COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

REGULATION OF DEBT MANAGEMENT COMPANIES IN COLORADO

DEBT MANAGEMENT ACT
1999 SUNSET REVIEW

October 15, 1999

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

Dear Members of the General Assembly:

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

> *The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...*
>
> *The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination . . ..*

The report discusses the question of whether there is a need for the regulation provided under Article 20 of Title 12, C.R.S. The report also discusses the effectiveness of the Division of Banking and staff in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

M. Michael Cooke
Executive Director

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Executive Summary

The Department of Regulatory Agencies (DORA) has concluded its 1999 Sunset Review of the licensing of debt management agencies by the Colorado Banking Board (Board) as required by §12-20-101, et seq. of the Colorado Revised Statutes (C.R.S.). Debt adjustment agencies provide a valuable service to consumers and the financial services industry. However, the exemptions to the licensing requirements allow the majority of agencies providing debt adjustment services to legally operate without regulation. This leads to a very small number of agencies falling under the jurisdiction of the licensing program. Because of the regulatory restrictions placed on licensees, they are at a competitive disadvantage with unregulated agencies operating in the state.

In evaluating the regulation of debt management agencies against the sunset evaluation criteria in §24-34-104 (9)(b), C.R.S., DORA found little benefit derived or public protection afforded by the continuation of the licensing of debt adjustment agencies. Therefore, the primary recommendation of this report is elimination of the licensing of debt adjustment agencies.

Should the General Assembly decide to continue regulation, the report makes four recommendations for statutory changes that will provide more flexibility for licensed companies while still protecting the public. A brief summary and discussion of the basis for the recommendation follow each recommendation listed under the Alternative Recommendation heading. These recommendations include statutory amendments to:

- Extend the maximum contract term for dissolution of debt;
- Extend the maximum period licensees may hold a client's funds prior to disbursement to creditors; and
- Expand the disciplinary options available to the Colorado Banking Board.

List of Recommendations

Background

Colorado began regulating debt adjusters in 1965. The regulation of debt adjusters has been under the authority of the Colorado Banking Board (Board) and the Colorado Banking Commissioner (Commissioner) since that time. The Board consists of eight members: four executive officers of state chartered banks, one executive officer of an industrial bank, an executive officer of a trust company, and two public members. The Board meets monthly, with emergency meetings as necessary. The Board normally deals with issues related to the issuance or renewal of bank charters, disciplinary hearings, and rule making concerns. Debt adjuster issues are rarely on the Board agenda.

From 1965 to 1991, there was only one debt adjuster licensed in the state. In 1992, the Board approved two additional licenses. There are currently five licensed debt adjustment entities in Colorado. The Debt Management Act (Act) contained in §12-20-101, et seq. C.R.S., had minor amendments in 1990 and again in 1994.

The program underwent a previous sunset review in 1993. At that time, the Department of Regulatory Agencies (DORA) questioned the need for the continuation of the program because of the lack of convincing evidence that the program was necessary to protect the public.

INDUSTRY OVERVIEW

Debt adjusters, or debt management companies, are also known by several other terms. However, the function of debt adjusters and debt management companies is to aid consumers in debt or credit management. Consumers who use the services of these companies are generally overextended on credit. These consumers may have undergone a financial setback such as a major medical emergency, underinsured catastrophe, or income reduction due to a job loss.

Any individual or business that manages the financial affairs of a debtor for a fee can be considered a debt adjuster subject to the licensing requirements of the Act. The Act contains specific exemptions for certain professions. Entities that do not charge fees are exempt, as are debt management companies located outside the State of Colorado that do not use Colorado based agents to solicit business or counsel consumers.

The majority of the revenues generated by debt management companies is in the form of a contribution made by the creditor called a “fair share” reduction. The Board has passed regulations to clarify gratuitous service. In essence, if an adjuster retains all or a portion of a fair share reduction of a client’s debt to a creditor, it does not constitute a fee. Adjusters must disclose fair share reductions to the client, and the amount of the fair share is subject to the 10-percent restriction on fees.

Debt adjusters provide services to two distinct groups, the debtors utilizing the service and the creditors of those debtors. Debt management companies perform an analysis of the expenses, debt, and income of the client debtor in order to develop a Debt Management Plan (DMP). The goal of a debt management plan is to provide relief to the debtor by negotiating directly with creditors on behalf of the delinquent debtor. Creditors agree to cease collection activities as long as debtors adhere to the provisions of a DMP approved by the debt management company. Creditors receive regular payments, which reduce collection expenses and losses by entering into an agreement with the debt management company.

The purpose of entering into a DMP is twofold for the debtor. First, there is relief from collection activities by the creditor. Second, by learning to manage money better and satisfy current creditors it is usually possible to reestablish eligibility for future consumer credit.

Creditors are not required by any law to participate in a debt management plan. However, many do so because of the potential to reduce losses resulting from the debtor filing for personal bankruptcy. If a debtor files for bankruptcy, the creditor may not receive any payments on the outstanding balance due. Further, creditors benefit by using the resources of the debt adjustment company to establish a payment schedule. Many creditors would rather take payments that produce a smaller profit or minimize a loss rather than charge an account off as uncollectable.

A debt management service consists of two basic components. The first component is a budgeting process which determines the actual income and expenses of the client. The second component is servicing of the debt, i.e., the actual payment or management of the client's financial obligations. Many companies also provide some debt counseling and financial management education as a part of the service.

Traditionally, debt management services have been provided by non-profit companies. The number of companies that provide debt management services on a for-profit basis is increasing. While, companies may charge a small fee to the consumer for the service, the majority of the revenues generated by both for-profit and non-profit debt management companies are from fair share contributions by the creditors.

Many creditors will contribute a "fair share" reduction of the client's debt (usually approximately 10 percent) if the client enrolls in an approved debt management plan. Debt management companies may retain that reduction as part of the client's fees, return the fair share to the client as an additional benefit of the service, or divide the creditor contribution between client and company. Whatever the scenario used, Colorado law requires that the terms must be included in the written agreement between the debt management company and the client.

According to the Colorado Division of Banking (Division), licensed debt management companies in Colorado served approximately 10,000 clients and remitted $43 million dollars to creditors during calendar year 1998. The largest licensed debt management company in Colorado reported over 6,200 clients during 1998. Of those clients, 1,578 (25 percent) graduated (an industry term for clients that complete their repayment plan as agreed), and fewer than 350 (less than six percent) filed for bankruptcy. Credit counseling advocates maintain that without their services, the bankruptcy percentage would be significantly higher.

The Division believes that a significant amount of credit counseling is being conducted by non-licensed entities. The Colorado Act provides numerous exemptions from the licensing requirement. For example, non-profit organizations that do not charge clients a fee are exempt from licensing. Estimates of unlicensed activity range up to 75 percent of the credit counseling activities in the state.

The increase of electronic commerce makes it very easy for debt management companies located outside of the state to obtain clients in Colorado without a physical presence. A cursory search on the Internet found over a dozen unlicensed debt management companies legally operating that could have Colorado clients. Since these companies are not located in Colorado or using Colorado based agents to solicit business, they are not subject to state regulation. An examination of the yellow pages covering the Denver Metropolitan area found 20 listings for credit counseling agencies, only two of which are licensed by the Board.

The National Foundation for Consumer Credit (NFCC) is an industry trade organization representing almost 200 debt management companies with over 1,400 offices nationally. To be eligible for membership in the organization, debt management companies must meet quality assurance standards and be accredited by the Council on Accreditation. All counselors must be certified and the company must provide annual audits to the NFCC.

In NCFF accredited organizations, debtors are counseled on budgeting and financial management techniques. Clients make regular payments to the debt management firm, which distributes the payments to creditors according to a schedule negotiated by the management company.

The NFCC estimates that there are 700 debt management companies nationally. Not all debt management companies provide comprehensive credit counseling and educational services as required by the NFCC standards. NFCC estimates that 50 percent of consumers who enter into a debt management arrangement with a NFCC member company graduate from the debt management program. Figures were not available for consumers using non-NFCC member companies.

Summary of Statute and Regulation

FEDERAL REGULATION

There is no specific federal oversight of debt adjusters or debt management companies. However, there is pending legislation to amend the federal bankruptcy laws (S.-625). This legislation, as drafted, would require personal bankruptcy applicants to obtain approved credit counseling prior to entering into bankruptcy proceedings. Proponents of this legislation argue that it will reduce bankruptcies and provide greater benefits to consumers in the long term. Opponents argue it is merely an obstacle to discharging debts in an expedient manner. An additional debate concerning this issue is whether approved counseling should be limited to non-profit entities.

COLORADO STATUTORY SUMMARY

The authority for the Division to regulate debt management businesses is contained in §12-20-101, et seq., C.R.S. The entire article is included as Appendix B to this report.

The Act defines creditor, debt management, and debtor, among other terms in section 102. Section 102.5 applies the powers and duties of the Board and the Commissioner over banks to debt management licensees.

Under the licensing provision of the article, applications for licensure are to be submitted in writing under oath on forms prescribed by the Board. Applications must include a surety bond or approved bond alternative in an amount determined by the Board by regulation. The amount of the bond or alternative may not exceed twenty-five thousand dollars.

The Act requires that funds collected by debt management companies be held in Debtor Trust Accounts for the benefit of the debtor. Debt management companies must supply the Board with a copy of the standard contract used by the company as well as a fee schedule. Fees charged by the company are subject to approval by the Board. The fee for initial licensure and renewal is established annually by the Board to cover the cost of the program.

The following entities are exempt from the debt management licensing provision when engaged in the regular course of their respective business or profession:

- Attorneys-at-law;
- Title insurance companies, agents, and abstract companies while performing escrow functions;
- Employees of licensees;
- Judicial officers or others acting under court orders; and
- Non-profit religious, fraternal, or cooperative organizations offering gratuitous debt management service.

The Board is required by §104 to investigate the facts of the application upon receipt of a complete application and appropriate fees. The Board is required to hold a hearing on the application within 30 days of receiving the required documents and fees unless the time is extended pursuant to a written agreement between the applicant and the Board.

The Board may consider the experience, financial responsibility, character, and general fitness of an applicant in deciding whether to grant a license. If the Board denies an application, the license application fee must be refunded within 15 days of the entry of the order. The Board is required to supply a written copy of the findings to the applicant.

All licenses expire on December 31 of the year following the date of issuance. Section 106 details the renewal procedures. Applicants for renewal must include evidence of financial responsibility.

Licensees are required to establish fees for service and disclose them in a written contract with each debtor. Fees may not exceed ten percent of the total debt being adjusted and must be prorated over the life of the contract. No contract may exceed 60 months in length. Debtors must receive a true copy of the contract upon signing. Licensees must maintain a separate bank account for debtors and hold funds deposited in the account for creditors of each debtor. Records for each client must be maintained for six years after completion or cancellation of the contract. Licensees must retain their business records and books for seven years following the final entry.

Licensees are required to remit payments to creditors within thirty days of receipt of the funds from the debtor. Licensees must furnish debtors with a written statement of account at least every 90 days or a verbal accounting any time the debtor requests one during normal business hours. Licensees must conduct a complete written budget analysis and determine if the client can meet the requirements of the analysis prior to accepting any client. Debtors are to receive the benefit of any compromise negotiated by the licensee with any creditor.

The Commissioner may examine the condition and affairs of any licensee at the direction of the Board. Licensees are responsible for payment of the fees associated with any examination. The Commissioner or the Board may compel the attendance of any person or production of books or records of the licensee.

Section 110 establishes unlawful actions constituting violations of the Act. Included are prohibitions against acting as a collection agent and debt management licensee for the same debtor's accounts, accepting an interest in real property as payment of fees and payment of a fee to any entity for referring a debtor to the licensee. Section 111 establishes the procedures for denial, revocation, or suspension of a license.

Any criminal or civil action for fraud brought against a licensee must comply with §13-80-103, C.R.S., which provides for a one-year statute of limitations. The Commissioner serves as agent for process for all licensees. The program is cash funded by fees assessed the licensee for examinations, investigations, and licenses.

COLORADO REGULATIONS

The Commission has promulgated regulations to implement the requirements of the Act. The regulations include requirements for the mandatory bond or bond alternatives, reporting requirements, requirements for the written contract between the licensee and debtor, and quarterly reports regarding the Debtor Trust Account that each licensee must maintain. Regulations are available to the public from the Division, or via the Internet.

REGULATION BY OTHER STATES

Colorado is one of 16 states that require a license for debt adjusters. Four other states have regulatory requirements, such as contract disclosures and mandatory bonds, but do not require a license. Four states have statutes prohibiting anyone who is not an attorney from performing debt adjuster services. Twelve states restrict debt adjustment services to specific categories, such as CPAs, attorneys, financial planners, or non-profit organizations. Fourteen states do not have specific statutes regarding debt management services or companies. The majority of states that have regulatory programs are administered by an agency equivalent to the Colorado Division of Banking. Table 1 details the breakdown of other state regulatory programs:

TABLE 1

Other State Regulatory Programs

No Statutes	Limited To Attorneys	Limited To Specific Categories	Regulations But No License	License Required
Alabama	Georgia	Hawaii	California	Arizona
Alaska	Kansas	Maine	Florida	Colorado
Arkansas	Massachusetts	Maryland	Illinois	Connecticut
Kentucky	South Carolina	Mississippi	North Dakota	Idaho
Delaware		Montana		Indiana
Minnesota		Oklahoma		Iowa
Missouri		Pennsylvania		Louisiana
New Hampshire		South Dakota		Michigan
North Carolina		Tennessee		Nebraska
Oregon		Texas		Nevada
Utah		Wyoming		New Jersey
Vermont		West Virginia		New York
Wisconsin				Ohio
New Mexico				Rhode Island
				Virginia
				Washington

Program Description and Administration

The volume of activity necessary to regulate debt adjusters does not require a separate work unit within the Division. Total resources allocated to the program are estimated by the Division to equal approximately one quarter (.25) of one full-time equivalent (FTE) employee. This includes the resources necessary to investigate applicants, review and approve renewals, conduct examinations, and resolve complaints.

The Board has developed an application for debt management companies. Application information includes the name of the applicant as well as personal information regarding the qualifications and character of the applicant. If the applicant is a business entity, documentation for the business entity and personal information regarding the principals is required. A surety bond or alternative evidence of financial responsibility, defined in §11-35-101, C.R.S., must accompany the application. The application fee, a separate non-refundable investigation fee, and a copy of the proposed contract between the applicant and a client debtor must accompany the application.

The Board has 30 days to approve or deny an application once it and the required fees are received, unless both the applicant and the Board agree upon an extension. The Board holds a hearing prior to issuing a license. Before the hearing, the Board, through the Division, conducts an investigation into the fitness of the applicant for licensure. The Act, at §12-20-104, C.R.S., defines the scope of the investigation:

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

board may require as part of the application a credit report and other information.

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

EXAMINATIONS

The Board has issued a policy (number 80-1) regarding examinations of debt adjusters. The policy calls for a targeted on or off-site examination of new licensees during the first four months of operation. Established licensees are to be examined at least annually by the Division. Licensees are required to pay an hourly fee, established by the Board for examinations.

Since 1996, the Division has regularly reported examination results to the Board. When issues are discovered during an examination, the Division attempts to resolve them with the licensee through a Memorandum of Understanding (MOU). The Division then follows up with the licensee to monitor compliance.

Unlike banks, debt collection agencies do not have minimum capital requirements to be reviewed during an examination. Agencies are required to maintain a bond or approved financial alternative for the benefit of the citizens of the state. The examination process involves reviewing inactive, new, and active account files for all required disclosures and signed agreements.

Payment receipts and disbursements are also examined. In approximately 10 percent of the files examined, disclosure documents are not adequate or present. Occasionally, it is found that funds are being held beyond the statutory 30-day limit. This is generally caused by partial payments by the client. Most creditors will only accept payments according to the schedule agreed upon with the adjusting agency. If the client does not make a full payment to the agency, the agency cannot disburse funds according to the agreement.

The Division reports that examinations have not found any significant violations of the Act. Although the Act does not contain capitalization requirements, the NFCC guidelines call for three months of capital reserves. The major agencies in the state are members of NFCC and voluntarily adhere to the certification standards of that organization. There have been few disciplinary actions involving licensed debt adjusters since the program was created.

FEES

The Board regularly evaluates fees to ensure that the revenues generated are sufficient to recover the direct and indirect expenses associated with the program. The initial license, investigation, and renewal fees have been consistent for the past five years. The examination fee has increased slightly to adjust for increased personnel costs within the Division. Table 2 details the fees for the Division for the past five years. Table 3 details the revenue and expenditures for the program.

TABLE 2

Fee History

Effective Date	Application Fee	Investigation Fee	Renewal Fee	Hourly Examination Fee
July 1, 1998	$7,000	$500	$1,500	$30
July 1, 1997	7,000	500	1,500	30
July 1, 1996	7,000	500	1,500	30
July 1, 1995	7,000	500	1,500	28
July 1, 1994	7,000	500	2,000	28
July 1, 1993	7,500	N/A	500	28

TABLE 3

Revenue and Expenses

FY Ending	Application Fee	Investigation Fee	Renewal Fee	Hourly Exam Fee	Total Revenue	Expenses
June, 1999*	$0	$0	$6,000	$0	$6,000	$10,250
June, 1998	0	0	6,000	4,410	10,410	12,915
June, 1997	7,000	500	6,000	5,739	19,239	26,855
June, 1996	0	0	10,500	3,724	14,224	35,629
June, 1995	18,750		10,000	6,202	34,952	10,168
TOTAL	25,750	500	38,500	20,075	84,825	95,817

*Partial year data

The fee setting process involves the Division estimating expenses and recommending fees to the Board that approximate those estimates. Because of the small size of the debt adjuster program, actual revenue and expenses can fluctuate significantly on a percentage basis from year to year because of factors beyond the control of the Division. For the period reviewed, there has been a slight subsidization of the program by the much larger banking industry.

In 1994, the Board increased renewal fees to partially offset the subsidization by the banking industry. At least one licensee, Credit Counselors, ceased operations, citing increased renewal fees as the primary reason.

LICENSEES

There are currently five licensed companies providing debt adjuster services in Colorado. Two of the companies are headquartered in other states and have used Colorado based agents to solicit business in the state. Family Life Services underwent an investigation by the North Dakota regulatory authorities. The company eventually filed bankruptcy and is in receivership. Family Life Services has agreed not to renew their Colorado license or solicit additional business in the state. The company will continue to service existing clients for the term of their agreements. Table 4 identifies existing licensees.

TABLE 4

Licensed Debt Management Companies

DEBT ADJUSTERS	LOCATION
Consumer Credit Counseling Service of Greater Denver, Inc.	Denver, CO
Consumer Credit Counseling Service of Southern Colorado, Inc.	Colorado Springs, CO
Consumer Credit Counseling Service of Northern Colorado & Southeast Wyoming	Fort Collins, CO
Action Credit Advisors	Omaha, NE
Family Life Services, Inc. d.b.a. Family Life Credit Services	Fargo, ND

COMPLAINTS

The 1993 sunset review of debt management companies found only two consumer complaints in the preceding 28 years that could have resulted in economic harm to consumers. One of these complaints resulted in criminal charges being filed against an unlicensed debt management company.

A review of the Division complaint files since the last sunset review revealed a total of six consumer complaints. None of these complaints resulted in a finding of a violation of the statute or regulations by the Division.

The Division occasionally receives information regarding unlicensed activity. This information usually comes from existing licensees. In the past, the Division has initiated investigations based on newspaper or yellow pages advertisements for debt management services. The majority of those investigations found that the activity was exempt from licensing. In those situations where the entity is required to be licensed, a letter is sent requesting that the business apply for a license. In only one situation in the history of the Act has a business failed to comply with the Division's request by either obtaining a license, ceasing operations, or discontinuing charging a fee, thereby exempting itself from the licensing requirement. In that single situation, the local district attorney filed criminal charges.

Analysis and Recommendations

ISSUES

During the course of this review, all current licensees and other interested parties such as better business bureaus and consumer protection divisions of larger district attorneys offices were contacted regarding the regulation of debt adjustment agencies. The most common concern expressed was the appearance of an inequity in the regulatory structure. Many organizations are legally allowed to perform debt management services without oversight by the Division of Banking or any other regulatory agency. A brief summary of issues raised by the interested parties is categorized and included in this section of the report.

Client Fees

Fees are capped in statute at 10 percent of the total debt. Licensed debt management companies frequently establish fees based on the ability of the client to pay, an amount usually lower than the maximum allowed. However, if the financial situation of the debtor changes, companies are not allowed to renegotiate the fee structure.

When a debt management agency charges a client a fee, no matter how small, that agency is required to obtain a license from the Banking Commission. Most of the licensees charge relatively modest fees. For example, Consumer Credit Counseling Service (CCCS) of Southern Colorado has an average monthly fee of $9 for clients. However, companies that provide similar services for no up-front or monthly maintenance fees are exempt from licensure. These companies generate their revenue from the fair share contribution of the creditors.

Debtors frequently make several payments a month, or occasionally multiple payments each week to a debt management company in order to build a balance sufficient to meet the payment arrangements agreed upon by the creditors. If the debtor is late with a payment the debt management company may have to make special payment by express mail or by wire transfer. This is sometimes necessary to avoid additional penalties or interest. Industry advocates maintain that they should be able to recover expenses for arrangements caused by a debtor's late payments or special requests.

Retailers and creditors are able to recover fees charged by financial institutions for non-sufficient funds (NSF) checks written by debtors. Licensed debt management companies believe that they are not able to recover these fees. Company advocates believe this is another expense that affects their ability to serve their clientele in a cost effective manner. They would like to be able to charge clients the same type of fees as creditors for NSF checks.

Exemptions

Attorneys are exempt from licensure. Licensees believe this exemption should only apply to attorneys that regularly negotiate with creditors as part of their legal practice. Additionally, licensees believe that to maintain the exemption, the attorney should be required to deposit all debtor funds in a trust account and pay creditors directly from the trust account.

Out of state firms that do not maintain a physical presence in Colorado are exempt from licensure. Companies located in states without regulation can solicit business in a variety of ways in Colorado without using agents based or working in the state, such as Internet and 800 telephone number advertisements. This potentially places consumers at risk of paying excessive fees and having deposited funds misappropriated.

Contract Terms

Contracts are required to have a fixed termination date, no longer than 60 months in length. If a debtor has insufficient income to resolve the debt in 60 months, a licensed debt management company cannot legally take the debtor on as a client.

A debtor may take on additional debt, or decide to add a debt to the payment plan. Other situations, such as a creditor not accepting a negotiated payment plan, or providing information that increases the debtor's liability can change payment terms. Frequently, creditor fees, interests and penalties can only be estimated. The total amount of the debt may change over the life of the contract. If these situations occur, the contract must be voided and rewritten. Debt management companies believe they should be able to provide a range of months in the contracts.

Fund Disbursals

The Act requires that client funds be disbursed within 30 days of receipt by the debt adjustment agency. Advocates maintain this is not always possible, nor in the best interest of the debtor. Contracts generally call for the disbursement of funds to creditors based on a specific payment schedule or dollar amount. Many debtors make several payments to the plan weekly, in order to build up the amount necessary for a full payment to the creditor.

One of the services provided by the debt management company is negotiating payment arrangements with creditors. Some creditors will accept smaller payments than required by their original agreement with the debtor. Some creditors will allow the debtor to make several small monthly payments to the debt management company and then accept a large payment from the company at intervals other than once a month. In this situation, it will take the debtor longer than 30 days to accumulate the amount necessary to make the full payment. However, the debt management company is required to issue all funds in the trust account within 30 days. This does not allow for the flexibility debt management companies require to meet the needs of their customers.

Another related issue is the availability of funds to the debt adjustment agency. If a debtor makes a payment by personal check near the end of the 30-day cycle, the agency should hold the funds to be sure the check will clear. However, in order to make full payments, and meet the 30-day requirement, the agency must issue payments before the check clears. If the check is returned NSF, the agency is out funds and is not able to recover NSF charges as mentioned previously.

Examinations

Some licensees believe that out of state licensees should be required to pay travel costs associated with the annual examination. Some licensees believe all licensees should be required to have an independent financial audit submitted to the Division annually, in addition to the annual examination. One licensee believes the annual examination should be eliminated. All states that regulate debt management companies have the authority to conduct examinations. However, not all require annual examinations, which can be expensive for licensees.

Disciplinary Actions

Industry advocates indicated concern at the limit of disciplinary options available to the Board and Division. They believe the Board and/or Division should have the ability to issue fines, similar to the authority under the Colorado Banking Code. They also believe the Commissioner and/or the Board should have the ability to issue formal and informal enforcement actions such as letters of admonition or letters of caution.

Bonding

The maximum bond required by the statue is $25,000. Advocates for debt adjustment agencies point out that fees charged by companies present a small risk to the public when compared to the large amounts of money agencies hold in trust for debtors. CCCS of Greater Denver distributes approximately $30 million per year for debtors. The current Act does not contain any reserve requirements, although NFCC members must maintain three months of reserves. The current bond seems low in relation to the potential risk.

ANALYSIS

According to the Federal Reserve Board, administrators of the nation's central bank, the average amount of consumer debt carried by U.S. households was approximately $13,000 in 1998. This represents an increase of almost 50 percent from 1990. During this same time period, national personal bankruptcy filings increased 88 percent, from 718,000 to over 1.35 million.

CCCS reports that consumers who successfully complete a DMP are more likely to be able to obtain new credit, purchase a home, and stay out of credit problems than consumers who file for bankruptcy. It seems logical to correlate the assistance and educational opportunities afforded debtors completing a DMP with an increased ability to manage finances. However, the question asked in the sunset process is: does this benefit necessitate a licensing program.

The Division receives less than one complaint per year regarding debt management companies. A survey of better business bureaus found a total of five complaints over the past three years. Examinations of licensees occasionally find technical violations of the regulations, such as missing documentation, or failure to disperse funds within 30 days because a debtor was late with an agreed upon payment. However, these violations have not resulted in consumer harm, and the Board has never disciplined a licensee.

It is likely that non-licensed firms are conducting much of debt management activity in Colorado. Licensees argue that large out-of-state firms advertise services on the Internet and cable television stations. These firms do not provide the educational or counseling services offered by licensees, and interact with clients via 800 telephone numbers and email.

Other firms operate within the state but do not charge a fee. Therefore, they are exempt from licensure. Licensees believe that at least one of these firms requests a voluntary donation and that most debtors assume it is a mandatory fee and thus pay it without knowing it is not required.

Debt adjustment companies that do not charge fees are not subject to licensing by the state. Colorado licensed debt adjustment companies have relatively modest fees, averaging approximately $10 per month. Over the life of a 60-month contract, this totals approximately $600. However, based on the average household debt of $13,000 and a 10 percent fair share contribution by creditors, a debt adjustment company could generate $1,300, or over twice the average fee, from the creditors.

Exempt firms have several competitive advantages over licensed firms. The most obvious of these advantages is cost savings associated with licensing and examinations. However, there are additional advantages. Licensed debt management companies are limited to 60 month agreements and may not enter into an agreement that does not discharge the debt in that period. In some cases, this requires debtors to devote a significant portion of their income to the service of the debt. However, debtors may get the same benefits (cessation of collection efforts, waiving of fees, lower interest rates) of a DMP from a non-licensed company with lower payments because of the fact that unlicensed firms may extend the term of the agreement beyond the 60 month period allowed for licensees.

The real potential for harm to the public is not from the charging of fees. The largest potential harm to the public is from diversion of payments. CCCS of Greater Denver, the largest licensee in the state, reports that it distributes $30 million per year for 6,500 clients, with an average payment of $385 per month. Using the average fee of $10 per month, CCCS of Greater Denver generates approximately $780,000 each year in fees, less than three percent of the total annual client payments.

Licensed and unlicensed companies will collect a comparable amount of revenue from a debtor to satisfy creditors. However, the unlicensed company is not subject to examinations nor does it have expenses associated with obtaining a license. Licensed companies are required to disperse these funds within 30 days, while there are no legal dispersal deadlines for unlicensed companies.

Additionally, companies operating from another state via electronic means can charge fees, and hold payments longer than 30 days with no regulatory oversight by the state. CCCS estimates that one large unlicensed debt adjustment firm distributes approximately $15 million annually for Colorado clients. CCCS maintains that this firm and other unlicensed firms are not required to perform the same financial analysis licensed firms are, do not pay license or examination fees, are able to offer lower monthly payments because they are not limited to 60 month DMPs, and are not required to maintain a bond to protect consumers in the event the firm does not disperse funds or otherwise violates terms of the agreement.

Recommendation 1 - Allow the licensing of debt adjusters by the Colorado Banking Commission to sunset as scheduled.

Debt management firms provide a valuable service to debtors and creditors. One may conclude that the large amount of consumer funds passed through these agencies creates a significant potential for public harm, and a corresponding need for government regulation. However, the 34 year history of the regulatory program indicates the opposite is true.

Consumer complaints against licensed firms are rare. Violations that are discovered during annual examinations are technical in nature, such as a missing disclosure statement, and have not resulted in harm to consumers. There has never been an action against a bond of a licensed company in the history of the program. Consumer complaints to better business bureaus and district attorneys are negligible.

Out-of-state firms and Colorado based firms that do not charge mandatory fees are exempt from regulation. These firms not only compete with licensed firms, they have a distinct competitive advantage over licensed firms. They avoid the cost of regulation, and are able to offer lower monthly payment plans because of the lack of maximum contract terms.

It is possible to eliminate statutory exemptions and include the unlicensed firms in the regulatory program. This would serve to eliminate the competitive advantage and create the "level playing field" that licensed firms desire. However, lacking compelling evidence of actual harm to the public, the sunset criterion does not indicate that expanded regulation is necessary. Rather, the lack of complaints against unlicensed firms combined with the lack of disciplinary actions against licensees indicates less regulation should be considered.

If the General Assembly should choose to expand the licensing program, there are certain enforcement issues to consider. The Division has investigated in-state unlicensed firms based on complaints from licensees. In most cases, the investigations revealed that the firm was exempt from licensure. However, out-of-state firms using 800 telephone numbers or Internet access to obtain clients would be difficult if not impossible to regulate. The General Assembly could prohibit out-of-state firms from accepting clients in Colorado unless they obtain a Colorado license. However, enforcement would be difficult, and possibly expensive.

ALTERNATIVE RECOMMENDATIONS

If the General Assembly decides to continue the licensing of Debt Management companies, some of the restrictive provisions of the Act should be amended.

Recommendation 2 – Amend §12-20-108 (1), C.R.S., to allow licensed companies to extend contracts to 72 months.

The 60-month term was probably sufficient for debtors to eliminate debt on a DMP when it was adopted in 1965. However, the debt load of the average debtor has increased since that time. Licensees report the 60-month limit places debtors in the position of using the services of an unlicensed firm to extend payments or file bankruptcy. If the General Assembly believes licensure is necessary to protect the public, it should make the licensing program flexible enough to attract more debtors to it rather than place restrictions that cause debtors to use unregulated firms.

In 1965 it was unusual for an automobile loan to have a term of more than three years. Four and five year loans are common now. Financial institutions advertise even longer terms for big ticket items such as motor homes and campers. Revolving charge cards have no fixed term. Debt management companies advise clients not to use these cards except in an emergency. However, many clients have large balances that will take years to pay down, even without additional purchases. The last sentence of §12-20-108(1), C.R.S., should be changed to read:

> *"No contract shall extend for a period longer than seventy-two months."*

Recommendation 3 - Allow licensed debt management companies to hold payments beyond the 30-day limit if requested by the creditor and approved by the debtor.

Some creditors, particularly collection agencies, would rather have the debt management company collect funds from the debtor and remit payment when the collected funds reach a specific dollar amount. The reason is that it is more cost effective for the creditor to deposit one large check in place of several smaller checks.

Some creditors will not accept partial payments. If a debtor makes a partial payment to the plan, the agency agreement with the creditors sometimes creates conflict. The agency must either prorate the payment to each creditor, or pay some creditors in full and skip a payment with others. Licensed agencies should be able to negotiate payment arrangements with the debtor and creditor that are in the best interest of all parties.

As long as the payment terms are clearly defined in the written contract and signed by all parties, the statute should not preclude extending the payment period. Section 12-20-108 (4), C.R.S., should be amended to provide for payments to creditors according to a schedule agreed upon by the creditor for an individual DMP, if agreed to by the debtor in writing. The written contract between the debt management company and the debtor should be allowed to specifically address issues of NSF checks, check holds, and partial payments to the plan. Section 12-20-108(4), C.R.S., should be amended to read:

> *(4) Each licensee shall make remittances to creditors within one month after receipt of any funds, or such ~~shorter~~ period as may be provided under the schedule of repayment pursuant to section 12-20-107, less fees and costs.*

Recommendation 4 - Increase the disciplinary options for the Board.

Essentially, the only disciplinary option available for the Board is revocation of a license. Under §12-20-112, C.R.S., if a licensee is convicted in criminal court of a violation of the statute, the licensee is subject to a $1,000 fine. However, the Board does not have formal authority to issue a letter of admonition or fine a licensee.

The Board should have the full range of regulatory options for debt adjustment agencies as it has for other regulatory programs under its authority. The Act should be amended to include the authority for letters of admonition, supervision, and monetary fines for licensees according to regulations promulgated by the Board. Section 12-20-111, C.R.S., should be amended to read:

> **12-20-111 - *Disciplinary Actions*** ~~**Denial, revocation, or suspension of license.**~~
>
> (1) The banking board may deny, revoke, or suspend, *issue a letter of admonition, place under supervision or fine* any license issued or applied for under this article for any of the following causes:

Appendices

Appendix A - Sunset Statutory Evaluation Criteria

(I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;

(II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;

(III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;

(IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;

(V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;

(VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;

(VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;

(VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action; and

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

Appendix B - Colorado Debt Management Act

12-20-101 - Legislative declaration.

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

12-20-102 - Definitions.

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

(1) "Banking board" means the banking board created in section 11-2-102, C.R.S.

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

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

(3) "Debt management" means the planning and management of the financial affairs of a debtor for a fee and the receiving therefrom of money or evidences thereof for the purpose of distributing the same to such debtor's creditors in payment or partial payment of such debtor's obligations. The business of debt management is conducted in this state if the debt management business, its employees, or its agents are located in this state or if the debt management business solicits or contracts with debtors located in this state.

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

(5) "Licensee" means any individual, limited liability company, partnership, unincorporated association, or corporation licensed under this article, including, without limitation, a registered limited liability partnership.

(6) "Office" means each location by street number, building number, city, and state where any individual, limited liability company, partnership, unincorporated association, or corporation engages in debt management. For purposes of this article, branch office is included in the definition of "office".

12-20-102.5 - Applicability of powers of banking board and bank commissioner to debt adjusters.

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

12-20-103 - Debt management - licensing of companies and individuals.

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

(a) Attorneys-at-law;

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

(c) Title insurance companies, title insurance agents, and abstract companies while performing an escrow function;

(d) Employees of licensees under this article;

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

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

(1.5) Any individual, limited liability company, partnership, unincorporated association, or corporation claiming an exemption from licensure pursuant to subsection (1) of this section shall have the burden of proving such exemption.

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

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

(b) Debtor funds collected by a licensee including the surety bond or surety bond alternative required by this subsection (3), even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of the debtor in the event of the bankruptcy of the licensee.

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

(5) At the time of making such application, the applicant shall pay to the banking board a licensing fee in an amount set by the banking board pursuant to section 11-2-103 (11), C.R.S., for the licensing of such applicant's debt management business. One fee shall cover the applicant's office and any branch offices listed on such application. A separate investigation fee in an amount set by the banking board pursuant to section 11-2-103 (11), C.R.S., shall also be required and collected when the application is submitted.

12-20-104 - Investigation of application - license requirements - denial.

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

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

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

board may require as part of the application a credit report and other information.

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

12-20-105 - License expiration.

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

12-20-106 - License renewal.

Each licensee, on or before December first, may make application to the banking board for renewal of such licensee's license. The application shall be on the form prescribed by the banking board and shall be accompanied by a fee in an amount set by the banking board pursuant to section 11-2-103 (11), C.R.S., together with evidence of financial responsibility as in the case of an original application; except that the original application shall be accompanied by an additional fee in an amount set by the banking board pursuant to section 11-2-103 (11), C.R.S. An application for renewal of a license made by a licensee and the accompanying fee shall be valid for the applicant's office and all branch offices used by the applicant as listed on such application for renewal. No separate fee or application shall be required for any branch office listed on the renewal application for licensure.

12-20-107 - Fee of the licensee.

The fee of the licensee shall be agreed upon in advance and stated in the contract, and provision for settlement in case of cancellation or prepayment shall be clearly stated therein. The fee of the licensee shall not exceed ten percent of the total debts to be adjusted. The fee of the licensee shall be prorated monthly over the life of the contract. In addition to the prorated amount, the licensee shall be allowed to deduct from the first month's payment a reasonable amount for an application fee, said amount not to exceed twenty-five dollars. In the event of total payment of the contract before the term of the contract has expired, the licensee is entitled to an amount equal to twenty-five

percent of the remaining fee, or any lesser amount as may be agreed upon. In the event of cancellation of the contract by the debtor, the licensee is entitled to a cancellation fee not to exceed twenty-five dollars. The licensee shall not be entitled to any fee under this article unless eighty percent of the creditors as listed in the contract required by section 12-20-108 (1) have agreed to a schedule of payments as required by section 12-20-108 (6). For the purpose of a licensee's entitlement to a fee under this section only, in addition to any other form of agreement, a creditor's acceptance of a scheduled payment from the debt adjuster after the creditor has received the proposed schedule of payments constitutes such creditor's agreement to the schedule of payments, except as otherwise provided by rule of the banking board. A creditor shall not be deemed to have agreed to a schedule of payments other than for the purpose of allowing a licensee to collect a fee, unless such agreement by the creditor is in writing.

12-20-108 - Duties of licensee.

(1) Each licensee who makes a written contract between such licensee and a debtor shall immediately furnish the debtor with a true copy of the contract. The contract shall set forth the complete list of the creditors holding such obligations, the total charges agreed upon for the services of the licensee, and the beginning and expiration dates of the contract. No contract shall extend for a period longer than sixty months.

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

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

(4) Each licensee shall make remittances to creditors within one month after receipt of any funds, or such shorter period as may be provided under the schedule of repayment pursuant to section 12-20-107, less fees and costs.

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

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

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

12-20-109 - Duties and power of commissioner.

(1) The commissioner may examine the condition and affairs of any licensee at such times as are necessary in the opinion of the commissioner as directed by the banking board. In connection with any examination, the commissioner may examine, on oath, any licensee and any director, officer, employee, customer, creditor, or stockholder of a licensee concerning the affairs and business of the licensee. The commissioner shall ascertain whether the licensee transacts its business in the manner prescribed by law and the rules and regulations of the banking board issued thereunder. The licensee shall pay the cost of the examination as determined by the commissioner, which fee shall not exceed a sum per day of examination set by the banking board pursuant to section 11-2-103 (11), C.R.S. Failure to pay the examination fee within thirty days of receipt of demand from the commissioner shall automatically suspend the license until the fee is paid.

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

12-20-110 - Unlawful acts by licensee.

(1) It is unlawful and a violation of this article for the holder of any license issued under the terms and provisions of this article:

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

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

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

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

(e) To pay any bonus or other consideration to any individual, limited liability company, partnership, unincorporated association, or corporation for the referral of a debtor to such licensee's business, or to accept or receive any bonus, commission, or other consideration for referring any debtor to any individual, limited liability company, partnership, unincorporated association, or corporation for any reason;

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

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

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

12-20-111 - Denial, revocation, or suspension of license.

(1) The banking board may deny, revoke, or suspend any license issued or applied for under this article for any of the following causes:

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

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

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

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

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

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

(3) No license shall be transferable or assignable.

12-20-112 - Violation.

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

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

12-20-113 - Limitation of actions.

All actions for fraud, misrepresentation, concealment, or deceit brought in any of the courts of this state pursuant to this article shall be commenced within the time period prescribed in section 13-80-103, C.R.S. All other civil and criminal actions shall be brought within the applicable statutes of limitations as provided by law.

12-20-114 - Commissioner as agent for service of process.

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

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

12-20-115 - Disposition of fees.

All moneys received by the banking board and the commissioner from fees, licenses, and examinations pursuant to this article shall be deposited by the banking board and the commissioner with the state treasurer and credited to the division of banking cash fund created in section 11-2-114.5, C.R.S.

12-20-116 - Repeal - review of functions.

This article is repealed, effective July 1, 2000. Prior to such repeal, the licensing functions of the commissioner and the banking board shall be reviewed as provided for in section 24-34-104, C.R.S.