its clients, who then seek to collect on the collection agency's bond. Additionally, the Board has conducted two rule-making hearings during the same five-year period.

DORA's 1999 sunset review of the Board recommended sunseting the Board at that time because it was not clear to DORA that the Board served any function that could not just as easily be performed by the Administrator alone. Many collection agencies disagreed. At the heart of the collection agencies'

argument was the claim that the Board appeared to serve no function because the Administrator and the AGO refused to give the Board any specific duties. Based on testimony and other public input, the General Assembly postponed the question of continuation of the Board until 2003.

Following the 2000 legislative session, the Administrator responded to the Board's concerns that too many letters of admonition were being issued. The Administrator agreed to issue "advisory letters" in those instances in which minor violations of the CFDCPA occurred, but in which there was no harm suffered by the consumer/debtor.

Furthermore, the Administrator and the Board agreed that prior to the issuance of any letters of admonition, recipients of such letters would receive a draft of the letter and be given the opportunity to appear before the Board and the Administrator to discuss the issuance of the letter before it is even issued. The Board would then advise the Administrator as to whether the letter should be issued.

This process was instituted in early 2002, and as of this writing, only one licensee took advantage of the pre-issuance appeal. In that case, the licensee admitted to the alleged violation, but the Board recommended that the licensee receive only an advisory letter, rather than a letter of admonition. The Administrator disagreed and issued the letter of admonition.

Despite these additional duties, however, the Board met only 12 times between July 1, 2000, and July 1, 2002, because it only meets when it has business to discuss. The fact that it has only met 12 times for two to three hours, during a 24-month period indicates that it does not have a significant amount of business to discuss. Indeed, anecdotal evidence suggests that even when it meets and provides advice and recommendations to the Administrator, such advice is rejected far more often than it is heeded.

Many members of the Board and the regulated community reported to DORA that they believe that the Administrator takes disciplinary action in too many instances over "technical" violations (i.e., violations that are minor and more procedural than substantive, and do not result in substantial harm to the consumer). They argue that this is evidence that the Administrator and the AGO are overzealous and overprotective of the consumer at the expense of the licensee.

As part of this sunset report, DORA reviewed the Board's complaint files that resulted in letters of admonition. In most cases, the original complaint was dismissed for lack of jurisdiction or because the complained-of conduct did not violate the CFDCPA. However, in processing the complaint, AGO staff identified other violations and filed complaints on its own motion. Most of these violations concerned paperwork errors (i.e., notices to consumers that did not include the proper disclaimers or notification of rights) or other, minor procedural errors. These are the issues that form the basis for the collection agency industry's and the Board's complaints of over zealousness.

While such allegations may seem meritorious at first, closer analysis reveals several weaknesses. First, the CFDCPA was enacted to protect consumers from being harassed and coerced by unscrupulous collection agencies. Thus, the CFDCPA is first and foremost, a consumer protection statute that delineates the limits to which a collection agency may legitimately go in pursuing the collection of a debt. Included in these limits is a requirement that the collection agency inform the consumer of his/her rights and, in several instances, the manner in which such notification must be given. Failure to operate within these limits constitutes not only a violation of the letter of the CFDCPA, but also of its spirit.

Furthermore, the regulation of collection agencies is different than the regulation of other licensed professionals. For example, the practice of medicine involves subjective analysis of symptoms to derive a diagnosis, which leads to the subjective selection of a treatment protocol. Thus, there is a great deal of subjectivity and professional judgment involved in the practice of medicine. The state does not clearly define what medical doctors must and must not do when diagnosing and treating patients – the element of subjectivity and judgment is pervasive.

The regulation of collection agencies is far different and focuses, in more objective terms, on the way in which a collection agency may interact with a debtor. For example, the CFDCPA clearly states that if a consumer directs the collection agency, in writing, to cease contact, the collection agency must cease contact. If the collection agency fails to properly record the reception of such a direction and continues to contact the consumer, a violation has occurred and the consumer has suffered exactly the type of harm the CFDCPA was enacted to eliminate. It is

irrelevant whether the violation was unintentional. Intent plays a role only in determining the level of sanction to be imposed, not whether the violation occurred, and in most of these types of incidents, the Administrator issues a letter of admonition, the least severe form of discipline available.

Additionally, as Table 5 on page 20 illustrates, the AGO is far more likely to close a complaint without taking any action than it is to take any form of disciplinary action. This is even done in instances in which a violation may have occurred, but in order to conserve resources, the AGO does not pursue the matter.

All of this leads to the inevitable conclusion that the Board, as it currently exists, is unworkable. Three solutions present themselves: sunset the Board and allow the program to be run by the Administrator alone; elevate the Board to a Type 1, policy-autonomous board or transfer the Board to another department.

When the Board was originally transferred to the AGO from the Department of Regulatory Agencies (DORA) by a Type 2 transfer, the General Assembly acknowledged, in 1977, that a policy autonomous Board was not necessary to adequately protect the health, safety or welfare of the public. Lending further credence to this position is the fact that the CFDCPA has been enforced, in every practical way, by the Administrator. Sunsetting the Board would simply amount to acknowledging the *status quo*.

As part of this sunset review, DORA examined the laws of other states to determine whether and how they regulate collection agencies. Twenty-eight states regulate collection agencies directly, and 18 do so without a board or advisory committee.

However, regulation without public input is contrary to Colorado's regulatory tradition. Responsible government requires public input, which can best be achieved by instituting formal mechanisms by which such input may be solicited and provided. Boards, commissions and advisory committees are the result of this need for public input. Eliminating the Board but continuing the regulation of collection agencies would contradict Colorado's regulatory philosophy and should be rejected.

A second alternative to the current regulatory scheme is to elevate the Board to a Type 1 board and grant it all the powers and duties that designation entails. Under a Type 1 setting, the Board would exercise its statutory authorities independently of the Administrator and the AGO. However, given the Board's position regarding what it considers to be "technical" violations, this could severely undermine the consumer protection aspects that the CFDCPA was enacted to enhance. Thus, this alternative, too, should be rejected.

The final alternative to the current regulatory scheme is to transfer the Board to another principal department. Of the 28 states that regulate collection agencies, only two, Colorado and West Virginia, do so through their attorneys' general office, whereas 13 regulate collection agencies through the agency charged with regulating banks and other depositories, and eight do so through the agency charged with regulating occupations and professions. The remaining states regulate collection agencies through a variety of agencies, including stand-alone agencies, secretaries of state and divisions of insurance.

This comparative information would seem to indicate that the ideal home for the Board would be the Department of Regulatory Agencies, Division of Banking. However, a large number of states regulate collection agencies through their professional and occupational licensing agency, such as the Department of Regulatory Agencies, Division of Registrations (Division).

The Division is the ideal administrative home for the Board because the Division is accustomed to regulating occupations and professions, which entails processing and issuing large numbers of licensure applications, fielding a high number of complaints and inquiries, and taking disciplinary action when appropriate. The Colorado Division of Banking, on the other hand, regulates banks and other depository institutions and lacks the infrastructure and expertise to regulate a profession, such as collection agencies, and all that it entails. The Division is the ideal home for the Board.

Furthermore, transferring the Board by a Type 2 transfer to another agency, such as the Division, would eliminate the tension between the members of the Board and the AGO.

The Division has a long history of making Type 2 boards and advisory committees work well. For example, the Outfitter Advisory Committee makes licensing, policy and disciplinary recommendations to the Director of the Division (Director), who, with rare exception, adopts the recommendations of that advisory committee.

When this recommendation is implemented, it should be effected by a Type 2 transfer and the Board's organic statute should clearly state that all regulatory functions, including rule-making, and disciplinary and licensing authority is vested in the Director, rather than the confusing way in which various powers and duties are currently allocated amongst the Board and the Administrator.

The Board's transfer to the Division should be given an effective date of January 1, 2004, so as to allow sufficient time for the smooth transfer of functions, duties and records from the AGO to the Division.

The CFDCPA currently requires collection agency licenses to be issued on July 1 each year. When the Board is transferred to the Division, this schedule should be changed to allow the Director to determine, by rule, the date on which collection agency licenses will expire. This will allow the Director to schedule collection agency license renewals in such a manner so as to maximize the efficiencies of the Division's new centralized licensing unit.

The Board and the CFDCPA should be reviewed again in 2008, so as to give the Division sufficient time to transfer regulatory functions and to establish a working regulatory program. Five years is deemed sufficient to accomplish these tasks and to also allow sufficient time to determine whether the program is more effective in the Division than in the AGO.

For the foregoing reasons, the General Assembly should continue the Colorado Collection Agency Board until 2008 and transfer it by a Type 2 transfer to the Division, effective January 1, 2004.

Recommendation 2 - Revise the composition of the Board to include representation of creditors, the clients of collection agencies. Amend section 12-14-116(2), C.R.S., to read as follows:

. . . Effective July 1, 2000 2003, board appointments shall ensure that three TWO members of the board have been engaged in the collection business within the state of Colorado, either as a collections manager, owner, or part owner of a licensed collection agency. Two members of the board shall be representatives of the general public and not engaged in the collection business. ONE MEMBER OF THE BOARD SHALL BE A REPRESENTATIVE OF A CREDITOR WHOSE PRINCIPAL PLACE OF BUSINESS IS LOCATED WITHIN THE STATE OF COLORADO.

If the Board is transferred to the Division, it will be necessary to counter the interests of the collection agency representatives with the interests of other parties, since the Administrator will no longer be in a position to counter the interests of collection agencies with the AGO's consumer protection interests.

To help rectify this, the composition of the Board should be revised to include two representatives of collection agencies, two public members to represent consumers and one representative of creditors. In this manner, all three population-segments that hold an interest in the regulation of collection agencies will have a voice on the Board and will be able to provide more balanced recommendations to the Director.

Additionally, creditors currently have no representation on the Board, yet the credit industry drives the need for collection agencies. Without creditors to grant credit, there would be no debt, and without debt upon which to default, there would be no need for collection agencies. It is only fair that the industry that creates the need for regulation has some representation on the board that regulates the industry it has created.

The composition of the Board should be amended to include representation by creditors and the representation afforded to collection agencies should be reduced so as to better ensure that the Board does not become overly protectionist of collection agencies and to provide the Director with more balanced advice.

Recommendation 3 – Specify that all fines collected pursuant to the Colorado Fair Debt Collection Practices Act be credited to the state General Fund, rather than the Collection Agency Cash Fund. Amend section 12-14-136(2), C.R.S., to read as follows:

(2) All fines collected pursuant to this article, including but not limited to fines collected pursuant to section 12-14-130, shall be collected by the ~~administrator~~ DIRECTOR and transmitted to the state treasurer, who shall credit the same to the ~~collection agency cash fund, created in subsection (1) of this section~~ STATE GENERAL FUND.

Ordinarily, when an agency is given fining authority, any funds generated by such fines are credited to the state General Fund. This is done so that the agency has no incentive to impose fines, other than taking legitimate disciplinary action.

In situations such as the one at issue here, where fines are credited to the agency's cash fund, there can be a perceived conflict of interest – an agency can increase revenues by imposing more fines. For cash funded agencies, this can allow them, and in some cases require them, to reduce license and other fees.

Although no such allegations have been levied against the AGO during the course of this sunset review, DORA makes this recommendation as a policy matter so as to prevent any such allegations from arising in the future, regardless of where the Board and the administration of the CFDCPA is housed.

Appendix A - Sunset Statutory Evaluation Criteria

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

Appendix B – Comparison of Colorado and Federal Fair Debt Collection Practices Acts

Issue	Colorado Fair Debt Collection Practices Act	Federal Fair Debt Collection Practices Act
Definition of “collection agency”	“Collection agency” is defined as any person who engages in a business the principal purpose of which is the collection of debts, or any person who regularly collects or attempts to collect, directly or indirectly, debts owed or due to be owed to another, takes assignment of debts for collection purposes or directly or indirectly solicits for collection, debts owed or due or asserted to be owed or due another. §12-14-103(2)(a), C.R.S.	“Debt collector” is defined as any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. The term includes any creditor who, in the process of collecting his own debts, uses any name other than his own, which would indicate that a third person is collecting or attempting to collect such debts. 15 U.S.C. 1692a(6).
Definition of “consumer”	Any natural person obligated or allegedly obligated to pay any debt. §12-14-103(4), C.R.S.	The federal definition is substantially similar to Colorado’s. 15 U.S.C. 1692a(3).
Definition of “creditor”	Any person who offers or extends credit creating a debt or to which a debt is owed, but such term does not include any person to the extent such person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another. §12-14-103(5), C.R.S.	The federal definition is substantially similar to Colorado’s. 15 U.S.C. 1692a(4).

Definition of “debt”	Any obligation or alleged obligation of a consumer to pay money arising out of a transaction, whether or not such obligation has been reduced to judgment. It does not include a debt for business, investment, commercial or agricultural purposes or a debt incurred by a business. §12-14-103(6), C.R.S.	Any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment. 15 U.S.C. 1692a(5).
Acquisition of Information	When seeking the location of the consumer, a debt collector may not identify himself as such to third parties. Similarly, a debt collector may not use postcards or any envelopes that indicate the debt collector is in the debt collection business. §12-14-104, C.R.S.	The federal provisions are substantially similar to Colorado’s. 15 U.S.C. 1692b.
Initial communication with the consumer	In its initial communication with the consumer, the collection agency must notify the consumer of his/her rights under the CFDCPA. §12-14-105(3)(c), C.R.S.	There are no similar provisions in the federal act.
Initial telephonic communication with the consumer	The collection agency must, within the first 60 seconds of the initial telephone call, identify itself as a collection agency. §12-14-106(1)(f), C.R.S.	The collection agency need only identify itself as such at some point during the telephone call. 15 U.S.C. 1692d(6).
Restrictions on communicating with the consumer	Unless the consumer previously agrees, a collection agency may not attempt to communicate with the consumer at any unusual time, place or manner which should be known to be inconvenient to the consumer. Unless otherwise directed, the collection agency should assume that the hours between 8:00 a.m. and 9:00 p.m. are convenient to the consumer. The collection agency may not communicate with the consumer if the collection agency knows that an attorney represents the consumer. §12-14-105(1), C.R.S.	The federal provisions are substantially similar to Colorado’s. 15 U.S.C. 1692c(a).
Cessation of communications with the consumer	The collection agency must cease all communications with the consumer if the consumer notifies the collection agency, in writing, that the consumer wishes the collection agency to cease contact by telephone, to cease all contact, or that the consumer refuses to pay the debt. The collection agency may then communicate with the consumer one last time to inform the consumer that the collection agency is ceasing contact and/or that the collection agency may invoke certain remedies. §12-14-105(3), C.R.S.	The federal provisions are substantially similar Colorado’s except that the collection agency is only obligated to cease communications if the consumer notifies the collection agency, in writing, that the consumer refuses to pay the debt. 15 U.S.C. 1692c(c).

Communications with third parties	Unless the communication is intended to solicit information regarding the consumer's location, the collection agency may not, without the permission of the consumer, communicate with any third parties regarding the debt. §12-14-105(2), C.R.S.	The federal provisions are substantially similar to Colorado's. 15 U.S.C. 1692c(b).
Harassment or Abuse	Collection agencies are prohibited from harassing, oppressing or abusing any person in connection with the collection of a debt, including the use or threat of use of violence or other criminal means; the use of obscene or profane language; publishing a list of consumers who allegedly refuse to pay debts (except to consumer reporting agencies); advertising for sale, any debt to coerce payment of the debt or causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse or harass the person called. §§12-14-106(1)(a)-(e), C.R.S.	The federal provisions are substantially similar to Colorado's. 15 U.S.C. 1692d(1)-(5).
False or misleading representations	A collection agency is prohibited from making any false, deceptive or misleading representations in connection with the collection of a debt. For example, a collection agency may not falsely represent the character, amount or legal status of any debt; falsely represent or imply that any individual is an attorney who is not an attorney; represent or imply that nonpayment of any debt will result in the arrest or imprisonment of any person; threaten to take any action unless such action is lawful and the collection agency intends to take such action; falsely representing or implying that the consumer committed any crime or other disgraceful conduct; communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed. §12-14-107, C.R.S.	The federal provisions are substantially similar to Colorado's. 15 U.S.C. 1692e.
Unfair practices	A collection agency is prohibited from utilizing unfair or unconscionable means to collect a debt. For example, a collection agency may not collect any amount, including any interest, fee, charge or expense incidental to the principal obligation unless such amount is expressly authorized by the instrument creating the debt or permitted by law; accepting, depositing or threatening to deposit a post-dated check prior to the date on the check without notice to the consumer; threatening any nonjudicial repossession of property if there is no intent to do so or the property is exempt, by law, from such repossession; communicating with a consumer via postcard; causing charges to be made to any person for communications by concealment of the true purpose of the communication, such as collect calls and telegram fees and using envelopes that indicate that the collection agency is a collection agency. In addition, the collection agency may not communicate credit information to a consumer-reporting agency earlier than 30 days after the initial notice to the consumer has been mailed. §12-14-108, C.R.S.	The federal provisions are substantially similar to Colorado's, except that the federal provisions do not require the debt collector to wait 30 days before reporting credit information to consumer reporting agencies. 15 U.S.C. 1692f.

Validation of debts	Within five days of the initial communication with the consumer, the collection agency must disclose the amount of the debt; the name of the creditor; that unless the consumer disputes the validity of the debt within 30 days of receipt of the notice, the debt will be presumed to be valid; that if the consumer disputes any portion of the debt, the collection agency will obtain verification of the debt; that collection agencies are licensed by the Colorado Collection Agency Board and the address of that board. In addition, if the consumer disputes the debt, the collection agency must cease all collection activities until it obtains verification of the debt and provides such verification to the consumer. §12-14-109, C.R.S.	The federal provisions are substantially similar to Colorado's, except that collection agencies are not required to notify the consumer of the address of the Colorado Collection Agency Board or that collection agencies are regulated by that board. 15 U.S.C. 1692g.
Civil liability	A collection agency that violates the provisions of the Colorado Fair Debt Collection Practices Act may be held civilly liable for any actual damages sustained by the consumer; additional damages as the court may allow, not to exceed \$1,000, provided the plaintiff in such case shows, by a preponderance of the evidence, that such violation was intentional or grossly negligent and did not result from a bona fide error. Any such case must be filed within one year from the date on which the violation occurred. §12-14-113, C.R.S.	The federal provisions are substantially similar to Colorado's. 15 U.S.C. 1692k.
Administrative Enforcement	The Colorado Collection Agency Board administratively enforces the Colorado Fair Debt Collection Practices Act. §12-14-114, C.R.S.	The Federal Trade Commission administratively enforces the federal Fair Debt Collection Practices Act. 15 U.S.C. 1692i.

Appendix C – Colorado Fair Debt Collections Practices Act

12-14-101 - Short title.

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

12-14-102 - Scope of article.

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

(a) Within this state;

(b) Outside this state and collects or attempts to collect from consumers who reside within this state for a creditor with a place of business located within this state;

(c) Outside this state and regularly collects or attempts to collect from consumers who reside within this state for a creditor with a place of business located outside this state; or

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

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

12-14-103 - Definitions.

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

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

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

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

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

(II) Person who:

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

(B) Takes assignment of debts for collection purposes;

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

(D) Collects debt for the department of personnel, but only for the purposes specified in paragraph (d) of this subsection (2);

(b) "Collection agency" does not include:

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

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

(III) Any officer or employee of the United States or any state to the extent that collecting or attempting to collect any debt is in the performance of such officer's or employee's official duties, except as otherwise provided in subsection (7) of this section;

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

(V) Any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors;

(VI) Repealed.

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

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

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

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

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

(VIII) Any person whose principal business is the making of loans or the servicing of debt not in default and who acts as a loan correspondent, or seller and servicer for the owner, or holder of a debt which is secured by a deed of trust on real property whether or not such debt is also secured by an interest in personal property.

(c) Notwithstanding the provisions of subparagraph (VII) of paragraph (b) of this subsection (2), "collection agency" includes any person who, in the process of collecting his or her own debts, uses another name which would indicate that a third person is collecting or attempting to collect such debts.

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

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

(I) (Deleted by amendment, L. 2000, p. 935, § 2, effective July 1, 2000.)

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

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

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

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

(4.5) (a) "Consumer reporting agency" means any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

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

(c) "Consumer reporting agency" shall include any persons defined in 15 U.S.C. sec. 1681a (f) or section 12-14.3-102 (4).

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

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

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

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

(8) (Deleted by amendment, L. 2000, p. 935, § 2, effective July 1, 2000.)

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

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

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

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

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

12-14-104 - Location information - acquisition.

(1) Any debt collector or collection agency communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall:

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

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

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

(d) Not communicate by postcard;

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

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

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

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

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

(b) If the debt collector or collection agency knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time, not less than thirty days, to a communication from the debt collector or collection agency or unless the attorney consents to direct communication with the consumer; or

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

(2) Except as provided in section 12-14-104, without the prior consent of the consumer given directly to the debt collector or collection agency or the express permission of a court of competent jurisdiction or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector or collection agency shall not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the collection agency.

(3) (a) If a consumer notifies a debt collector or collection agency in writing that:

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

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

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

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

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

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

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

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

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

(5) It shall be an affirmative defense to any action based upon failure of a debt collector or collection agency to comply with this section that the debt collector or collection agency believed, in good faith, that the debtor was other than a natural person.

12-14-106 - Harassment or abuse.

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

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

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

(c) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of 15 U.S.C. sec. 1681b (a) (3) and section 12-14.3-103 (1) (c);

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

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

(f) Except as provided in section 12-14-104, the placement of telephone calls without meaningful disclosure of the caller's identity within the first sixty seconds after the other party to the call is identified as the debtor.

12-14-107 - False or misleading representations.

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

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

(b) The false representation of:

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

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

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

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

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

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

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

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

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- (g) The false representation or implication that the consumer committed any crime;
 - (h) The false representation or implication that the consumer has engaged in any disgraceful conduct;
 - (i) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed;
 - (j) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any state or which creates a false or misleading impression as to its source, authorization, or approval;
 - (k) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;
 - (l) Except as otherwise provided for communications to acquire location information under section 12-14-104, the failure to disclose clearly, in the initial written communication made to collect a debt or obtain information about a consumer, that the debt collector or collection agency is attempting to collect a debt and that any information obtained will be used for that purpose;
 - (m) The false representation or implication that accounts have been turned over to innocent purchasers for value;
 - (n) The false representation or implication that documents are legal process;
 - (o) The use of any business, company, or organization name other than the true name of the collection agency's business, company, or organization;
 - (p) The false representation or implication that documents are not legal process forms or do not require action by the consumer;
 - (q) The false representation or implication that a debt collector or collection agency operates or is employed by a consumer reporting agency.

12-14-108 - Unfair practices.

- (1) A debt collector or collection agency shall not use unfair or unconscionable means to collect or attempt to collect any debt, including, but not limited to, the following conduct:
 - (a) The collection of any amount, including any interest, fee, charge, or expense incidental to the principal obligation, unless such amount is expressly authorized by the agreement creating the debt or permitted by law;
 - (b) The acceptance by a debt collector or collection agency from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's or collection agency's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit;
 - (c) The solicitation by a debt collector or collection agency of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;
 - (d) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument;
 - (e) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.
 - (f) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:
 - (I) There is no present right to possession of the property claimed as collateral through an enforceable security interest;
 - (II) There is no present intention to take possession of the property; or
 - (III) The property is exempt by law from such dispossession or disablement;

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- (g) Communicating with a consumer regarding a debt by postcard;
 - (h) Using any language or symbol, other than the debt collector's or collection agency's address, on any envelope when communicating with a consumer by use of the mails or by telegram; except that a debt collector or collection agency may use his business name if such name does not indicate that he is in the debt collection business;
 - (i) Failing to comply with the provisions of section 13-21-109, C.R.S., regarding the collection of checks, drafts, or orders not paid upon presentment;
 - (j) Communicating credit information to a consumer reporting agency earlier than thirty days after the initial notice to the consumer has been mailed, unless the consumer's last-known address is known to be invalid. This paragraph (j) shall not apply to checks, negotiable instruments, or credit card drafts.

12-14-109 - Validation of debts.

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

- (a) The amount of the debt;
- (b) The name of the creditor to whom the debt is owed;
- (c) That, unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector or collection agency;
- (d) That, if the consumer notifies the debt collector or collection agency in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector or collection agency will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector or collection agency;
- (e) That upon the consumer's written request within the thirty-day period, the debt collector or collection agency will provide the consumer with the name and address of the original creditor, if different from the current creditor;
- (f) That collection agencies are licensed by the collection agency board. The address of the board shall also be disclosed. If, however, the debt collector is a person employed by the department of personnel for the purpose of collecting debts due to the state on behalf of another state agency, the disclosure required under this paragraph (f) shall state that the activities of such debt collector are subject to sections 12-14-104 to 12-14-109, Colorado Revised Statutes, as contained in the "Colorado Fair Debt Collection Practices Act", that complaints may be filed with the executive director of the department of personnel, and that disciplinary actions will be subject to the rules and regulations of the state personnel system.
- (g) That consumers shall not send payments to the collection agency board.

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

thereof, until the debt collector or collection agency obtains verification of the debt or a copy of a judgment or the name and address of the original creditor and mails a copy of such verification or judgment or name and address of the original creditor to the consumer.

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

(4) It shall be an affirmative defense to any action based upon failure of a debt collector or collection agency to comply with this section that the debt collector or collection agency believed, in good faith, that the debtor was other than a natural person.

12-14-110 - Multiple debts.

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

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

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

12-14-112 - Deceptive forms.

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

(2) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector or collection agency under section 12-14-113 for failure to comply with this article.

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

12-14-113 - Civil liability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12-14-114 - Administrative enforcement.

Compliance with this article shall be enforced by the board. The board has power to make reasonable rules and regulations for the administration and enforcement of this article, including standards of conduct for licensees and registrants and collection notices and forms.

12-14-115 - License - registration - unlawful acts.

(1) It is unlawful for any person to:

(a) Conduct the business of a collection agency or advertise or solicit, either in print, by letter, in person, or otherwise, the right to make collection or obtain payment of any debt on behalf of another without having obtained a license under this article; or

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

(2) and (3) Repealed.

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

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

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

(1) For the purpose of carrying out the provisions of this article, the governor shall appoint five members to the collection agency board, which board is hereby created. The members of the board serving on July 1, 1985, shall continue to serve their appointed terms, and their successors shall be appointed for three-year terms. Upon the death, resignation, or removal of any member of the board, the governor shall appoint a member to fill the unexpired term. Any member of the board may be removed by the governor for misconduct, neglect of duty, or incompetence. No member may serve more than two consecutive terms.

(2) No person shall be appointed as a member of such board unless such person is a bona fide resident of the state of Colorado. Effective July 1, 2000, board appointments shall ensure that three members of the board have been engaged in the collection business within the state of Colorado, either as a collections manager, owner, or part owner of a licensed collection agency. Two members of the board shall be representatives of the general public and not engaged in the collection business.

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

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

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

12-14-117 - Powers and duties of the administrator.

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

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

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

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

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

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

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

(1) As requisites for licensure, the applicant for a collection agency license shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Each license issued pursuant to this section shall expire on July 1 of each year; except that a licensee, at any time, may voluntarily surrender the license to the administrator to be cancelled, but such surrender shall not affect the licensee's liability for violations of this article that occurred prior to the date of surrender.

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

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

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

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

(2) The administrator may deny any application for a license or its renewal if any grounds exist that would justify disciplinary action under section 12-14-130, for failure to meet the requirements of section 12-14-119, or if the applicant, the applicant's principles, or the applicant's collections manager have fraudulently obtained or attempted to obtain a license.

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

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

(5) Repealed.

(6) The administrator may deny any application for a license or its renewal if the collection agency has failed to perform the duties enumerated in section 12-14-123.

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

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

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

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

(3) If a licensee fails to submit an application or any part of the total fee on or before July 15 of each year, the license shall automatically expire and an application for a new license must be submitted.

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

12-14-122 - Collection agency license - notification of change and reapplication requirements.

(1) (a) Upon any of the following changes, the licensee shall notify the administrator in writing of such change within thirty days after its occurrence:

(I) Change of business name or address;

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

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

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

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

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

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

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

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

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

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

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

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

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

12-14-123 - Duties of collection agencies.

(1) A licensee shall:

(a) Maintain, at all times, liquid assets in the form of deposit accounts in the total sum of not less than two thousand five hundred dollars more than all sums due and owing to all of its clients;

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

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

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

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

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

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

(b) No collection agency shall be owned or operated by the following persons who have been convicted of or who have entered a plea of guilty or nolo contendere to any crime specified in part 4 of article 4 or in part 1, 2, 3, 5, or 7 of article 5 of title 18, C.R.S., or any similar crime under the jurisdiction of any federal court or court of another state:

(I) The owner of a sole proprietorship;

(II) A partner of a partnership;

(III) A member of a limited liability company; or

(IV) An officer or director of a corporation.

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

12-14-124 - Bond.

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

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

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

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

(5) If a client has filed a duly verified claim with the board, which has refused to make demand upon the licensee or surety, the client may bring suit against the licensee or surety on the bond for the recovery of money due from such licensee without assignment of such bond to the client. Nothing in this section shall preclude a client from making a demand on both the licensee and the surety.

(6) (a) Said bond shall include a condition that the licensee shall, upon written demand, turn over to the client any and all notes, valuable papers, or evidence of indebtedness which may have been deposited with said licensee by the client, but such licensee shall not be required to return any such papers, notes, or evidence of indebtedness on debts in process of collection, unless reimbursed by the client for the services performed on the debt so evidenced.

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

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

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

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

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

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

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

(1) Repealed.

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

12-14-128 - Unlawful acts.

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

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

(b) To aid or abet any person operating or attempting to operate in violation of this article, including but not limited to section 12-14-115; except that nothing in this article shall prevent any licensed collection agency from accepting, as forwarder, claims for collection from any collection agency or attorney whose place of business is outside this state;

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

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

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

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

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

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

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

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

12-14-129 - Criminal penalties.

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

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

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

(2) The board may, on its own motion, conduct an investigation of the conduct of any person concerning compliance with this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12-14-130.1 - Debt collectors for the department of personnel - complaint - disciplinary procedures.

(1) Any interested person may file a written complaint with the executive director of the department of personnel charging a debt collector in the employ of the department of personnel with a violation of:

(a) This article or a rule promulgated pursuant thereto;

(b) A lawful order of the state board of ethics; or

(c) The standards of conduct set forth in the code of conduct developed by the department of personnel for such debt collectors.

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

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

12-14-131 - Records.

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

12-14-132 - Jurisdiction of courts.

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

12-14-133 - Duty of district attorney.

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

12-14-134 - Remedies.

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

12-14-135 - Injunction - receiver.

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

12-14-136 - Disposition of fees and fines.

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

(2) All fines collected pursuant to this article, including but not limited to fines collected pursuant to section 12-14-130, shall be collected by the administrator and transmitted to the state treasurer, who shall credit the same to the collection agency cash fund, created in subsection (1) of this section.

12-14-137 - Termination of board.

The collection agency board shall be terminated July 1, 2003. Prior to such termination, the board shall be reviewed as provided in section 24-34-104, C.R.S.