TITLE 5

CONSUMER CREDIT CODE

Editor's note: This title was numbered as chapter 73 in C.R.S. 1963. The provisions of this title were repealed and reenacted in 1971, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this title prior to 1971, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

CONSUMER CREDIT CODE

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CONSUMER CREDIT CODE

Editor's note: When originally enacted in 1971, articles 1 through 3 and 4 through 6 were based upon the Uniform Consumer Credit Code promulgated by the National Conference of Commissioners on Uniform State Laws; however it has been substantially amended in subsequent years and was the subject of a major rewrite in the 2000 session based upon recommendations of the office of the attorney general.

ARTICLE 1

General Provisions and Definitions

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PART 1

SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

5-1-101. Short title.

Articles 1 to 9 of this title shall be known and may be cited as the "Uniform Consumer Credit Code", referred to in said articles as the "code".

Source: L. 2000: Entire article R&RE, p. 1178, § 1, effective July 1.

Editor's note: This section is similar to former § 5-1-101, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "The Basic Exclusions from the UCCC: A Road Map for Traversing a New World With Oblique Guides", see 43 U. Colo. L. Rev. 269 (1972). For article, "The 'New and Improved' Colorado Uniform Consumer Credit Code", see 29 Colo. Law. 5 (Dec. 2000).

5-1-102. Purposes - rules of construction.

(1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this code are:

(a) To simplify, clarify, and modernize the law governing retail installment sales, consumer credit, small loans, and usury;

(b) To provide rate ceilings to assure an adequate supply of credit to consumers;

(c) To further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;

(d) To protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;

(e) To permit and encourage the development of fair and economically sound consumer credit practices;

(f) To conform the regulation of consumer credit transactions to the policies of the federal "Truth in Lending Act" and the federal "Consumer Leasing Act"; and

(g) To make uniform the law, including administrative rules, among the various jurisdictions.

(3) A reference to a requirement imposed by this code includes reference to a related rule of the administrator adopted pursuant to this code.

Source: L. 2000: Entire article R&RE, p. 1178, § 1, effective July 1.

Editor's note: This section is similar to former § 5-1-102, as it existed prior to 2000.

Cross references: For the definitions and federal statutory cites of the "Truth in Lending Act" and the "Consumer Leasing Act", see § 5-1-302.

ANNOTATION

Applied in Strader v. Beneficial Fin. Co., 191 Colo. 206, 551 P.2d 720 (1976) (decided prior to 2000 repeal and reenactment).

5-1-103. Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this code, the "Uniform Commercial Code" and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause, supplement the provisions of this code.

Source: L. 2000: Entire article R&RE, p. 1179, § 1, effective July 1.

Editor's note: This section is similar to former § 5-1-103, as it existed prior to 2000.

Cross references: For the "Uniform Commercial Code", see title 4.

ANNOTATION

Applied in D.E.B. Adjustment Co. v. Cawthorne, 623 P.2d 82 (Colo. App. 1981) (decided prior to 2000 repeal and reenactment).

5-1-104. Construction against implicit repeal.

This code being a general act intended as a unified coverage of its subject matter, no part of it is deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Source: L. 2000: Entire article R&RE, p. 1179, § 1 effective July 1.

Editor's note: This section is similar to former § 5-1-104, as it existed prior to 2000.

5-1-105. Severability clause.

If any provision of this code or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

Source: L. 2000: Entire article R&RE, p. 1179, § 1, effective July 1.

Editor's note: This section is similar to former § 5-1-105, as it existed prior to 2000.

5-1-106. Waiver - agreement to forego rights - settlement of claims.

(1) Except as otherwise provided in this code, a consumer may not waive or agree to forego rights or benefits under this code.

(2) A claim by a consumer against a creditor for an excess charge, other violation of this code, or civil penalty, or a claim against a consumer for default or breach of a duty imposed by this code, if disputed in good faith, may be settled by agreement.

(3) A claim, whether or not disputed, against a consumer, may be settled for less value than the amount claimed.

(4) A settlement in which the consumer waives or agrees to forego rights or benefits under this code is invalid if the court as a matter of law finds the settlement to have been unconscionable at the time it was made. The competence of the consumer, any deception or coercion practiced upon the consumer, the nature and extent of the legal advice received by the consumer, and the value of the consideration are relevant to the issue of unconscionability.

Source: L. 2000: Entire article R&RE, p. 1179, § 1, effective July 1.

Editor's note: This section is similar to former § 5-1-107, as it existed prior to 2000.

5-1-107. Effect of code on powers of organizations.

(1) This code prescribes maximum charges for all creditors extending consumer credit except lessors and those excluded in sections 5-1-202 and 5-2-213 and displaces existing limitations on the powers of those creditors based on maximum charges.

(2) With respect to sellers of goods or services, small loan companies, licensed lenders, consumer and sales finance companies, loan companies, and commercial banks and trust companies, this code displaces existing limitations on their powers based solely on amount or duration of credit.

(3) Except as provided in subsection (1) of this section, this code does not displace limitations on powers of credit unions, savings banks, savings and loan associations, or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

(4) Except as provided in subsections (1) and (2) of this section, this code does not displace:

(a) Limitations on powers of supervised financial organizations, as defined in section 5-1-301 (45), with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land, or other similar restrictions designed to protect deposits; or

(b) Limitations on powers an organization is authorized to exercise under the laws of this state or the United States.

Source: L. 2000: Entire article R&RE, p. 1180, § 1, effective July 1. **L. 2013:** (2) amended, (SB 13-154), ch. 282, p. 1468, §19, effective July 1. **L. 2023:** (1) amended, (HB 23-1229), ch. 375, p. 2245, § 4, effective July 1, 2024.

Editor's note: This section is similar to former § 5-1-108, as it existed prior to 2000.

PART 2

SCOPE AND JURISDICTION

5-1-201. Territorial application - definitions.

(1) Except as otherwise provided in this section, this code applies to consumer credit transactions made in this state and to modifications, including refinancing, consolidations, and deferrals, made in this state, of consumer credit transactions, wherever made. For purposes of this code, a consumer credit transaction is made in this state if:

(a) A written agreement evidencing the obligation or offer of the consumer is received by the creditor in this state; or

(b) A consumer who is a resident of this state enters into the transaction with a creditor who has solicited or advertised in this state by any means, including but not limited to mail, brochure, telephone, print, radio, television, internet, or any other electronic means.

(2) Notwithstanding paragraph (b) of subsection (1) of this section, unless made subject to this code by agreement of the parties, a consumer credit transaction is not made in this state if a resident of this state enters into the transaction while physically present in another state.

(3) Part 1 of article 5 of this title and sections 5-3-104 and 5-3-105 apply to actions or other proceedings brought in this state to enforce rights arising out of a consumer credit transaction, or modification thereof, wherever made.

(4) If a consumer credit transaction, or modification thereof, is made in another state with a person who is a resident of this state when the consumer credit transaction or modification is made, the following provisions apply as though the transaction occurred in this state:

(a) A creditor, or assignee of the creditor's rights, may not collect charges through actions or other proceedings in excess of those permitted by this code; and

(b) A creditor, or assignee of the creditor's rights, may not enforce rights against the consumer that violate the provisions of this code on limitations on agreements and practices.

(5) Except as provided in subsection (3) of this section, a consumer credit transaction, or modification thereof, made in another state with a person who was not a resident of this state when the consumer credit transaction or modification was made is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

(6) For the purposes of this code, the "residence" of a consumer is the address given by the consumer as the consumer's residence in any writing provided by the consumer in connection with a credit transaction. Until the consumer notifies the creditor of a new or different address, the given address is presumed to be unchanged.

(7) Notwithstanding other provisions of this section:

(a) Except as provided in subsection (3) of this section, this code does not apply if the consumer is not a resident of this state at the time of a credit transaction and the parties then agree that the law of the consumer's residence applies; and

(b) This code applies if the consumer is a resident of this state at the time of a credit transaction and the parties then agree that the law of this state applies.

(8) Except as provided in subsection (7) of this section, an agreement by a consumer is invalid with respect to consumer credit transactions, or modifications thereof, to which this code applies when such agreement provides that:

(a) The law of another state shall apply;

(b) The consumer consents to the jurisdiction of another state; or

(c) Venue is fixed.

(9) The following provisions of this code specify the applicable law governing certain cases:

(a) Section 5-6-102 on the powers and functions of the administrator; and

(b) Section 5-6-201 on notification and fees.

(10) For the purpose of subsection (1) of this section, "receive" means obtained as a result of physical delivery, transmission, or communication to one who has actual or apparent authority to

act for the creditor in this state whether or not approval, acceptance, or ratification by any other agent or representative of such creditor in some other state is necessary to give legal consequence to the consumer credit transaction.

(11) Notwithstanding any other provision of this section, this code applies to any consumer insurance premium loan made to a resident of this state.

Source: L. 2000: Entire article R&RE, p. 1180, § 1, effective July 1.

Editor's note: This section is similar to former § 5-1-201, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "Colorado Usury", see 11 Colo. Law. 2557 (1982). For article, "Colorado Usury: The Sequel - Parts I and 2", see 23 Colo. Law. 565 and 829 (1994).

Applied in D.E.B. Adjustment Co. v. Cawthorne, 623 P.2d 82 (Colo. App. 1981) (decided prior to 2000 repeal and reenactment).

5-1-202. Exclusions.

(1) This code does not apply to:

(a) Extensions of credit to government or governmental agencies or instrumentalities;

(b) Except as otherwise provided in article 4 of this title, the sale of insurance if there is no legal obligation to pay installments of the premium and the insurance may terminate or be canceled after nonpayment of an installment of the premium;

(c) Transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment;

(d) (I) With respect to contracts for purchase entered into by a pawnbroker, as the terms are defined in section 29-11.9-101, the rates and charges, and the disclosure of rates and charges, if the rates and charges do not exceed the fixed price permitted by section 29-11.9-101 (2). The exclusion in this subsection (1)(d)(I) applies to pawnbrokers who are:

(A) Licensed by a local licensing authority pursuant to section 29-11.9-102; or

(B) Regulated, with respect to rates and charges, by a local governing authority pursuant to section 29-11.9-102.

(II) The exclusion in subparagraph (I) of this paragraph (d) also applies to pawnbrokers authorized to make supervised loans under section 5-2-301 with respect to contracts for purchase; except that the exclusion does not apply to the disclosure of rates and charges of pawnbrokers authorized to make supervised loans.

(e) The disclosure of rates and charges in connection with transactions in securities and commodities accounts by a broker-dealer registered with the securities and exchange commission;

(f) Loans made, originated, disbursed, serviced, or guaranteed by an agency, instrumentality, or political subdivision of the state pursuant to article 3.1 of title 23, C.R.S.

Source: L. 2000: Entire article R&RE, p. 1182, § 1, effective July 1. **L. 2012:** IP(1) and (1)(d) amended, (HB 12-1328), ch. 218, p. 936, § 1, effective August 8. **L. 2017:** (1)(d)(I) amended, (SB 17-228), ch. 246, p. 1041, § 4, effective August 9.

Editor's note: This section is similar to former § 5-1-202, as it existed prior to 2000.

Cross references: For regulation of insurance agents, brokers, and representatives, see article 2 of title 10; for regulation of pawnbrokers, see article 11.9 of title 29; for regulation of securities brokers, see article 51 of title 11; for credit unions, see article 30 of title 11.

5-1-203. Jurisdiction and service of process.

(1) The court of record of any judicial district in this state may exercise jurisdiction over any creditor with respect to any conduct in this state governed by this code or with respect to any claim arising from a transaction subject to this code. In addition to any other method provided by the Colorado rules of civil procedure or by statute, personal jurisdiction over a creditor may be acquired in a civil action or proceeding instituted in the court of record by the service of process in the manner provided by this section.

(2) If a creditor is not a resident of this state or is a corporation not authorized to do business in this state and engages in any conduct in this state governed by this code or engages in a transaction subject to this code, the creditor may designate an agent upon whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to do business in this state. The designation shall be in writing and filed with the

secretary of state. If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the secretary of state, but service upon the secretary of state is not effective unless the plaintiff or petitioner forthwith mails a copy of the process and pleading by registered or certified mail to the defendant or respondent at his or her last reasonably ascertainable address. An affidavit of compliance with this section shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows.

Source: L. 2000: Entire article R&RE, p. 1183, § 1, effective July 1.

Editor's note: This section is similar to former § 5-1-203, as it existed prior to 2000.

PART 3

DEFINITIONS

5-1-301. General definitions.

In addition to definitions appearing in subsequent articles, as used in this code, unless the context otherwise requires:

(1) "Actuarial method" means the method, defined by rules promulgated by the administrator in accordance with article 4 of title 24, C.R.S., of allocating payments made on a debt between the amount financed and finance charge pursuant to which a payment is applied first to the accumulated finance charge and the balance subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

(2) "Administrator" means the administrator designated in section 5-6-103.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

(4) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(5) "Amount financed" means the total of the following items to the extent that payment is deferred:

(a) In the case of a sale:

(I) The cash price of the goods, services, or interest in land, less the amount of any down payment whether made in cash or in property traded in; and

(II) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in;

(b) In the case of a loan:

(I) The net amount paid to, receivable by, or paid or payable for the account of the debtor; and

(II) The amount of any discount excluded from the finance charge described in paragraph (c) of subsection (20) of this section; and

(c) In the case of a sale or loan, to the extent that payment is deferred and the amount is not otherwise included in the cash price:

(I) Any applicable sales, use, excise, or documentary stamp taxes;

(II) Amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees; and

(III) Additional charges permitted by this code described in section 5-2-202.

(6) "Business day" means any calendar day except Sunday, New Year's day, the third Monday in January observed as the birthday of Dr. Martin Luther King, Jr., Washington-Lincoln day, Memorial day, Juneteenth, Independence day, Labor day, Frances Xavier Cabrini day, Veterans' day, Thanksgiving day, and Christmas day.

(7) (a) "Cash price" means, except as the administrator may otherwise prescribe by rule promulgated in accordance with article 4 of title 24, C.R.S., the price at which goods, services, or an interest in land is offered for sale by the seller to cash buyers in the ordinary course of business and may include the cash price of accessories or related services such as delivery, installation, servicing, repairs, alterations, modifications, and improvements and, if individually itemized, may also include:

(I) Applicable sales, use, and excise and documentary stamp taxes; and

(II) Amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees.

(b) The cash price stated by the seller to the buyer pursuant to the provisions on disclosure contained in section 5-3-101 is presumed to be the cash price.

(8) "Closing costs" with respect to a debt secured by an interest in land includes:

(a) Fees or premiums for title examination, title insurance, or similar purposes including surveys;

(b) Fees for preparation of a deed, settlement statement, or other documents;

(c) Escrows for future payments of taxes and insurance;

(d) Fees for notarizing deeds and other documents;

(e) Appraisal fees; and

(f) Credit reports.

(9) "Conspicuous" means a term or clause that is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court. A printed heading in capitals (as: WARRANTY) is conspicuous, and language in the body of the form is conspicuous if it is in larger or other contrasting type or color. In a telegram, any stated term is conspicuous.

(10) "Consumer" means a person other than an organization who is the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.

(11) (a) "Consumer credit sale" means, except as provided in paragraph (b) of this subsection (11), a sale of goods, services, a mobile home, or an interest in land in which:

(I) Credit is granted or arranged by a person who regularly engages as a seller in credit transactions of the same kind or pursuant to a seller credit card;

(II) The buyer is a person other than an organization;

(III) The goods, services, mobile home, or interest in land are purchased primarily for a personal, family, or household purpose;

(IV) Either the debt is by written agreement payable in installments or a finance charge is made; and

(V) With respect to a sale of goods or services, the amount financed does not exceed seventy-five thousand dollars.

(a.5) "Consumer credit sale" includes the recoverable expense of educating and training a worker pursuant to section 8-2-113 (3)(a).

(b) Unless the sale is made subject to this code by section 5-2-501, "consumer credit sale" does not include:

(I) A sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement;

(II) (A) Except as required by the federal "Truth in Lending Act" or the federal "Consumer Leasing Act" with respect to disclosure contained in section 5-3-101 and consumers' remedies for transactions secured by interests in land as contained in section 5-5-204, a sale of a mobile home or a sale of an interest in land if the finance charge does not exceed twelve percent per year calculated according to the actuarial method on the unpaid balances of the amount financed on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term or, notwithstanding the rate of the finance charge with respect to the sale of an interest in land, the sale is secured by a first mortgage or deed of trust lien against a dwelling to finance the acquisition of that dwelling.

(B) For the purposes of this subparagraph (II), "dwelling" means any improved real property or portion thereof that is used or intended to be used as a residence and contains not more than four dwelling units, and "first mortgage or deed of trust" means a mortgage or deed of trust having priority as a lien over the lien of any other mortgage or deed of trust on the same dwelling and subject to the lien of taxes levied on that dwelling.

(III) A sale for a business, investment, or commercial purpose; or

(IV) A sale primarily for an agricultural purpose.

(12) "Consumer credit transaction" means a consumer credit sale or consumer loan, or a refinancing or consolidation thereof, or a consumer lease.

(13) "Consumer insurance premium loan" means a consumer loan that:

(a) Is made for the sole purpose of financing the payment by or on behalf of an insured of the premium on one or more policies or contracts issued by or on behalf of an insurer;

(b) Is secured by an assignment by the insured to the lender of the unearned premium on the policy or contract; and

(c) Contains an authorization to cancel the policy or contract so financed.

(14) (a) "Consumer lease" means a lease of goods and includes any insurance incidental to the lease and any other services merely incidental to upkeep or repair of the goods:

(I) That a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, or household purpose;

(II) In which the amount payable under the lease does not exceed seventy-five thousand dollars; and

(III) That is for a term exceeding four months.

(b) "Consumer lease" does not include a lease made pursuant to a lender credit card or similar arrangement.

(15) (a) Except as provided in paragraph (b) of this subsection (15) and except with respect to a "loan primarily secured by an interest in land" as defined in subsection (26) of this section, "consumer loan" means a loan made or arranged by a person regularly engaged in the business of making loans in which:

(I) The consumer is a person other than an organization;

(II) The debt is incurred primarily for a personal, family, or household purpose;

(III) Either the debt is by written agreement payable in installments or a finance charge is made; and

(IV) Either the principal does not exceed seventy-five thousand dollars or the debt is secured by an interest in land.

(a.5) "Consumer loan" includes the recoverable expense of educating and training a worker pursuant to section 8-2-113 (3)(a).

(b) Unless the loan is made subject to this code by an agreement described in section 5-2-501, "consumer loan" does not include:

(I) A loan for a business, investment, or commercial purpose;

(II) A loan primarily for an agricultural purpose; or

(III) A reverse mortgage as defined in section 11-38-102, C.R.S.

(c) Unless the loan is made subject to this code by an agreement described in section 5-2-501 and except as provided with respect to the disclosure described in section 5-3-101, consumers' remedies for transactions secured by interests in land as described in section 5-5-204, and powers and functions of the administrator under part 1 of article 6 of this title, "consumer loan" does not include a "loan primarily secured by an interest in land" as defined in subsection (26) of this section.

(16) "Credit" means the right granted by a creditor to a consumer to defer payment of debt or to incur debt and defer its payment.

(16.5) "Credit card" means a lender credit card or a seller credit card, except as otherwise provided in this code.

(17) "Creditor" means the seller, lessor, lender, or person who makes or arranges a consumer credit transaction and to whom the transaction is initially payable, or the assignee of a creditor's right to payment, but use of the term does not in itself impose on an assignee any obligation of his or her assignor. In case of credit granted pursuant to a credit card, "creditor" means the card issuer and not another person honoring the credit card.

(18) "Dwelling" means a residential structure or mobile home that contains one to four family housing units or individual units of condominiums or cooperatives.

(19) "Earnings" means compensation paid or payable to an individual or for the individual's account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, fees, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement, or disability program.

(20) "Finance charge" means:

(a) The sum of all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the consumer, the creditor, or any other person on behalf of the consumer to the creditor or to a third party, including any of the following types of charges that are applicable:

(I) Interest or any amount payable under a point, discount, or other system of charges, however denominated;

(II) Time-price differential, credit service, service, carrying, or other charge, however denominated;

(III) Premium, or other charge for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss; and

(IV) Charges incurred for investigating the collateral or credit-worthiness of the consumer or for commissions or brokerage for obtaining the credit.

(b) The term does not include charges as a result of default described in section 5-3-302, additional charges described in section 5-2-202, delinquency charges described in section 5-2-203, or deferral charges described in section 5-2-204.

(c) If a creditor makes a loan to a consumer by purchasing or satisfying obligations of the consumer pursuant to a credit card or similar arrangement and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the finance charge.

(21) "Goods" includes goods not in existence at the time the transaction is entered into and merchandise certificates but excludes money, chattel paper, documents of title, and instruments.

(22) "Investment purpose" means that the primary purpose of the credit sale or loan is for future financial gain rather than for a present personal, family, or household use.

(23) "Lender" includes an assignee of the lender's right to payment, unless otherwise provided in this code, but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(24) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a consumer the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

(a) By the lender's honoring a draft or similar order for the payment of money drawn or accepted by the consumer;

(b) By the lender's payment or agreement to pay the consumer's obligations; or

(c) By the lender's purchase from the obligee of the consumer's obligations.

(25) "Loan" includes:

(a) Except as otherwise provided in paragraph (b) of this subsection (25):

(I) The creation of debt by the lender's payment of or agreement to pay money to the consumer or to a third party for the account of the consumer;

(II) The creation of debt by a credit to an account with the lender upon which the consumer is entitled to draw immediately;

(III) The creation of debt pursuant to a lender credit card in any manner, including a cash advance or the card issuer's honoring a draft or similar order for the payment of money drawn or accepted by the consumer, paying or agreeing to pay the consumer's obligation, or purchasing or otherwise acquiring the consumer's obligation from the obligee or his or her assignees;

(IV) The forbearance of debt arising from a loan; and

(V) The creation of debt by a cash advance to a consumer pursuant to a seller credit card.

(b) "Loan" does not include:

(I) A card issuer's payment or agreement to pay money to a third person for the account of a consumer if the debt of the consumer arises from a sale or lease and results from use of a seller credit card; or

(II) The forbearance of debt arising from a sale or lease.

(26) (a) "Loan primarily secured by an interest in land" means a consumer loan secured by a mobile home or primarily secured by an interest in land if, at the time the loan is made the value of the collateral is substantial in relation to the amount of the loan, and:

(I) The rate of the finance charge does not exceed twelve percent per year calculated according to the actuarial method on the unpaid balances of the principal on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term; or

(II) Notwithstanding the rate of the finance charge, and other than a precomputed loan as defined in subsection (35) of this section, the loan is secured by a first mortgage or deed of trust lien against a dwelling to:

(A) Finance the acquisition of that dwelling; or

(B) To refinance, by amendment, payoff, or otherwise, an existing loan made to finance the acquisition of that dwelling, including a refinance loan providing additional sums for any purpose whether or not related to acquisition or construction.

(b) As to any refinance loan in the form of a revolving loan account that is in whole or in part for purposes other than acquisition or construction, section 5-3-103 shall apply.

(c) With respect to loans secured by a first mortgage or deed of trust lien against a dwelling to refinance an existing loan to finance the acquisition of the dwelling and providing additional sums for any other purpose that are not subject to this code pursuant to paragraph (a) of this subsection (26), the lender shall disclose to the consumer that the refinance loan creates a lien against the dwelling or property and that the limits set forth in section 5-5-112 on the amount of attorney fees that a lender may charge the consumer are not applicable.

(d) For purposes of this subsection (26):

(I) A "loan secured by a first mortgage or deed of trust lien against a dwelling to finance the acquisition of the dwelling" includes a loan secured by a first mortgage or deed of trust lien against a dwelling to finance the original construction of such dwelling or to refinance any such construction loan;

(II) "Dwelling" means any improved real property, or portion thereof, that is used or intended to be used as a residence and contains not more than four dwelling units; and

(III) "First mortgage or deed of trust" means a mortgage or deed of trust having priority as a lien over the lien of any other mortgage or deed of trust on the same dwelling and subject to the lien of taxes levied on that dwelling.

(27) "Material disclosures" means the disclosure, as required by this code, of the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be financed, the total of payments, the number and amount of payments, and the due dates or periods of payments scheduled to repay the indebtedness.

(28) "Merchandise certificate" means a writing not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(29) "Mobile home" means a dwelling that is built on a chassis designed for long-term residential occupancy, that is capable of being installed in a permanent or semi-permanent location, with or without a permanent foundation, and with major appliances and plumbing, gas,

and electrical systems installed but needing the appropriate connections to make them operable, and that may be occasionally drawn over the public highways, by special permit, as a unit or in sections to its permanent or semi-permanent location.

(30) "Official fees" means:

(a) Fees and charges prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit transaction; or

(b) Premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the consumer credit transaction if the premium does not exceed the fees and charges described in paragraph (a) of this subsection (30) that would otherwise be payable.

(31) "Organization" means a corporation, limited liability company, government or governmental subdivision or agency, trust, estate, partnership, limited liability partnership, cooperative, or association.

(32) "Payable in installments" means that payment is required or permitted by agreement to be made in more than four periodic payments, excluding a down payment. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit transaction is "payable in installments".

(33) "Person" includes a natural person or an individual and an organization.

(34) (a) "Person related to" means, with respect to an individual, the spouse of the individual; a brother, brother-in-law, sister, or sister-in-law of the individual; an ancestor or lineal descendant of the individual or the individual's spouse; and any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(b) "Person related to" means, with respect to an organization, a person directly or indirectly controlling, controlled by, or under common control with the organization; an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization; the spouse of a person related to the organization; and a relative by blood or marriage of a person related to the organization who shares the same home with such person.

(35) "Precomputed" means a consumer credit sale or consumer loan in which the debt is expressed as a sum comprising the amount financed and the amount of the finance charge computed in advance or in which any portion of the finance charge is prepaid and the amount of that portion of the finance charge either computed in advance or prepaid constitutes more than one-half of the total finance charge applicable to the consumer credit sale or consumer loan.

(36) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced that would support a finding of its nonexistence.

(37) "Regularly" has the same meaning as stated in the federal "Truth in Lending Act" and the federal "Consumer Leasing Act".

(38) "Revolving credit" means an arrangement pursuant to which:

(a) A creditor may permit a consumer, from time to time, to purchase or lease on credit from the creditor or to obtain loans from the creditor;

(b) The amounts financed and the finance and other appropriate charges are debited to an account;

(c) The finance charge, if made, is computed on the account periodically; and

(d) Either the consumer has the privilege of paying in full or in installments or the creditor periodically imposes charges computed on the account for delaying payment and permits the consumer to continue to purchase or lease on credit.

(39) "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his or her obligations under the agreement.

(40) "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

(41) "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(42) "Seller", except as otherwise provided, includes an assignee of the seller's right to payment, but use of the term does not in itself impose on an assignee any obligation of the seller with respect to events occurring before the assignment.

(43) "Seller credit card" means an arrangement pursuant to which a person gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person or from that person and any other person.

(44) "Services" includes:

(a) Work, labor, and other personal services;

(b) Privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like; and

(c) Insurance provided by a person other than the insurer.

(45) "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business:

(a) Organized, chartered, or holding an authorization certificate under the laws of any state or of the United States that authorize the person to make loans and to receive deposits, including a savings, share, certificate, or deposit account; and

(b) Subject to supervision by an official or agency of any state or of the United States.

(46) "Supervised lender" means a person authorized to make or take assignments of supervised loans under a license issued by the administrator or as a supervised financial organization.

(47) "Supervised loan" means a consumer loan, including a loan made pursuant to a revolving credit account, in which the rate of the finance charge exceeds twelve percent per year as determined according to the provisions on finance charges contained in section 5-2-201.

(48) "Written" or "in writing" means any record conveying information and that is in a form the consumer may retain, or is capable of being displayed in visual text in a form the consumer may retain, including paper, electronic, digital, magnetic, optical, and electromagnetic.

Source: L. 2000: Entire article R&RE, p. 1183, § 1, effective July 1; (17) amended, p. 443, § 2, effective July 1. **L. 2001:** (1), (5)(b)(II), (15)(a)(III), and (26)(c) amended, p. 27, § 1, effective March 9. **L. 2003:** (16.5) added, p. 1892, § 1, effective July 1. **L. 2004:** (11)(b)(II)(A) and (15)(c) amended, p. 1187, § 6, effective August 4. **L. 2020:** (6) amended, (HB 20-1031), ch. 43, p. 143, § 3, effective September 14. **L. 2022:** (6) amended, (SB 22-139), ch. 149, p. 958, § 2, effective May 2. **L. 2024:** (11)(a.5) and (15)(a.5) added, (HB 24-1324), ch. 316, p. 2119, § 1, effective August 7.

Editor's note: (1) This section is similar to former § 5-1-301, as it existed prior to 2000.

(2) Subsection (17) was amended in Senate Bill 00-144. Those amendments were duplicated in § 5-1-301 (45)(a) as contained in the repeal and reenactment of article 1 of title 5 by House Bill 00-1185.

Cross references: (1) For additional definitions of the days under subsection (6) of this section, see § 24-11-101.

(2) For the definitions and federal statutory cites of the "Truth in Lending Act" and the "Consumer Leasing Act", see § 5-1-302.

(3) For the legislative declaration in HB 20-1031, see section 1 of chapter 43, Session Laws of Colorado 2020. For the legislative declaration in SB 22-139, see section 1 of chapter 149, Session Laws of Colorado 2022.

ANNOTATION

Law reviews. For article, "State Variations of the Uniform Consumer Credit Code: The Case for Legislative Restraint", see 48 Den. L.J. 239 (1971). For article, "Colorado Usury", see 11 Colo. Law. 2557 (1982). For article, "Colorado Usury: The Sequel - Parts I and II", see 23 Colo. Law. 565 and 829 (1994). For article, "The Colorado Equity Protection Act: A Response to Predatory Lending Practices", see 32 Colo. Law. 79 (Apr. 2003).

Subdivision of property and sale of lots held to be "credit transactions of the same kind" and therefore "consumer credit sales" under subsection (1)(a). Varady v. White, 661 P.2d 284 (Colo. App. 1982) (decided prior to 2000 repeal and reenactment).

Advance to tort plaintiffs in exchange for future litigation proceeds is a "loan", even if the plaintiff has no obligation to repay a deficiency if the litigation proceeds are less than the amount due. This transaction creates a debt, or an obligation to repay, that grows with the passage of time. Oasis Legal Fin. Grp. v. Coffman, 2015 CO 63, 361 P.3d 400.

The sale and assignment of a taxpayer's right to receive an income tax refund from the internal revenue service constitutes a loan subject to the Uniform Consumer Credit Code. State ex rel. Salazar v. The Cash Now Store, Inc., 31 P.3d 161 (Colo. 2001) (decided under former § 5-3-104 as it existed prior to the 2000 repeal and reenactment).

Where the loan was for taxes and business expenses incurred by an auto repair garage, it was frivolous to argue that the loan was personal because it preserved the business for plaintiff's son. Nienke v. Naiman Group, Ltd., 857 P.2d 446 (Colo. App. 1992) (decided prior to 2000 repeal and reenactment).

Transactions were consumer credit sales, not consumer loans, where transactions involved the purchase of vehicles from a used car dealership, the arrangement of financing by the dealership, the financing of the purchases by a third party lender, and the assignment of the dealer's right to payment from the purchasers to the third party lender, and where the purchasers never directly received money from the lender. De La Rosa v. W.

Funding, Inc., 24 P.3d 637 (Colo. App. 2001).

Applied in Empire Sav., Bldg. & Loan Ass'n v. Otero Sav. & Loan Ass'n, 640 P.2d 1151 (Colo. 1982) (decided prior to 2000 repeal and reenactment).

5-1-302. Definitions - federal "Truth in Lending Act" and federal "Consumer Leasing Act".

In this code, federal "Truth in Lending Act", 15 U.S.C. sec. 1601 et seq., and federal "Consumer Leasing Act", 15 U.S.C. sec. 1667 et seq., mean chapters of the "Consumer Credit Protection Act" (Public Law 90-321; 82 Stat. 146), as amended from time to time, and include regulations issued pursuant to those acts.

Source: L. 2000: Entire article R&RE, p. 1194, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 5-1-302, as it existed prior to 2000.

(2) "Consumer Leasing Act", referred to throughout this title, means the federal "Consumer Leasing Act of 1976", Pub.L. 94-240.

5-1-303. Index of definitions in code.

Definitions in this code and the sections in which they appear are:

"Actuarial method"	section 5-1-301 (1)
"Administrator"	sections 5-1-301 (2) and 5-6-103
"Agreement"	section 5-1-301 (3)
"Agricultural purpose"	section 5-1-301 (4)
"Amount financed"	section 5-1-301 (5)
"Business day"	section 5-1-301 (6)
"Cash price"	section 5-1-301 (7)

"Closing costs" section 5-1-301 (8)

"Conspicuous" section 5-1-301 (9)

"Consumer" section 5-1-301 (10)

"Consumer credit insurance" section 5-4-103 (1)

"Consumer credit sale" section 5-1-301 (11)

"Consumer credit transaction" section 5-1-301 (12)

"Consumer insurance premium loan" section 5-1-301 (13)

"Consumer lease" section 5-1-301 (14)

"Consumer loan" section 5-1-301 (15)

"Credit" section 5-1-301 (16)

(Deleted by amendment, L. 2023, effective July 1, 2024)

"Creditor" section 5-1-301 (17)

"Credit Insurance Act" section 5-4-103 (2)

"Dwelling" section 5-1-301 (18)

"Earnings" section 5-1-301 (19)

"Federal 'Truth in Lending Act'" and
"Federal 'Consumer Leasing Act'" section 5-1-302

"Finance charge" section 5-1-301 (20)

"Goods" section 5-1-301 (21)

"Home solicitation sale" section 5-3-401

"Investment purpose" section 5-1-301 (22)

"Lender" section 5-1-301 (23)

"Lender credit card or similar
arrangement" section 5-1-301 (24)

"Loan" section 5-1-301 (25)

"Loan primarily secured by an
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"Material disclosures"	section 5-1-301 (27)
"Merchandise certificate"	section 5-1-301 (28)
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"Organization"	section 5-1-301 (31)
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"Person"	section 5-1-301 (33)
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"Precomputed"	section 5-1-301 (35)
"Presumed" or "Presumption"	section 5-1-301 (36)
"Receive"	section 5-1-201 (10)
"Regularly"	section 5-1-301 (37)
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"Sale of goods"	section 5-1-301 (39)
"Sale of an interest in land"	section 5-1-301 (40)
"Sale of services"	section 5-1-301 (41)
"Seller"	section 5-1-301 (42)
"Seller credit card"	section 5-1-301 (43)
"Services"	section 5-1-301 (44)
"Supervised financial organization"	section 5-1-301 (45)
"Supervised lender"	section 5-1-301 (46)
"Supervised loan"	section 5-1-301 (47)
"Written" or "In writing"	section 5-1-301 (48)

Source: L. 2000: Entire article R&RE, p. 1194, § 1, effective July 1. **L. 2023:** Entire section amended, (HB 23-1229), ch. 375, p. 2245, § 5, effective July 1, 2024.

Editor's note: This section is similar to former § 5-1-303, as it existed prior to 2000.

ARTICLE 2

Finance Charges and Related Provisions

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PART 1

GENERAL PROVISIONS

5-2-101. Short title.

This article shall be known and may be cited as "Uniform Consumer Credit Code - Finance Charges and Related Provisions".

Source: L. 2000: Entire article R&RE, p. 1195, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-101, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "The Uniform Small Loan Law", see 6 Dicta 5 (1929). For article, "Professional Ethics", see 9 Dicta 317 (1932). For article, "Installment Selling in Colorado and Needed Legislation", see 29 Dicta 81 (1952). For note, "Colorado Interest Law", see 34 Dicta 398 (1957). For article, "Highlights of 1955 Colorado Legislative Session — Consumer Finance Act", see 28 Rocky Mt. L. Rev. 77 (1955). For article, "One Year Review of Real Property", see 36 Dicta 57 (1959). For article, "One Year Review of Contracts", see 38 Dicta 161 (1961). For article, "The Revolution in Consumer Credit Legislation", see 45 Den. L.J. 679 (1968). For article, "The Plight of the Consumer in the Uniform Consumer Credit Code", see 48 Den. L.J. 1 (1971). For article, "Legislative Overview of the Uniform Consumer Credit Code: A 1971 Perspective", see 48 Den. L.J. 27 (1971).

Annotator's note. (1) For cases construing prior provisions (§ 73-2-1 et seq., C.R.S. 1963, § 73-3-1 et seq., CRS 53)

governing loans over $15,000, see Waggener v. Holt Chew Motor Co., 130 Colo. 294, 274 P.2d 968 (1954); Siegal v. Lechler, 130 Colo. 338, 275 P.2d 949 (1954); Camellia Cleaners, Inc. v. Siegal, 131 Colo. 570, 283 P.2d 1083 (1955); Horlbeck v. Walther, 133 Colo. 19, 291 P.2d 688 (1955); Denning v. A.D. Wilson & Co., 137 Colo. 372, 326 P.2d 77 (1958); Von Reisen v. Greeley Fin. Co., 142 Colo. 210, 350 P.2d 340 (1960); Theodore Roosevelt Agency, Inc. v. GMAC, 156 Colo. 237, 398 P.2d 965 (1965), Dennis v. Bradbury, 236 F. Supp. 683 (D. Colo. 1964), aff'd and reh'g denied, 368 F.2d 905 (1966); Lederman Enters., Inc. v. Westinghouse Credit Corp., 347 F. Supp. 1291 (D. Colo. 1972).

(2) For case construing prior provisions (§ 73-3-1 et seq., C.R.S. 1963, § 73-4-1 et seq., CRS 53) governing loans of $15,000 or less, see Klipping v. McCauley, 143 Colo. 444, 354 P.2d 167 (1960).

(3) For cases construing prior provisions (§ 73-2-1 et seq., CRS 53; CSA, C. 88, §§ 22 through 44; and laws antecedent to CSA, C. 88, §§ 22 through 44) governing small loans ($300 or less), see Newman v. People, 23 Colo. 300, 47 P. 278 (1896); Lamar Canal Co. v. Amity Land & Irrigation Co., 26 Colo. 370, 58 P. 600 (1899); People ex rel. Colo. Bar Ass'n v. Erbaugh, 42 Colo. 480, 94 P. 349 (1908); Cavanaugh v. People, 61 Colo. 292, 157 P. 200 (1916); Warner v. People, 71 Colo. 559, 208 P. 459 (1922); Beneficial Loan & Inv. Co. v. Ira, 75 Colo. 379, 226 P. 136 (1924); Rice v. Franklin Loan & Fin. Co., 82 Colo. 163, 258 P. 223 (1927); Angleton v. Franklin Fin. Co., 88 Colo. 322, 295 P. 797 (1931); Gilbert v. Hudgens, 92 Colo. 571, 22 P.2d 858 (1933); Gronert v. People, 95 Colo. 508, 37 P.2d 396 (1934); Furlong v. People, 95 Colo. 571, 37 P.2d 1119 (1934); Daniels v. Fenton, 97 Colo. 409, 50 P.2d 62 (1935); Dowd v. Labor Fin. Corp., 100 Colo. 512, 69 P.2d 305 (1937); Siebers v. Labor Fin. Corp., 100 Colo. 40, 64 P.2d 1263 (1937); Waddell v. Traylor, 99 Colo. 576, 64 P.2d 1273 (1937); Siebers v. Disque, 102 Colo. 39, 76 P.2d 1108 (1938); Personal Fin. Co. v. Baker, 105 Colo. 1, 94 P.2d 460 (1939); Personal Fin. Co. v. Day, 126 F.2d 281 (10th Cir. 1942); Ray v. City & County of Denver, 109 Colo. 74, 121 P.2d 886 (1942); Sullivan v. Siegal, 125 Colo. 544, 245 P.2d 860 (1952).

5-2-102. Scope.

For purposes of this article, "consumer credit transaction" applies to consumer loans, including supervised loans, consumer credit sales, and refinancing and consolidations of these transactions but does not include consumer leases except for the charges and procedures in sections 5-2-202 and 5-2-203. The provisions concerning credit card surcharges contained in section 5-2-212 apply to all sales and leases.

Source: L. 2000: Entire article R&RE, p. 1195, § 1, effective July 1. **L. 2009:** Entire section amended, (HB 09-1141), ch. 41, p. 157, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-102, as it existed prior to 2000.

PART 2

MAXIMUM FINANCE CHARGES AND OTHER FEES AND CHARGES

5-2-201. Finance charge for consumer credit transactions.

(1) With respect to a consumer loan other than a supervised loan, including a revolving loan, a lender may contract for and receive a finance charge calculated according to the actuarial method not exceeding twelve percent per year on the unpaid balance of the amount financed.

(2) With respect to a supervised loan or a consumer credit sale, except for a loan or sale pursuant to a revolving account, a supervised lender or seller may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding the equivalent of the greater of either of the following:

(a) The total of:

(I) Thirty-six percent per year on that part of the unpaid balances of the amount financed that is one thousand dollars or less;

(II) Twenty-one percent per year on that part of the unpaid balances of the amount financed that is more than one thousand dollars but does not exceed three thousand dollars; and

(III) Fifteen percent per year on that part of the unpaid balances of the amount financed that is more than three thousand dollars; or

(b) Twenty-one percent per year on the unpaid balances of the amount financed.

(3) (a) Except as provided in paragraph (b) of this subsection (3), the finance charge for a supervised loan or consumer credit sale pursuant to a revolving credit account, calculated according to the actuarial method, may not exceed twenty-one percent per year on the unpaid balance of the amount financed.

(b) Notwithstanding paragraph (a) of this subsection (3), if there is an unpaid balance on the date as of which the finance charge is applied, the creditor may contract for and receive a minimum finance charge not exceeding fifty cents.

(4) (a) Except as provided in paragraph (b) of this subsection (4), this section does not limit or restrict the manner of contracting for the finance charge, whether by way of add-on, discount, single annual percentage rate, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section.

(b) A seller or lender may contract for the payment by a consumer of a prepaid finance charge. In addition to any other disclosure required by this code, a seller or lender shall disclose to the consumer the amount of any such prepaid finance charge.

(c) If the consumer credit transaction is precomputed:

(I) The finance charge may be calculated on the assumption that all scheduled payments will be made when due;

(II) The effect of prepayment is governed by the provisions on rebate upon prepayment contained in section 5-2-211.

(5) Except as provided in subsection (8) of this section, the term of a consumer credit transaction, for the purposes of this section, commences on the date the consumer credit transaction is made. Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth of a month. Subject to classifications and differentiations the creditor may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(6) Subject to classifications and differentiations the creditor may reasonably establish, the creditor may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate this section if:

(a) When applied to the median amount within each range, it does not exceed the maximum permitted in this section; and

(b) When applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to paragraph (a) of this subsection (6) by more than eight percent of such rate.

(7) Notwithstanding the provisions of subsections (1), (2), and (3) of this section, the creditor, in connection with a consumer credit transaction other than a deferred deposit loan as defined in section 5-3.1-102 (3) or one pursuant to a revolving credit account, may contract for and receive a minimum loan finance charge of not more than twenty-five dollars.

(8) With respect to a consumer insurance premium loan, the term of the loan commences on the earliest inception date of a policy or contract of insurance on which payment of the premium is financed by the loan.

Source: L. 2000: Entire article R&RE, p. 1196, § 1, effective July 1. **L. 2001:** (4)(b) amended, p. 28, § 2, effective March 9. **L. 2003:** (7) amended, p. 1892, § 2, effective July 1.

Editor's note: This section is similar to former § 5-2-201, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "State Variations of the Uniform Consumer Credit Code: The Case for Legislative Restraint", see 48 Den. L.J. 239 (1971). For article, "Colorado Usury", see 11 Colo. Law. 2557 (1982).

Defendant was entitled to charge 21% interest with respect to installment payments on the purchase of vehicles from a used-car dealership. Transaction was a consumer credit sale, not a consumer loan, so defendant who was an assignee of the dealership was legally entitled to charge 21% interest under this section. De La Rosa v. Western Funding, Inc., 24 P.3d 637 (Colo. App. 2001).

5-2-202. Additional charges.

(1) In addition to the finance charge permitted by this article 2 and in a consumer lease, a creditor may contract for and receive the following additional charges in connection with a consumer credit transaction:

(a) Official fees and taxes;

(b) Charges for insurance as described in subsection (3) of this section;

(c) Annual charges, payable in advance, for the privilege of using a credit card or similar arrangement;

(c.5) Charges for debt cancellation contracts or debt suspension contracts offered in compliance with 12 CFR 37 or 12 CFR 721 or other federal law;

(c.7) Charges for guaranteed asset protection agreements, as defined in section 5-9.3-101 (4), offered in compliance with article 9.3 of this title 5;

(d) Charges for other benefits conferred on the consumer, including insurance, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, are of a type that is not for credit, and are authorized as permissible additional charges by rule adopted by the administrator;

(e) The following charges if agreed to by the parties:

(I) A charge, not to exceed the greater of two dollars or two and one-half percent of the amount advanced, for each cash advance transaction made pursuant to a credit card; and

(II) A fee, not to exceed twenty-five dollars, assessed upon return or dishonor of a check or other instrument tendered as payment.

(2) No finance charge may be assessed on any charge listed in paragraph (e) of subsection (1) of this section.

(3) An additional charge may be made for insurance written in connection with the transaction, other than insurance protecting the creditor against the consumer's default or other credit loss, if:

(a) With respect to insurance against loss of or damage to property or against liability, the creditor furnishes a clear and specific statement in writing to the consumer setting forth the cost of the insurance if obtained from or through the creditor and stating that the consumer may choose the person through whom the insurance is to be obtained; and

(b) With respect to consumer credit insurance providing life, accident, or health coverage, the insurance coverage is not a factor in the approval by the creditor of the extension of credit and this fact is clearly disclosed in writing to the consumer and if, in order to obtain the insurance in connection with the extension of credit, the consumer gives specific affirmative written indication of the consumer's desire to do so after written disclosure to the consumer of the cost thereof.

(4) With respect to a debt secured by an interest in land, bona fide and reasonable closing costs described in section 5-1-301 (8) are additional charges.

Source: L. 2000: Entire article R&RE, p. 1197, § 1, effective July 1. **L. 2002:** (1)(b) amended, p. 1012, § 2, effective June 1. **L. 2009:** IP(1) amended, (HB 09-1141), ch. 41, p. 157, § 2, effective July 1. **L. 2023:** IP(1) amended and (1)(c.5) and (1)(c.7) added, (HB 23-1181), ch. 425, p. 2497, § 2, effective January 1, 2024. **L. 2024:** (1)(c.7) amended, (HB 24-1450), ch. 490, p. 3405, § 9, effective August 7.

Editor's note: This section is similar to former § 5-2-202, as it existed prior to 2000.

Cross references: For the legislative declaration in HB 23-1181, see section 1 of chapter 425, Session Laws of Colorado 2023.

ANNOTATION

National Bank Act preempts this section to the extent that an out-of-state national bank may "export" a favorable interest rate from the state in which it is located. Copeland v. MBNA Am., N.A., 883 P.2d 564 (Colo. App. 1994) (decided prior to 2000 repeal and reenactment).

Applied in Empire Sav., Bldg. & Loan Ass'n v. Otero Sav. & Loan Ass'n, 640 P.2d 1151 (Colo. 1982) (decided prior to 2000 repeal and reenactment).

5-2-203. Delinquency charges.

(1) With respect to a consumer credit transaction, the parties may contract for a delinquency charge on any installment or minimum payment not paid in full within ten days after its scheduled due date in an amount not exceeding:

(a) Fifteen dollars for a transaction not secured by an interest in land; except that, if the transaction is precomputed, the amount may not exceed the greater of fifteen dollars or the deferral charge described in section 5-2-204 (1) that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent; or

(b) Five percent of the unpaid amount of the installment or minimum payment due for a transaction secured by an interest in land.

(2) A delinquency charge under this section may be collected only once on an installment or minimum payment however long it remains in default. No delinquency charge may be collected if the installment or minimum payment has been deferred and a deferral charge described in section 5-2-204 has been paid or incurred until ten days after the deferred due date. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an installment or minimum payment that is paid in full within ten days after its scheduled installment due date even though an earlier maturing installment, minimum payment, or a delinquency charge on an earlier installment or minimum payment may not have been paid in full. For purposes of this subsection (3), payments are applied first to current installments or minimum payments due and then to delinquent installments or minimum payments due.

(4) (a) A creditor who has imposed a delinquency charge shall notify the consumer in writing of the amount of the delinquency charge assessed as follows:

(I) Before the due date of the next scheduled payment;

(II) If the creditor provides the consumer with periodic statements for each installment, on or with the next periodic statement provided to the consumer after the delinquency charge has been assessed; or

(III) For a revolving credit account for which a credit card is issued and that is not secured by an interest in land, before, on, or with the next periodic statement after the delinquency charge has been assessed.

(b) A creditor shall not assess a delinquency charge unless the delinquency charge is assessed within thirty days after the scheduled due date of any installment not paid in full or, for a revolving credit account for which a credit card is issued and that is not secured by an interest in land, within ninety days after the scheduled due date of the delinquent minimum payment.

(5) No finance charge may be assessed on any delinquency charge. For purposes of this section, for revolving credit, an installment is the minimum payment that the debtor is required to make during any billing cycle excluding any past-due amount from any previous billing cycle.

(6) If two installments or parts thereof of a precomputed transaction are in default for ten days or more, the creditor may elect to convert the transaction from a precomputed transaction to one in which the finance charge is based on unpaid balances, and the terms of the converted transaction shall be no less favorable to the consumer than the terms of the original transaction. In this event the creditor shall make a rebate pursuant to the provisions on rebate upon prepayment contained in section 5-2-211 as of the maturity date of the first delinquent installment and thereafter may make a finance charge as authorized by the provisions on finance charges. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge described in section 5-2-201. If the creditor proceeds under this subsection (6), any delinquency or deferral charges made with respect to installments due at or after the maturity date of the first delinquent installment shall be rebated and no further delinquency or deferral charges shall be made.

Source: L. 2000: Entire article R&RE, p. 1198, § 1, effective July 1. **L. 2007:** (4) amended, p. 842, § 1, effective May 14.

Editor's note: This section is similar to former § 5-2-203, as it existed prior to 2000.

ANNOTATION

Section 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 preempted plaintiff's claims against a Delaware bank that the bank's late charges violated this section and § 5-5-202. Stoorman v. Greenwood Trust Co., 888 P.2d 289 (Colo. App. 1994) (decided under law in effect prior to the 2000 repeal and reenactment).

"Interest" under § 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 includes late fees and, therefore, Colorado law is preempted by the federal law with respect to late charges. Stoorman v. Greenwood Trust Co., 888 P.2d 289 (Colo. App. 1994); Richardson v. Citibank (S.D.), N.A., 908 P.2d 532 (Colo. 1995); Smiley v. Citibank (S.D.), 517 U.S. 735 (1996) (decided under

law in effect prior to the 2000 repeal and reenactment).

Plaintiff's common law challenges were preempted by § 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 since that law creates an exclusive federal remedy and an exclusive federal remedy is inconsistent with the idea that a plaintiff can seek relief under state common law theories. Stoorman v. Greenwood Trust Co., 888 P.2d 289 (Colo. App. 1994) (decided under law in effect prior to the 2000 repeal and reenactment).

National Bank Act preempts this section to the extent that an out-of-state national bank may "export" a favorable interest rate from the state in which it is located. Copeland v. MBNA Am., N.A., 883 P.2d 564 (Colo. App. 1994) (decided under law in effect prior to the 2000 repeal and reenactment).

Section 86 of the National Bank Act of 1982 authorizes a national bank to charge interest at the rate allowed by the laws of the state where the bank is located. Copeland v. MBNA Am. Bank, N.A., 907 P.2d 87 (Colo. 1995) (decided under law in effect prior to 1993 amendment).

"Interest" under § 85 of the National Bank Act of 1982, includes late payment fees and, therefore, a national bank located in Delaware is authorized to charge such fees to a Colorado cardmember despite the fact that Colorado law prohibits late payment fees in addition to finance charges. Copeland v. MBNA Am. Bank, N.A., 907 P.2d 87 (Colo. 1995) (decided under law in effect prior to 1993 amendment).

5-2-204. Deferral charges - rules.

(1) With respect to a precomputed consumer credit transaction, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid installments, and the creditor may make and collect a charge not exceeding the rate previously stated to the consumer pursuant to the provisions on disclosure contained in section 5-3-101 applied to the amount or amounts deferred for the period of deferral calculated without regard to differences in the lengths of months, but proportionally for a part of a month, counting each day as one-thirtieth of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter.

(2) The creditor, in addition to the deferral charge, may make appropriate additional charges described in section 5-2-202, and the amount of these charges that is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

(3) The parties may agree in writing at the time of a precomputed consumer credit transaction that, if an installment is not paid within ten days after its due date, the creditor may unilaterally grant a deferral and make charges as provided in this section. No deferral charge may be made for a period after the date that the creditor elects to accelerate the maturity of the agreement.

(4) A delinquency charge made by the creditor on an installment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency.

(5) A deferral charge made according to this section is earned pro rata during the period in which no installment is scheduled to be paid by reason of the deferral and is fully earned on the last day of that period.

(6) The administrator may adopt rules regarding deferral charges for nonrecourse consumer credit transactions that have no periodic payments and are secured by an unvested, contingent future interest in the potential net proceeds of a settlement or judgment obtained from the consumer's associated legal claim.

Source: L. 2000: Entire article R&RE, p. 1200, § 1, effective July 1. **L. 2023:** (6) added, (HB 23-1162), ch. 286, p. 1719, § 1, effective August 7.

Editor's note: This section is similar to former § 5-2-204, as it existed prior to 2000.

5-2-205. Finance charge on refinancing.

(1) With respect to a consumer credit transaction, the creditor may by agreement with the consumer refinance the unpaid balance and may contract for and receive a finance charge based on the amount financed resulting from the refinancing at a rate not exceeding that permitted by the provisions on finance charges. For the purpose of determining the finance charge permitted, the amount financed resulting from the refinancing comprises the following:

(a) If the transaction was not precomputed, the total of the unpaid balance and the accrued charges on the date of the refinancing, or, if the transaction was precomputed, the amount that the consumer would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment contained in section 5-2-211 on the date of refinancing; except that, for the purpose of computing this amount, no minimum charge described in section 5-2-201 shall be allowed; and

(b) Appropriate additional charges described in section 5-2-202, payment of which is deferred.

Source: L. 2000: Entire article R&RE, p. 1200, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-205, as it existed prior to 2000.

5-2-206. Finance charge on consolidation.

If a consumer owes an unpaid balance to a creditor with respect to a consumer credit transaction and becomes obligated on another consumer credit transaction with the same creditor, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer credit transaction was not precomputed, the parties may agree to add the unpaid amount of the amount financed and accrued charges on the date of consolidation to the amount financed with respect to the subsequent consumer credit transaction. If the previous consumer credit transaction was precomputed, the parties may agree to refinance the unpaid balance pursuant to the provisions on refinancing contained in section 5-2-205 and to consolidate the amount financed resulting from the refinancing by adding it to the amount financed with respect to the subsequent consumer credit transaction. In either case, the creditor may contract for and receive a finance charge based on the aggregate amount financed resulting from the consolidation at a rate not in excess of that permitted by the provisions on finance charges.

Source: L. 2000: Entire article R&RE, p. 1201, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-205, as it existed prior to 2000.

5-2-207. Prepaid finance charge.

(1) Subject to the provisions of subsection (2) of this section, a creditor may contract for the payment by the consumer of a prepaid finance charge; except that the total finance charge contracted for and received by the creditor shall not exceed that permitted for consumer credit transactions.

(2) With respect to a refinancing pursuant to section 5-2-205 or consolidation pursuant to section 5-2-206 of a previous consumer credit transaction for which a prepaid finance charge was imposed, if said refinancing or consolidation is consummated within one year after the previous transaction, a new prepaid finance charge may be imposed:

(a) Only on that portion of the aggregate amount financed resulting from the refinancing or consolidation that exceeds the unpaid balance of the previous transaction determined in accordance with the provisions of section 5-2-205 or section 5-2-206, whichever is appropriate; or

(b) On the aggregate amount financed resulting from the refinancing or consolidation; except that any unearned portion of the prepaid finance charge imposed in connection with the previous

transaction shall be rebated to the consumer in accordance with the actuarial method as defined in section 5-1-301 and applicable rules adopted by the administrator.

Source: L. 2000: Entire article R&RE, p. 1201, § 1, effective July 1.

Editor's note: This section is similar to former § 5-3-206.5, as it existed prior to 2000.

5-2-208. Conversion to revolving account.

The parties may agree to add to a revolving account the unpaid balance of a consumer credit transaction not made pursuant to a revolving account. The unpaid balance is an amount equal to the amount financed determined according to the provisions on refinancing contained in section 5-2-205.

Source: L. 2000: Entire article R&RE, p. 1201, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-207 (5), as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "State Variations of the Uniform Consumer Credit Code: The Case for Legislative Restraint", see 48 Den. L.J. 239 (1971). For article, "Colorado Usury", see 11 Colo. Law. 2557 (1982).

5-2-209. Advances to perform covenants of consumer.

(1) If the agreement with respect to a consumer credit transaction contains covenants by the consumer to perform certain duties pertaining to insuring or preserving collateral, and the creditor pursuant to the agreement pays for performance of the duties on behalf of the consumer, the creditor may add the amounts paid to the debt if:

(a) The expenditure is reasonable to protect the risk of loss or damage to the property;

(b) The creditor has mailed to the consumer, at the consumer's last-known address, written notice of the consumer's nonperformance and has given the consumer reasonable opportunity after such notice to so perform; and

(c) In the absence of performance, the creditor has made all expenditures on behalf of the consumer in good faith and in a commercially reasonable manner.

(2) Within a reasonable time after advancing any sums, the creditor shall state to the consumer in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule, and, if the duties of the consumer performed by the creditor pertain to insurance, a brief description of the insurance paid for by the creditor including the type and amount of coverage. No further information need be given.

(3) A finance charge may be made for sums advanced pursuant to this section at a rate not exceeding the rate stated to the consumer pursuant to the provisions on disclosure contained in section 5-3-101 with respect to the consumer credit transaction; except that, with respect to a revolving account, the amount of the advance may be added to the unpaid balance of the debt and the creditor may make a finance charge not exceeding that permitted by the provisions on finance charges.

Source: L. 2000: Entire article R&RE, p. 1202, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-208, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "State Variations of the Uniform Consumer Credit Code: The Case for Legislative Restraint", see 48 Den. L.J. 239 (1971).

5-2-210. Right to prepay.

Subject to the provisions on rebate upon prepayment contained in section 5-2-211, the consumer may prepay in full, or in part if payment is no less than five dollars, the unpaid balance of a consumer credit transaction at any time without penalty. A payment in the amount of a scheduled installment, other than the last scheduled installment, not identified by the consumer as a partial prepayment shall not be deemed to be a partial prepayment regardless of when the payment is made if the amount equals the next scheduled installment. If such a payment is applied by the creditor to the scheduled installment, the payment shall be deemed to have been made on the due date for the scheduled installment to which it was applied.

Source: L. 2000: Entire article R&RE, p. 1202, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-209, as it existed prior to 2000.

ANNOTATION

Applied in Empire Sav., Bldg. & Loan Ass'n v. Otero Sav. & Loan Ass'n, 640 P.2d 1151 (Colo. 1982) (decided prior to 2000 repeal and reenactment).

5-2-211. Rebate upon prepayment - definitions.

(1) Except as otherwise provided in this section, upon prepayment in full of the unpaid balance of a precomputed consumer credit transaction, an amount not less than the unearned portion of the finance charge calculated according to this section shall be rebated to the consumer. If the rebate otherwise required is less than one dollar, no rebate need be made.

(2) Upon prepayment in full of a consumer credit transaction, other than one pursuant to a revolving account, a refinancing, or a consolidation, whether or not precomputed, the creditor may collect or retain a minimum charge within the limits stated in this subsection (2) if the finance charge earned at the time of prepayment is less than any minimum charge contracted for. The minimum charge may not exceed the lesser of the amount of finance charge contracted for or twenty-five dollars.

(3) (a) Except as otherwise provided in this section, the unearned portion of the finance charge is a fraction of the finance charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which prepayment occurs, and the denominator is the sum of all periodic balances under either the consumer credit agreement or, if the balance owing resulted from a refinancing described in section 5-2-205 or a consolidation described in section 5-2-206, under the refinancing agreement or consolidation agreement.

(b) With respect to a precomputed transaction entered into on or after October 28, 1975, and payable according to its original terms in more than sixty-one installments or on any precomputed transaction entered into on or after January 1, 1982, the unearned portion of the finance charge is, at the option of the lender, either:

(I) That portion that is applicable to all fully unexpired computational periods as originally scheduled, or if deferred, as deferred, that follow the date of prepayment. For this purpose, the applicable charge is the total of that which would have been made for each such period, had the consumer credit transaction not been precomputed, by applying to unpaid balances of the amount financed, according to the actuarial method, the annual percentage rate of charge previously stated to the consumer pursuant to the provisions on disclosure contained in section 5-3-101 based upon the assumption that all payments were made as originally scheduled, or if deferred,

as deferred. The creditor, at the creditor's option, may round the annual percentage rate to the nearest one-half of one percent so long as such procedure is not consistently used to obtain a greater yield than would otherwise be permitted; or

(II) The total finance charge minus the earned finance charge. The earned finance charge shall be determined by applying the annual percentage rate previously stated to the consumer pursuant to the provisions on disclosure contained in section 5-3-101 according to the actuarial method to the actual unpaid balances for the actual time the balances were unpaid up to the date of prepayment. If a delinquency or deferral charge was collected, it shall be treated as a payment.

(c) In the case of a consumer credit transaction primarily secured by an interest in land, reasonable sums actually paid or payable to persons not related to the creditor for customary closing costs included in the finance charge shall be deducted from the finance charge before the calculation prescribed by this subsection (3) is made.

(4) As used in this section, unless the context otherwise requires:

(a) "Computational period" means one month if one-half or more of the intervals between scheduled payments under the agreement is one month or more and otherwise means one week.

(b) The "interval" to the due date of the first scheduled installment or the final scheduled payment date is measured from the date of a consumer credit transaction and includes either the first or last day of the interval. If the interval to the due date of the first scheduled installment does not exceed one month by more than fifteen days when the computational period is one month or eleven days when the computational period is one week, the interval shall be considered as one computational period.

(c) "Periodic balance" means the amount scheduled to be outstanding on the last day of a computational period before deducting the payment, if any, scheduled to be made on that day.

(5) (a) This subsection (5) applies only if the schedule of payments is not regular.

(b) If the computational period is one month and:

(I) If the number of days in the interval to the due date of the first scheduled installment is less than one month by more than five days or more than one month by more than five but not more than fifteen days, the unearned finance charge shall be increased by an adjustment for each day by which the interval is less than one month and, at the option of the creditor, may be reduced by an adjustment for each day by which the interval is more than one month; the adjustment for each day shall be one-thirtieth of that part of the finance charge earned in the computational period prior to the due date of the first scheduled installment assuming that period to be one month; and

(II) If the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full month, the additional number of days shall be

considered a computational period only if sixteen days or more. This subparagraph (II) applies whether or not subparagraph (I) of this paragraph (b) applies.

(c) Notwithstanding paragraph (b) of this subsection (5), if the computational period is one month, the number of days in the interval to the due date of the first installment exceeds one month by not more than fifteen days and the schedule of payments is otherwise regular, the creditor at the creditor's option may exclude the extra days and the charge for the extra days in computing the unearned finance charge; but if the creditor does so and a rebate is required before the due date of the first scheduled installment, the creditor shall compute the earned charge for each elapsed day as one-thirtieth of the amount the earned charge would have been if the first interval had been one month.

(d) If the computational period is one week and:

(I) If the number of days in the interval to the due date of the first scheduled installment is less than five days or more than nine days but not more than eleven days, the unearned finance charge shall be increased by an adjustment for each day by which the interval is less than seven days and, at the option of the creditor, may be reduced by an adjustment for each day by which the interval is more than seven days; the adjustment for each day shall be one-seventh of that part of the finance charge earned in the computational period prior to the due date of the first scheduled installment assuming that period to be one week; and

(II) If the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full week, the additional number of days shall be considered a computational period only if four days or more. This subparagraph (II) applies whether or not subparagraph (I) of this paragraph (d) applies.

(6) Except as otherwise provided in paragraph (b) of subsection (3) of this section, if a deferral described in section 5-2-204 has been agreed to, the unearned portion of the finance charge is the portion thereof attributable according to the sum of the balances method to the period from the first day of the computational period following that in which prepayment occurs; except that the numerator of the fraction is the sum of the periodic balances, after rescheduling to give effect to any deferral, scheduled to follow the computational period in which prepayment occurs. A separate rebate of the deferral charge is not required unless the unpaid balance of the transaction is paid in full during the deferral period, in which event the creditor shall also rebate the unearned portion of the deferral charge.

(7) Except as otherwise provided in paragraph (b) of subsection (3) of this section, this section does not preclude the collection or retention by the creditor of delinquency charges described in section 5-2-203.

(8) If the maturity is accelerated for any reason and judgment is obtained, the consumer is entitled to the same rebate as if payment had been made on the date judgment is entered.

(9) Upon prepayment in full of a consumer credit transaction by the proceeds of consumer credit insurance described in section 5-4-103, the consumer or the consumer's estate is entitled to the same rebate as though the consumer had prepaid the agreement on the date the proceeds of the insurance are paid to the creditor but no later than ten business days after satisfactory proof of loss is furnished to the creditor.

Source: L. 2000: Entire article R&RE, p. 1203, § 1, effective July 1. **L. 2001:** IP(3)(b) and (5)(d)(I) amended, p. 28, § 3, effective March 9.

Editor's note: This section is similar to former § 5-2-210, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "Colorado Usury", see 11 Colo. Law. 2557 (1982).

5-2-212. Surcharges on credit transactions - enforcement - definitions.

(1) (a) Except as otherwise provided in sections 24-19.5-103 (3) and 29-11.5-103 (3), a seller or lessor in any sales or lease transaction may impose a surcharge on a buyer or lessee who elects to use a credit or charge card in lieu of payment by cash, check, or similar means in accordance with subsection (1)(c) of this section.

(b) A surcharge is any additional amount imposed at the time of the sales or lease transaction by the merchant, seller, or lessor that increases the charge to the buyer or lessee for the privilege of using a credit or charge card.

(c) A seller or lessor may impose a surcharge pursuant to either subsection (1)(c)(I) or (1)(c)(II) of this section as follows:

(I) An amount not to exceed two percent of the total cost to the buyer or lessee for the sales or lease transaction. A seller or lessor that imposes a surcharge on credit or charge cards shall post signage at the seller's or lessor's premises in a manner that is visible to customers or, for a sales or lease transaction made online, display before an online customer's completion of the sales or lease transaction in a manner that is visible to the online customer, the following language:

To cover the cost of processing a credit or charge card transaction, and pursuant to section 5-2-212, Colorado Revised Statutes, a seller or lessor may impose a processing surcharge in an amount not to exceed 2% of the total payment made for goods or services purchased or leased by use of a credit or charge card. A seller or lessor shall not impose a processing surcharge on payments made by use of cash, a check, or a debit card or redemption of a gift card.

(II) (A) An amount not to exceed the merchant discount fee that the seller or lessor incurs in processing the sales or lease transaction. The seller or lessor or the seller's or lessor's service provider shall calculate the surcharge at an amount not to exceed the actual amount paid to the processor or service provider to process the transaction.

(B) A seller or lessor shall post signage at the seller's or lessor's premises in a manner that is visible to customers or, for a sales or lease transaction made online, display before an online customer's completion of the sales or lease transaction in a manner that is visible to the online customer, the following language:

To cover the cost of processing a credit or charge card transaction, and pursuant to section 5-2-212, Colorado Revised Statutes, a seller or lessor may impose a processing surcharge in an amount not to exceed the merchant discount fee that the seller or lessor incurs in processing the sales or lease transaction. A seller or lessor shall not impose a processing surcharge on payments made by use of cash, a check, or a debit card or redemption of a gift card.

(C) The service provider may provide the seller or lessor with the means to make the disclosure required by this subsection (1)(c)(II).

(d) For any goods or services purchased or leased through payment by credit or charge card, the seller, lessor, or service provider shall provide as a separate line item on the customer's receipt the surcharge amount imposed pursuant to subsection (1)(c) of this section.

(e) A seller or lessor may impose only a single credit or charge card surcharge per sales or lease transaction pursuant to subsection (1)(a) of this section.

(f) A seller or lessor shall not impose a surcharge if a customer elects to pay for goods or services by:

(I) Using cash or a check;

(II) Using a debit card, whether or not a personal identification number is used;

(III) Processing a payment as a debit payment; or

(IV) Redeeming a gift card.

(g) As used in this subsection (1):

(I) "Charge card" includes those cards pursuant to which unpaid balances are payable on demand.

(II) "Merchant discount fee" means the actual fee, expressed as a percentage or fixed amount of the total transaction amount, that a seller or lessor pays its processor or service provider to process the transaction.

(2) A discount offered by a seller or lessor for the purpose of inducing payment by cash, check, or other means not involving the use of a seller or lender credit card shall not constitute a finance charge if such discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously in accordance with regulations of the administrator.

(3) (a) A seller or lessor who violates this section:

(I) Violates the code; and

(II) Is subject to liability as a creditor under the code.

(b) For purposes of liability for a violation of this section, a buyer or lessee is a consumer.

(4) A seller or lessor may impose a surcharge under this section regardless of any contract or agreement that the seller or lessor enters into on or after July 1, 2022.

Source: L. 2000: Entire article R&RE, p. 1206, § 1, effective July 1. **L. 2003:** (1) amended, p. 1442, § 3, effective April 29. **L. 2021:** (1) amended and (3) and (4) added, (SB 21-091), ch. 476, p. 3404, § 1, effective July 1, 2022.

Editor's note: This section is similar to former § 5-3-110, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "Colorado Usury", see 11 Colo. Law. 2557 (1982).

5-2-213. General-purpose credit cards - definitions.

(1) As used in this section:

(a) "General-purpose credit card" means any card, plate, or other single credit device that may be used from time to time to obtain consumer credit under an open-end credit plan offered by a supervised financial organization, as defined in section 5-1-301 (45), that:

(I) Is accepted by any merchant that participates in a widely accepted payment card network and is accepted upon presentation at multiple, unaffiliated merchants for goods or services;

(II) Does not charge fees, including pre-account opening fees, which exceed fifteen percent of the credit line; and

(III) Does not include an overdraft line of credit that is accessed by a debit or prepaid card or an account number.

(b) "Open-end credit plan" means consumer credit extended by a creditor under a plan in which:

(I) The creditor reasonably contemplates repeated transactions;

(II) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and

(III) The amount of credit that may be extended to the consumer during the term of the plan, up to any limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid.

(2) Limitations in state law on finance charges and fees applicable to consumer credit transactions in sections 5-2-201, 5-2-202, and 5-2-203 shall not apply to general-purpose credit cards.

Source: L. 2000: Entire article R&RE, p. 1206, § 1, effective July 1. **L. 2013:** (1) amended, (SB 13-154), ch. 282, p. 1468, § 20, effective July 1. **L. 2023:** Entire section R+RE, (HB 23-1229), ch. 375, p. 2242, § 1, effective July 1, 2024.

Editor's note: This section is similar to former § 5-3-508, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "State Variations of the Uniform Consumer Credit Code: The Case for Legislative Restraint", see 48 Den. L.J. 239 (1971). For article, "Colorado Usury", see 11 Colo. Law. 2557 (1982).

5-2-214. Alternative charges for loans not exceeding one thousand dollars.

(1) For a consumer loan where the amount financed is not more than one thousand dollars, a supervised lender may charge, in lieu of the loan finance charges permitted by section 5-2-201, the following finance charges:

(a) An acquisition charge for making the original loan or any refinanced loan, not to exceed eight percent of the amount financed; and

(b) A monthly installment account handling charge, not to exceed the following amounts:

Amount financed	Per month charge
$100.00 - $300	$8.50
$300.01 - $500	$11.50
$500.01 - $750	$14.50
$750.01 - $1,000	$17.50

(2) The minimum term of a loan made pursuant to this section is six months. The maximum term of a loan made pursuant to this section is twelve months. All loans shall be scheduled to be payable in substantially equal installments at equal periodic intervals.

(3) On a loan subject to the alternative charges authorized by this section, no other finance charge or any other charge or fee is permitted except as specifically provided for in this section and except for reasonable attorney fees provided for in section 5-5-112 and the fee for a dishonored check provided for in section 5-2-202 (1)(e)(II).

(4) Repealed.

(5) Upon prepayment of a loan made pursuant to this section, the unearned portion of the acquisition charge and the total monthly installment handling charge shall be refunded to the consumer. The unearned portion of these charges shall be calculated pursuant to the provisions on rebate upon prepayment contained in section 5-2-211 on the date of refinancing; except that, for the purpose of computing this amount, a minimum finance charge described in section 5-2-201 of no more than ten dollars is allowed if contracted with the consumer in the loan agreement.

(5.5) (a) A lender shall require a consumer to fill out a loan application for every loan under this section and shall maintain the application on file. The application must be signed and dated by the consumer.

(b) A lender shall require the consumer to provide a pay stub or other evidence of income in every application for a loan under this section and shall maintain this application on file. The pay stub or other evidence of income must have been issued or dated within forty-five days before the date of the application. If a lender requires a consumer to present a bank statement to secure a loan, the lender shall allow the consumer to delete from the statement the information regarding to whom the debits listed on the statement were payable. If the amount borrowed is not more than twenty-five percent of the consumer's monthly gross income and benefits, as evidenced by a paycheck stub or otherwise substantiated, a lender is not obligated to investigate the consumer's continued debt position, and the consumer's ability to repay the loan need not be further demonstrated.

(c) If a lender complies with the requirements of subsections (5.5)(a) and (5.5)(b) of this section, and the loan otherwise complies with this article 2 and other applicable law, neither the consumer's inability to repay the loan nor the lender's decision to obtain or not obtain additional information concerning the consumer's creditworthiness is cause to determine that a loan is unconscionable.

(6) The rates and charges permitted by this section shall not apply to deferred deposit loans subject to article 3.1 of this title.

(7) A lender shall not take collateral from a consumer as security for payment for any loan made pursuant to this section.

(8) A lender may not refinance a loan made pursuant to this section more than once in one year.

Source: L. 2004: Entire section added, p. 589, § 1, effective August 4. **L. 2007:** (1)(a) and (5) amended and (1)(a.5), (7), and (8) added, p. 711, §§ 1, 2, effective August 3. **L. 2023:** (1), (2), (3), (5), and (8) amended and (5.5) added, (HB 23-1229), ch. 375, p. 2243, § 2, effective January 1, 2024; (4)(b) added by revision, (HB 23-1229), ch. 375, pp. 2243, 2245, §§ 2, 6.

Editor's note: Subsection (4)(b) provided for the repeal of subsection (4), effective January 1, 2024. (See L. 2023, pp. 2243, 2245.)

PART 3

SUPERVISED LOANS AND SUPERVISED LENDERS

5-2-301. Authority to make supervised loans.

(1) Unless a person is a supervised financial organization or has first obtained a license from the administrator authorizing the person to make supervised loans, the person shall not engage in the business of:

(a) Making supervised loans or undertaking direct collection of payments from or enforcement of rights against consumers arising from supervised loans he or she has previously made; or

(b) Taking assignments of and undertaking direct collection of payments from or enforcement of rights against consumers arising from supervised loans, including servicing supervised loans; except that a person who is licensed by the administrator as a collection agency pursuant to article 16 of this title 5 or is licensed by the Colorado supreme court to practice law and who takes assignment of supervised loans only after such loans are in default is not required to obtain a supervised lender license to engage in the activities described in this subsection (1)(b).

Source: L. 2000: Entire article R&RE, p. 1206, § 1, effective July 1. **L. 2006:** (1)(b) amended, p. 530, § 1, effective April 18. **L. 2017:** (1)(b) amended, (HB 17-1238), ch. 260, p. 1170, § 6, effective August 9. **L. 2023:** IP(1) and (1)(b) amended, (SB 23-248), ch. 360, p. 2147, § 1, effective August 7.

Editor's note: This section is similar to former § 5-3-502, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "State Variations of the Uniform Consumer Credit Code: The Case for Legislative Restraint", see 48 Den. L.J. 239 (1971). For article, "Colorado Usury", see 11 Colo. Law. 2557 (1982).

5-2-302. License to make supervised loans - consumer credit unit cash fund - rules - definition.

(1) The administrator shall receive and act on all applications for licenses to make supervised loans under this code. Applications shall be filed in the manner prescribed by the administrator

and shall contain such information as the administrator may reasonably require. No license shall be issued without payment of a nonrefundable license fee. The license year shall be the calendar year.

(2) No license shall be issued unless the administrator, upon investigation, finds that the financial responsibility, character, and fitness of the applicant and of the members, managers, partners, officers, and directors thereof are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this code. In determining financial responsibility of an applicant proposing to engage in making consumer insurance premium loans, the administrator shall consider the liabilities the lender may incur for erroneous cancellation of insurance. The administrator may deny an application for licensure for any of the grounds provided in section 5-2-303.

(3) (a) Upon written request, the applicant is entitled to a hearing on the question of the applicant's qualifications for a license if:

(I) The administrator has notified the applicant in writing that his or her application has been denied; or

(II) The administrator has not issued a license within sixty days after the application for the license was filed.

(b) A request for a hearing may not be made more than sixty days after the administrator has mailed a writing to the applicant notifying the applicant that the application has been denied and stating in substance the administrator's findings supporting denial of the application.

(4) If a supervised lender has more than one place of business, it must obtain a master license. The administrator may authorize the addition of branch locations to the master license. A separate license fee and proof of financial responsibility shall be required for each authorized branch location. Each master license and branch location license shall remain in full force and effect until surrendered, suspended, or revoked.

(5) (a) The application for approval of a branch location license may be more abbreviated than the application for a new or master supervised lender's license. An application for a branch location license may be filed by any means, including facsimile or electronic filing, followed by the license fee required by this section.

(b) Upon receipt of a completed branch location license application and the required license fee, the branch location is automatically licensed for a temporary period not to exceed one hundred twenty days. If the administrator does not deny the branch location application on or before the end of that period, the temporary branch location license shall become permanent. The administrator may deny an application for a branch location for any of the grounds provided in subsection (2) of this section and section 5-2-303.

(c) The administrator's approval of an additional branch location license may be provided by letter. No license certificate need be issued for a licensed branch location. All provisions of this part 3 relating to licenses apply equally to branch location licenses.

(6) No licensee shall change the location of any place of business or license without giving the administrator at least fifteen days prior written notice. The administrator may by rule promulgated in accordance with article 4 of title 24, C.R.S., establish an administrative fee for such a change of address.

(7) (a) Except as provided in subsection (7)(b) of this section, a licensee shall not engage in the business of making supervised loans at any place of business for which the licensee does not hold a license, nor shall a licensee engage in business under any other name than that in the license. The administrator may, by rule, establish an administrative fee for such a change of name. For the purposes of this subsection (7), a consumer insurance premium loan is made at the lender's business office.

(b) (I) Subject to rules adopted by the administrator, nothing in this part 3 prohibits a licensee from permitting its employees to work from a remote location so long as the licensee:

(A) Ensures that no in-person customer interactions are conducted at the remote location and does not designate the remote location to consumers as a business location;

(B) Maintains appropriate safeguards for licensee and consumer data, information, and records, including the use of secure virtual private networks, also known as "VPNs", where appropriate;

(C) Employs appropriate risk-based monitoring and oversight processes of work performed from a remote location and maintains records of the monitoring and oversight processes;

(D) Ensures consumer information and records are not maintained at a remote location;

(E) Ensures consumer and licensee information and records remain accessible and available for regulatory oversight and examination; and

(F) Provides appropriate employee training to ensure employees working from a remote location keep all conversations about and with consumers that are conducted from the remote location confidential, as if conducted from a commercial location, and to ensure that employees working at a remote location work in an environment that is conducive and appropriate to ensuring privacy and confidential conversations.

(II) As used in this subsection (7)(b), "remote location" means a private residence of an employee of a licensee or another location selected by the employee and approved by the licensee.

(8) Each license shall be renewed by payment of a nonrefundable license fee and the filing of a renewal form. The fee and renewal form are due each July 1. If a licensee fails to file the renewal form and pay the appropriate renewal fees by July 1, its license automatically expires.

(9) (Deleted by amendment, L. 2009, (HB 09-1141), ch. 41, p. 157, § 3, effective January 1, 2010.)

(10) Repealed.

(11) (a) There is hereby created in the state treasury the consumer credit unit cash fund, referred to in this subsection (11) as the "fund". The fund consists of all fees collected pursuant to this article 2 and articles 6, 10, 16, 19, and 21 of this title 5 on and after July 1, 2024. The money in the fund is continuously appropriated to the fund by the general assembly to be expended by the administrator to pay for the direct and indirect costs of the administration and enforcement of this article 2 and articles 6, 10, 16, 19, and 21 of this title 5.

(b) The administrator may establish a fee schedule for the payment and collection of fees described in this article 2 and articles 6, 10, 16, 19, and 21 of this title 5.

(c) All interest derived from the deposit and investment of money in the fund is credited to the fund. At the end of each fiscal year, all unexpended and unencumbered money in the fund remains in the fund and shall not be credited or transferred to the general fund or any other fund.

(d) In accordance with section 24-75-402 (3)(c), the alternative maximum reserve for the fund is one-third of the amount expended from the fund during each fiscal year.

(e) On and after July 1, 2024, the administrator shall transfer all fees collected under this article 2 and under articles 10, 16, 19, and 21 of this title 5 to the state treasurer, who shall credit the fees to the fund.

Source: L. 2000: Entire article R&RE, p. 1207, § 1, effective July 1. **L. 2009:** (1), (8), and (9) amended, (HB 09-1141), ch. 41, p. 157, § 3, effective January 1, 2010. **L. 2022:** (7) amended, (HB 22-1410), ch. 404, p. 2872, § 1, effective August 10. **L. 2023:** (8) amended and (10) and (11) added, (SB 23-248), ch. 360, p. 2147, § 2, effective August 7.

Editor's note: (1) This section is similar to former §§ 5-3-503 and 5-6-203, as they existed prior to 2000.

(2) Subsection (10)(b) provided for the repeal of subsection (10), effective July 1, 2026. (See L. 2023, p. 2147.)

ANNOTATION

Law reviews. For article, "State Variations of the Uniform Consumer Credit Code: The Case for Legislative Restraint", see 48 Den. L.J. 239 (1971).

5-2-303. Denial and discipline of license.

(1) The administrator may deny an application for a license or take disciplinary action against a person licensed to make supervised loans if the administrator finds that:

(a) The applicant or licensee has violated this code or any rule or order lawfully made pursuant thereto;

(b) Facts or conditions exist that would clearly have justified the administrator in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made;

(c) The applicant has failed to complete an application for licensure;

(d) The applicant or licensee has failed to provide information required by the administrator within a reasonable time as fixed by the administrator;

(e) The applicant or licensee has failed to provide or maintain proof of financial responsibility;

(f) The applicant or licensee is insolvent;

(g) The applicant or licensee has made, in any document or statement filed with the administrator, a false representation of a material fact or has omitted to state a material fact;

(h) The applicant, licensee, or its owners, partners, members, officers, or directors have been convicted of or entered a plea of guilty or nolo contendere to a crime specified in part 4 of article 4 of title 18, C.R.S., or in part 1, 2, 3, 5, or 7 of article 5 of title 18, C.R.S., to a crime involving fraud or deceit, or to any similar crime under the jurisdiction of any federal court or court of another state;

(i) The applicant or licensee has failed to make, maintain, or produce records which comply with section 5-2-304 and any regulation adopted by the administrator;

(j) The applicant or licensee has been the subject of any disciplinary action by any state or federal agency;

(k) A final judgment has been entered against the applicant or licensee for violations of this code, any state or federal law concerning consumer finance, banking, or mortgage brokers or lenders, or any state or federal law prohibiting deceptive or unfair trade or business practices; or

(l) The applicant or licensee has failed to, in a timely manner as fixed by the administrator, take or provide proof of the corrective action required by the administrator subsequent to an examination or investigation pursuant to section 5-2-305 or 5-6-106.

(2) The administrator may summarily suspend a license as provided in section 24-4-104, C.R.S.

(3) Whenever the administrator denies a license application or takes disciplinary action pursuant to this section, the administrator shall enter an order to that effect and notify the licensee or applicant of the denial or disciplinary action. The notification required by this subsection (3) shall be given by personal service or by mail to the last-known address of the licensee or applicant as shown on the application, license, or as subsequently furnished in writing to the administrator.

(4) Any person holding a license to make supervised loans may relinquish the license by notifying the administrator in writing of its relinquishment. The revocation, suspension, expiration, or relinquishment of a license shall not affect the licensee's liability for acts previously committed nor impair the administrator's ability to issue a final agency order or impose discipline against the licensee.

(5) No revocation, suspension, or relinquishment of a license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any consumer.

(6) The administrator may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists that clearly would have justified the administrator in refusing to grant a license.

(7) After a finding of one or more of the conditions stated in subsection (1) of this section, the administrator may take any or all of the following actions:

(a) Deny an application for licensure including an application for a branch office license;

(b) Revoke the license;

(c) Suspend the license for a period of time;

(d) Issue an order to the licensee to cease and desist from such acts;

(e) Order the licensee to make refunds to consumers of excess charges under this code;

(f) Impose penalties of up to a maximum of one thousand dollars for each violation all or part of which may be specifically designated for consumer and creditor educational expenses;

(g) Bar the person from applying for or holding a license for a period of five years following revocation of his or her license;

(h) Issue a letter of admonition; or

(i) Impose a penalty of two hundred dollars per day for failure to make, produce, or retain records required to be maintained under this code within forty-eight hours after the administrator's written demand. If the administrator has provided advance written notice of forty-eight hours or more to a licensee prior to conducting an examination pursuant to section 5-2-305, the penalty may be imposed without allowing additional time.

(8) The discipline stated in paragraphs (h) and (i) of subsection (7) of this section may be imposed without a hearing, but the licensee may, within thirty days thereafter, file with the administrator a written notice requesting a hearing. If such request is timely made, the letter of admonition shall be deemed vacated and a hearing shall be held. If, after such hearing, there is a finding that one or more of the grounds for discipline exist, any or all of the forms of discipline listed in this section may be imposed.

Source: L. 2000: Entire article R&RE, p. 1209, § 1, effective July 1. **L. 2003:** (4) amended, p. 1892, § 3, effective July 1.

Editor's note: This section is similar to former §§ 5-3-503 and 5-3-504, as they existed prior to 2000.

ANNOTATION

Law reviews. For article, "State Variations of the Uniform Consumer Credit Code: The Case for Legislative Restraint", see 48 Den. L.J. 239 (1971).

5-2-304. Records - annual reports - proof of financial responsibility.

(1) Every licensee shall maintain records in conformity with this code, rules adopted thereunder, and generally accepted accounting principles and practices in a manner that will enable the administrator to determine whether the licensee is complying with the provisions of this code. The record-keeping system of a licensee shall be sufficient if the licensee makes the required information reasonably available. The records need not be kept in the place of business where supervised loans are made if the administrator is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than four years after making the final entry relating to the loan, but, in the case of a revolving loan account, the four years is measured from the date of each entry.

(2) On or before June 1 of each year, every licensee shall file with the administrator an annual report in the form prescribed by the administrator relating to all supervised loans made by

the licensee, which report shall also demonstrate satisfactory proof of the licensee's financial responsibility. At all other times, the licensee shall maintain satisfactory proof of financial responsibility. The administrator shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. Information contained in annual reports shall be confidential and may be published only in composite form. The administrator may, by rule, determine the types and amounts of financial responsibility deemed to be satisfactory.

(3) If a licensee fails to file the annual report or proof of financial responsibility by July 1, the administrator may impose a penalty of five dollars per day from July 2 to the date the filing is postmarked. However, if a licensee fails to file and pay the appropriate penalty by July 15, or, at all other times, fails to provide satisfactory proof of financial responsibility within thirty days after receiving notice from the administrator, its license shall automatically expire.

Source: L. 2000: Entire article R&RE, p. 1211, § 1, effective July 1. **L. 2003:** (2) and (3) amended, p. 1893, § 4, effective July 1.

Editor's note: This section is similar to former § 5-3-505, as it existed prior to 2000.

5-2-305. Examinations and investigations.

(1) The administrator shall examine periodically, at intervals the administrator deems appropriate, the loans, business, and records of every licensee. In addition, for the purpose of discovering violations of this code or securing information lawfully required, the administrator or, in lieu thereof, the official or agency to whose supervision the organization is subject pursuant to section 5-6-105, may at any time investigate the loans, business, and records of any supervised lender or any supervised financial organization. For these purposes the administrator shall have free and reasonable access to the offices, places of business, and records of the lender.

(2) (a) If the lender's records are located outside this state, the lender shall, at the lender's option, either make them available to the administrator at a convenient location within this state or pay the reasonable and necessary expenses for the administrator or the administrator's representative to examine them at the place where they are maintained; except that the lender shall make the records available for examination at the administrator's office or at any other location the administrator deems appropriate, at the cost of the lender, if the administrator determines that the examination of the records at the location where the records are maintained endangers the safety of the administrator's representative or that there are not adequate facilities at the location where the records are maintained to conduct the examination. The administrator

may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the administrator's behalf.

(b) The administrator may require any lender whose records are located within the state to make its records available for examination at the administrator's office or at any other location the administrator deems appropriate at the cost of the lender if the administrator determines that the examination of the records at the location where the records are maintained endangers the safety of the administrator's representative or that there are not adequate facilities at the location where the records are maintained to conduct the examination.

(3) For the purposes of this section, the administrator may administer oaths or affirmations, and, upon the administrator's own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(4) Upon failure without lawful excuse to obey a subpoena or to give testimony, the administrator may apply to the district court in the city and county of Denver for an order compelling compliance.

(5) After the administrator has examined a licensee pursuant to this section, the administrator shall provide a report of the examination to the licensee and request the licensee to take the corrective action required therein. The licensee shall, within a time and manner as fixed by the administrator, take the corrective action required in the report and provide proof that the corrective action was taken. The corrective action required may include refunds of excess charges and corrections of disclosures required by this code. This subsection (5) does not require the administrator to allow a licensee to take corrective action prior to the administrator filing legal or administrative action for repeated or willful violations of this code.

Source: L. 2000: Entire article R&RE, p. 1211, § 1, effective July 1.

Editor's note: This section is similar to former § 5-3-506, as it existed prior to 2000.

5-2-306. Administrative procedures - applicability.

Except as otherwise provided, the provisions of sections 24-4-102 to 24-4-106, C.R.S., apply to and govern all rules promulgated and all administrative action taken by the administrator pursuant to this code; except that section 24-4-104 (3), C.R.S., shall not apply to any such action.

Source: L. 2000: Entire article R&RE, p. 1213, § 1, effective July 1.

Editor's note: This section is similar to former § 5-3-507, as it existed prior to 2000.

5-2-307. Judicial review.

Any person aggrieved by any final action or order of the administrator and affected thereby is entitled to a review thereof by the court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S.

Source: L. 2000: Entire article R&RE, p. 1213, § 1, effective July 1.

Editor's note: This section is similar to former §§ 5-6-107 and 5-6-108, as they existed prior to 2000.

5-2-308. Regular schedule of payments - maximum loan term.

(1) Supervised loans not made pursuant to a revolving credit account and in which the principal is three thousand dollars or less shall be scheduled to be payable in substantially equal installments at equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor and:

(a) Over a period of not more than thirty-seven months if the principal is more than one thousand dollars; or

(b) Over a period of not more than twenty-five months if the principal is one thousand dollars or less.

Source: L. 2000: Entire article R&RE, p. 1213, § 1, effective July 1.

Editor's note: This section is similar to former § 5-3-511, as it existed prior to 2000.

5-2-309. Conduct of business other than making loans.

A supervised lender may not carry on any other business for the purpose of evasion or violation of this code nor may the supervised lender extend credit on the condition or requirement that the consumer obtain additional credit, goods, or services from the supervised lender or a person related to the supervised lender unless otherwise permitted by law.

Source: L. 2000: Entire article R&RE, p. 1213, § 1, effective July 1.

Editor's note: This section is similar to former § 5-3-512, as it existed prior to 2000.

Cross references: For regulation of pawnbrokers, see article 11.9 of title 29.

5-2-310. Application of other provisions.

Except as otherwise provided, all provisions of this code applying to consumer loans apply to supervised loans.

Source: L. 2000: Entire article R&RE, p. 1213, § 1, effective July 1.

Editor's note: This section is similar to former § 5-3-513, as it existed prior to 2000.

PART 4

(Reserved)

PART 5

OTHER CREDIT TRANSACTIONS

5-2-501. Transactions subject to code by agreement of parties.

The parties to a transaction other than a consumer credit transaction may agree in a writing signed by the parties that the transaction is subject to the provisions of this code. If the parties so agree, the transaction is a consumer credit transaction for the purposes of this code.

Source: L. 2000: Entire article R&RE, p. 1213, § 1, effective July 1.

Editor's note: This section is similar to former § 5-3-601, as it existed prior to 2000.

5-2-502. Finance charge for other transactions.

With respect to a transaction that is specifically exempt from the rate ceilings of this code by the provisions of section 5-1-301 (15)(c), the parties may contract for the payment by the consumer of any finance charge up to a rate not to exceed an annual percentage rate of forty-five percent pursuant to section 18-15-104, C.R.S. The rate of the finance charge shall be calculated on the unpaid balances of the debt on the assumption that the debt will be paid according to its terms and will not be paid before the end of the agreed term.

Source: L. 2000: Entire article R&RE, p. 1214, § 1, effective July 1.

Editor's note: This section is similar to former § 5-3-605, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "The Colorado Equity Protection Act: A Response to Predatory Lending Practices", see 32 Colo. Law. 79 (Apr. 2003).

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PART 1

DISCLOSURES, NOTICES, RECORDS, AND ADVERTISING

5-3-101. Applicability - information required.

(1) For purposes of this section, a consumer credit transaction includes a transaction secured primarily by an interest in land without regard to the rate of the finance charge if the consumer credit transaction is otherwise a consumer credit transaction.

(2) The creditor shall disclose to the consumer to whom credit is extended with respect to a consumer credit transaction the information, disclosures, and notices required by the federal "Truth in Lending Act", the federal "Consumer Leasing Act", and any regulation thereunder.

(3) The information, disclosures, and notices required by subsection (2) of this section must be provided if the transaction is a consumer credit transaction under this code even though the transaction is one of a class of credit transactions exempted from the federal "Truth in Lending Act", the federal "Consumer Leasing Act", and any regulation thereunder.

Source: L. 2000: Entire article R&RE, p. 1214, § 1, effective July 1. **L. 2001:** (1) amended, p. 28, § 4, effective March 9.

Editor's note: This section is similar to former § 5-2-301, as it existed prior to 2000.

Cross references: For the definitions and federal statutory cites of the "Truth in Lending Act" and the "Consumer Leasing Act", see § 5-1-302.

5-3-102. Notice of assignment.

The consumer is authorized to pay the original creditor until the consumer receives notification of assignment of rights to payment pursuant to a consumer credit transaction and that payment is to be made to the assignee. A notification that does not reasonably identify the rights assigned is ineffective. If requested by the consumer, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless the assignee does so the consumer may pay the original creditor.

Source: L. 2000: Entire article R&RE, p. 1214, § 1, effective July 1.

Editor's note: This section is similar to former § 5-3-406, as it existed prior to 2000.

5-3-103. Change in terms of revolving credit accounts.

(1) If a creditor makes a change in the terms of a revolving account without complying with this section, any additional cost or charge to the consumer resulting from the change is an excess charge and subject to the remedies available to consumers described in section 5-5-202 and to the administrator described in section 5-6-114.

(2) (a) Except as otherwise provided in paragraph (b) or (c) of this subsection (2), whenever any term of a revolving credit account is changed or the required minimum periodic payment thereon is increased, the creditor shall mail or deliver written notice of the change, at least one billing cycle before the effective date of the change, to each consumer who may be affected by the change.

(b) The notice required by paragraph (a) of this subsection (2) shall be given in advance, but need not be given one billing cycle in advance, if the change has been agreed to by the consumer or if the change is an increase in a finance charge, periodic rate, or other charge permitted under section 5-2-202 as a result of the consumer's delinquency or default.

(c) The notice otherwise required by paragraph (a) of this subsection (2) is not required if the change:

(I) Results from the consumer's delinquency or default but is not of a kind listed in paragraph (b) of this subsection (2);

(II) Results from an agreement related to a court proceeding or arbitration;

(III) Is a reduction of any charge or component thereof; or

(IV) Is a suspension of future credit privileges or termination of a consumer credit transaction.

(3) The notice provisions of subsection (2) of this section shall not apply if:

(a) The consumer, after receiving notice in writing of the specific change, agrees in writing to the change;

(b) The consumer elects to pay an amount designated on a billing statement as including a new charge for a benefit offered to the consumer when the benefit and charge constitutes the

change in terms and when the billing statement also states the amount payable if the new charge is excluded;

(c) The change involves no significant cost to the consumer; or

(d) The agreement provides limitations on changing of terms that are more restrictive than the requirements of subsection (2) of this section.

(4) The notice provided for in this section is given to the consumer when mailed to the consumer at the address used by the creditor for sending periodic billing statements.

Source: L. 2000: Entire article R&RE, p. 1214, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-416, as it existed prior to 2000.

5-3-104. Receipts - statements of account - evidence of payment.

(1) The creditor shall deliver or mail to the consumer, without request, a written receipt for each payment by coin or currency on an obligation pursuant to a consumer credit transaction. A periodic statement showing a payment received by the creditor complies with this subsection (1).

(2) Upon written request of a consumer, the creditor of a consumer credit transaction, other than one pursuant to a revolving credit account, shall provide a written statement of the dates and amounts of payments made within the twelve months preceding the month in which the request is received and the total amount unpaid as of the end of the period covered by the statement. The statement shall be provided without charge twice during each year of the term of the obligation. If additional statements are requested, the creditor may charge not more than ten dollars for each additional statement.

(3) Within thirty days after a consumer has fulfilled all obligations with respect to a consumer credit transaction, other than one pursuant to a revolving credit account, the creditor shall deliver or mail to the consumer written evidence acknowledging payment in full of all obligations with respect to the transaction and written evidence of release of any security interest and termination of any financing statement held, retained, or acquired.

Source: L. 2000: Entire R&RE, p. 1216, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-110, as it existed prior to 2000.

5-3-105. Notice to cosigners and similar parties.

(1) No natural person, other than the spouse of the consumer, shall be obligated as a cosigner, comaker, guarantor, endorser, surety, or similar party with respect to a consumer credit transaction, unless before or contemporaneously with signing any agreement of obligation or any writing setting forth the terms of the consumer's agreement, the person receives a written notice that contains a completed identification of the debt he or she may have to pay and reasonably informs such person of his or her obligation with respect to it. Such written notice may be set forth in the consumer's agreement of obligation or in a separate writing. For purposes of this section, the word "cosigner", "comaker", "guarantor", "endorser", or "surety" means a natural person who, by agreement and without compensation, renders himself or herself liable for the obligation of another in a consumer credit transaction, and the terms "agreement" and "consumer's agreement" mean the original underlying agreement.

(2) The notice required by this section must be a clear and conspicuous notice and comply with the disclosure requirements of 16 CFR 444.3.

(3) The notice required by this section need not be given to a seller, lessor, or lender who is obligated to an assignee of his or her rights.

(4) A person entitled to notice pursuant to this section shall also be given a copy of any writing setting forth the terms of the consumer's agreement and of any separate agreement of obligation signed by the person entitled to the notice.

(5) A cosignor is entitled to a notice of right to cure pursuant to sections 5-5-110 (4) and 5-5-111 (3).

Source: L. 2000: Entire article R&RE, p. 1216, § 1, effective July 1. **L. 2023:** (2) amended, (HB 23-1301), ch. 303, p. 1815, § 1, effective August 7.

Editor's note: (1) This section is similar to former § 5-5-109, as it existed prior to 2000.

(2) Although this section was effective July 1, 2000, section 5 of chapter 265, Session Laws of Colorado 2000, provides that the disclosures described in subsection (5) are effective January 1, 2001.

5-3-106. Disclosures for real estate secured consumer credit transactions.

(1) With respect to a real estate secured consumer credit transaction payable in installments, other than one pursuant to a revolving credit account, if the creditor credits payments made after the due date as of the date of receipt rather than the date payment was due, the creditor must clearly and conspicuously disclose to the consumer at or before the time that credit is extended the effect of untimely payments using language in substantially the following form:

"The dollar amount of the finance charge disclosed to you for this credit transaction is based upon your payments being received by the creditor on the date payments are due. If your payments are received after the due date, even if received before the date a late fee applies, you may owe additional and substantial money at the end of the credit transaction and there may be little or no reduction of principal. This is due to the accrual of daily interest until a payment is received."

(2) A creditor that makes or arranges for extensions of consumer loans secured by a dwelling and that uses credit scores for that purpose shall, upon request of the consumer, provide to the consumer to whom the credit report relates, as soon as practicable and reasonable, but in a period not to exceed thirty days, a copy of the information specifically required to be disclosed pursuant to section 5-18-107 (1) in a form obtained from a consumer reporting agency as defined in section 5-18-103 (4). The creditor may charge a reasonable fee for making such information available to the consumer and such charge shall be an additional charge within the meaning of section 5-2-202 and not part of the finance charge.

(3) (a) Nothing in subsection (2) of this section shall require the creditor to:

(I) Explain to the consumer the information specifically required to be disclosed pursuant to section 5-18-107 (1);

(II) Disclose any information other than the information required pursuant to subsection (2) of this section;

(III) Disclose any credit score or related information obtained by the creditor after the transaction occurs; or

(IV) Provide more than one disclosure to any one consumer per credit transaction.

(b) The creditor's obligation pursuant to subsection (2) of this section and this subsection (3) shall be limited to providing a copy of the information that was received from a consumer reporting agency, as defined in section 5-18-103 (4). A creditor who uses a credit score has no liability under this subsection (3) or subsection (2) of this section for the content of the credit score information received from a consumer reporting agency or from the omission of any information within the report provided by the consumer reporting agency.

Source: L. 2000: Entire article R&RE, p. 1217, § 1, effective July 1. **L. 2001:** Entire section amended, p. 28, § 5, effective March 9. **L. 2002:** Entire section amended, p. 647, § 3, effective July 1, 2003. **L. 2003:** (1) amended, p. 1893, § 5, effective July 1. **L. 2017:** (2), (3)(a)(I), and (3)(b) amended, (HB 17-1238), ch. 260, p. 1170, § 7, effective August 9.

Editor's note: Although this section was effective July 1, 2000, section 5 of chapter 265, Session Laws of Colorado 2000, provides that the disclosures described in this section are effective January 1, 2001.

5-3-107. Disclosures for consumer credit sale secured by a motor vehicle.

If the property that secures a consumer credit sale includes a motor vehicle and the written agreement does not provide for automobile liability insurance, the following clause shall be in the written agreement in capital letters and bold-face type: **"THIS CONTRACT DOES NOT PROVIDE FOR AUTOMOBILE LIABILITY INSURANCE, AND SAID BUYER ALSO STATES THAT HE OR SHE HAS/DOES NOT HAVE** (strike words not applicable) **IN EFFECT AN AUTOMOBILE LIABILITY POLICY AS DEFINED IN SECTION 42-7-103 (2), COLORADO REVISED STATUTES, ON THE MOTOR VEHICLE SOLD BY THIS CONTRACT."**

Source: L. 2000: Entire article R&RE, p. 1217, § 1, effective July 1. **L. 2009:** Entire section amended, (SB 09-292), ch. 369, p. 1939, § 4, effective August 5.

5-3-108. Written agreement required.

No consumer credit transaction shall be valid or enforceable in this state unless its terms are contained in a written agreement and a copy is provided to the consumer at or before the time credit is extended. A creditor may provide the copy to the consumer in a form other than paper upon the consumer's written authorization.

Source: L. 2000: Entire article R&RE, p. 1217, § 1, effective July 1.

ANNOTATION

Law reviews. For article, "Colorado Usury", see 11 Colo. Law. 2557 (1982). For

article, "Colorado Usury: The Sequel - Parts I and 2", see 23 Colo. Law. 565 and 829 (1994).

Applied in D.E.B. Adjustment Co. v. Cawthorne, 623 P.2d 82 (Colo. App. 1981) (decided prior to 2000 repeal and reenactment).

5-3-109. Records.

Every creditor shall maintain records in conformity with this code, rules adopted thereunder, and generally accepted accounting principles and practices in a manner that will establish that the creditor is complying with the provisions of this code. The record-keeping system of a creditor shall be sufficient if the creditor makes the required information reasonably available. The records pertaining to any credit transaction need not be preserved for more than four years after making the final entry relating to the transaction, but, in the case of a revolving credit account, the four years is measured from the date of each entry.

Source: L. 2000: Entire article R&RE, p. 1217, § 1, effective July 1.

5-3-110. Advertising.

(1) A creditor may not advertise, print, display, publish, distribute, broadcast, transmit or cause to be advertised, printed, displayed, published, distributed, broadcast, or transmitted in any manner any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions of credit of a consumer credit transaction.

(2) This section imposes no liability on the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

(3) Advertising that complies with the federal "Truth in Lending Act" and the federal "Consumer Leasing Act" does not violate this section.

Source: L. 2000: Entire article R&RE, p. 1217, § 1, effective July 1.

Editor's note: This section is similar to former §§ 5-2-312 and 5-2-313, as they existed prior to 2000.

Cross references: For the definitions and federal statutory cites of the "Truth in Lending Act" and the "Consumer Leasing Act", see § 5-1-302.

5-3-111. Use of credit scores.

Any provision in a contract that prohibits the disclosure of a credit score by a consumer reporting agency or a person who makes or arranges loans secured by a dwelling is void. For the purposes of this section, "dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence.

Source: L. 2002: Entire section added, p. 648, § 4, effective July 1, 2003.

PART 2

LIMITATIONS ON AGREEMENTS AND PRACTICES

5-3-201. Security in sales or leases.

(1) With respect to a consumer credit sale, a creditor may take a security interest in the property sold. In addition, a creditor may take a security interest in goods upon which services are performed or to which goods sold are annexed, or in land to which the goods are affixed or that is maintained, repaired, or improved as a result of the sale of the goods or services, if in the case of a security interest in land the debt secured is three thousand dollars or more, or in the case of a security interest in goods the debt secured is one thousand dollars or more. Except as provided with respect to cross-collateral described in section 5-3-202, a creditor may not otherwise take a security interest in property of the consumer to secure the debt arising from a consumer credit sale.

(2) With respect to a consumer lease, a creditor may not take a security interest in property of the consumer to secure the debt arising from the lease. This subsection (2) does not apply to a security deposit for a consumer lease.

(3) A security interest taken in violation of this section is void.

Source: L. 2000: Entire article R&RE, p. 1218, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-407, as it existed prior to 2000.

5-3-202. Cross-collateral.

(1) In addition to contracting for a security interest pursuant to the provisions on security in sales or leases contained in section 5-3-201, a seller in a consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller has an existing security interest in the other property. The seller may also contract for a security interest in the property sold in the subsequent sale as security for the previous debt.

(2) If the seller contracts for a security interest in other property pursuant to this section, the rate of finance charge thereafter on the aggregate unpaid balances so secured may not exceed that permitted if the balances so secured were consolidated pursuant to the provisions on consolidation involving a refinancing contained in section 5-2-205 (1). The seller has a reasonable time after so contracting to make any adjustments required by this section. "Seller" in this section does not include an assignee not related to the original seller.

Source: L. 2000: Entire article R&RE, p. 1218, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-408, as it existed prior to 2000.

5-3-203. Debt secured by cross-collateral.

(1) If debts arising from two or more consumer credit sales, other than sales pursuant to a revolving credit account, are secured by cross-collateral or consolidated into one debt payable on a single schedule of payments and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debts originally incurred with respect to each item are paid.

(2) Payments received by the seller upon a revolving credit account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

(3) If the debts consolidated arose from two or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt.

Source: L. 2000: Entire article R&RE, p. 1219, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-409, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "State Variations of the Uniform Consumer Credit Code: The Case for Legislative Restraint", see 48 Den. L.J. 239 (1971).

5-3-204. Restrictions on interest in land as security.

(1) With respect to a consumer loan in which the amount financed is three thousand dollars or less, a lender may not contract for an interest in land as security. A security interest taken in violation of this section is void.

(2) For the purposes of this section, on revolving credit accounts, the amount financed shall be determined by the limit in the amount of credit made available to or for the account of the consumer if that limit is established by an express written agreement by the lender and if the lender does not retain the right to unilaterally reduce that credit limit, except in the event of default.

Source: L. 2000: Entire article R&RE, p. 1219, § 1, effective July 1.

Editor's note: This section is similar to former § 5-3-510, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "An Overview of Home Equity as Security for a Line of Credit", see 14 Colo. Law. 226 (1985).

5-3-205. Use of multiple agreements.

A creditor may not use multiple agreements with respect to a single consumer credit transaction for the purpose of obtaining a higher finance charge than would otherwise be permitted by this code or to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure and advertising. Dividing a single consumer credit transaction between a husband and wife shall be presumed to be a violation of this section. The excess amount of finance charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on the effect of violations on rights of parties contained in section 5-5-201 and the provisions on civil actions by the administrator contained in section 5-6-114.

Source: L. 2000: Entire article R&RE, p. 1219, § 1, effective July 1.

Editor's note: This section is similar to former §§ 5-2-402 and 5-3-409, as they existed prior to 2000.

ANNOTATION

Law reviews. For article, "State Variations of the Uniform Consumer Credit Code: The Case for Legislative Restraint", see 48 Den. L.J. 239 (1971).

5-3-206. No assignment of earnings.

(1) A creditor may not take an assignment of earnings of the consumer for payment or as security for payment of a debt arising out of a consumer credit transaction. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the consumer.

(2) A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to him or her secured by an assignment of earnings.

Source: L. 2000: Entire article R&RE, p. 1220, § 1, effective July 1.

Editor's note: This section is similar to former §§ 5-2-410 and 5-3-403, as they existed prior to 2000.

5-3-207. Authorization to confess judgment prohibited.

A consumer may not authorize any person to confess judgment on a claim arising out of a consumer credit transaction. An authorization in violation of this section is void.

Source: L. 2000: Entire article R&RE, p. 1220, § 1, effective July 1.

Editor's note: This section is similar to former §§ 5-2-415 and 5-3-407, as they existed prior to 2000.

5-3-208. Balloon payments.

With respect to a consumer credit transaction other than one pursuant to a revolving credit account, if any scheduled payment is more than twice as large as the average of all other regularly scheduled payments, the consumer has the right to refinance the amount of that payment at the time it is due at the creditor's prevailing rates for such type of transaction if the consumer meets the creditor's normal credit standards and if the creditor is, at that time, in the business of making such transactions. The creditor shall disclose this right in writing to the consumer at the time the transaction is entered into. These provisions do not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the consumer. This section shall not apply to a transaction of a class defined by rule of the administrator promulgated in accordance with article 4 of title 24, C.R.S., as not requiring for the protection of the consumer his or her right to refinance as provided in this section.

Source: L. 2000: Entire article R&RE, p. 1220, § 1, effective July 1.

Editor's note: This section is similar to former §§ 5-2-405 and 5-3-402, as they existed prior to 2000.

ANNOTATION

Law reviews. For article, "State Variations of the Uniform Consumer Credit Code: The Case for Legislative Restraint", see 48 Den. L.J. 239 (1971).

5-3-209. Referral sales.

With respect to a consumer credit sale or consumer lease, the seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the consumer as an inducement for a sale or lease in consideration of the consumer giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount, or other value is contingent upon the occurrence of an event subsequent to the time the consumer agrees to buy or lease. If a consumer is induced by a violation of this section to enter into a consumer credit sale or consumer lease, the agreement is unenforceable by the seller or lessor and the consumer, at his or her option, may rescind the agreement or retain the goods delivered and the benefit of any services performed without any obligation to pay for them.

Source: L. 2000: Entire article R&RE, p. 1220, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-411, as it existed prior to 2000.

5-3-210. Discrimination prohibited - exemption.

A consumer credit transaction regulated by this code shall not be denied any person, nor shall terms and conditions be made more stringent, on the basis of disability, race, creed, religion, color, sex, sexual orientation, gender identity, gender expression, marital status, national origin, or ancestry. This section does not apply to any consumer credit transaction made or denied by a seller, lessor, or lender whose total original unpaid balances arising from consumer credit transactions for the previous calendar year are less than one million dollars.

Source: L. 2000: Entire article R&RE, p. 1220, § 1, effective July 1. **L. 2008:** Entire section amended, p. 1598, § 10, effective May 29. **L. 2021:** Entire section amended, (HB 21-1108), ch. 156, p. 889, § 10, effective September 7. **L. 2026:** Entire section amended, (HB 26-1426), ch. 334, p. 1982, § 3, effective August 12.

Editor's note: This section is similar to former § 5-1-109, as it existed prior to 2000.

Cross references: (1) For civil liability for discrimination, see § 5-5-206; for discrimination generally, see article 34 of title 24.

(2) For the legislative declaration contained in the 2008 act amending this section, see section 1 of chapter 341, Session Laws of Colorado 2008.

(3) For the legislative declaration in HB 21-1108, see section 1 of chapter 156, Session Laws of Colorado 2021.

PART 3

LIMITATIONS ON CONSUMERS' LIABILITIES

5-3-301. Restriction on liability in consumer lease.

The obligation of a lessee upon expiration of a consumer lease, may not exceed twice the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property or for other default.

Source: L. 2000: Entire article R&RE, p. 1221, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-406, as it existed prior to 2000.

5-3-302. Limitation on default charges.

Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer credit transaction may not provide for charges as a result of default by the consumer other than those authorized by this code. A provision in violation of this section is unenforceable.

Source: L. 2000: Entire article R&RE, p. 1221, § 1, effective July 1.

Editor's note: This section is similar to former §§ 5-2-414 and 5-3-405, as they existed prior to 2000.

ANNOTATION

Because this section provides that only those charges allowable elsewhere under the UCCC plus reasonable expenses in realizing a security interest are

permissible as default charges, higher default interest on a note is unenforceable. First Nat. Bank v. Union Tavern Corp., 794 P.2d 261 (Colo. App. 1990) (decided prior to 2000 repeal and reenactment).

5-3-303. Assignee subject to claims and defenses.

(1) With respect to a consumer credit sale or consumer lease, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer against the seller or lessor arising from the sale or lease of goods or services, notwithstanding that the assignee is a holder in due course of a negotiable instrument issued in connection with the consumer credit sale or consumer lease.

(2) A claim or defense of a consumer specified in subsection (1) of this section may be asserted against the assignee under this section only to the extent of the amount owing to the assignee with respect to the sale or lease of the goods or services as to which the claim or defense arose at the time the assignee has written notice of the claim or defense.

(3) For the purpose of determining the amount owing to the assignee with respect to the sale or lease:

(a) Payments received by the assignee after the consolidation of two or more consumer credit sales, except pursuant to a revolving credit account, are deemed to have been first applied to the payment of the sales first made; if the sales consolidated arose from sales made on the same day, payments are deemed to have been first applied to the smallest sale; and

(b) Payments received upon a revolving credit account are deemed to have been first applied to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

(4) An agreement may not limit or waive the claims or defenses of a consumer under this section.

Source: L. 2000: Entire article R&RE, p. 1221, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-403, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "State Variations of the Uniform Consumer Credit Code: The Case for Legislative Restraint", see 48 Den. L.J. 239 (1971).

5-3-304. Use of account - constructive assent to terms.

The use of a revolving credit account by a consumer, or by any person authorized by the consumer, constitutes the consumer's acceptance of the creditor's offer of credit and creates a binding contract on the creditor's terms then in effect. Such terms may be modified in the future as agreed by the parties and subject to the requirements of this article, including, but not limited to, the notice requirements of section 5-3-103.

Source: L. 2000: Entire article R&RE, p. 1222, § 1, effective July 1.

Editor's note: This section is similar to former §§ 5-2-417 and 5-3-411, as they existed prior to 2000.

5-3-305. Advance payment to reserve lodging and motor vehicle rental services - notice to consumer required.

If a deposit, reservation fee, or other advance payment is to be charged to a revolving credit account for lodging or motor vehicle rental services to be provided in the future in this state, the seller shall not charge such advance payment to the consumer's account without first notifying the consumer, either orally or in writing, and giving the consumer the opportunity to reject the services.

Source: L. 2000: Entire article R&RE, p. 1222, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-418, as it existed prior to 2000.

PART 4

HOME SOLICITATION SALES

5-3-401. Definitions - "home solicitation sale".

"Home solicitation sale" means a consumer credit sale of goods or services in which the seller or a person acting for the seller personally solicits the sale and the buyer's agreement or offer to purchase is given to the seller or a person acting for the seller at a residence. It does not include a

sale made pursuant to a preexisting revolving credit account, a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, a transaction conducted and consummated entirely by mail or telephone, or a sale that is subject to the provisions of the federal "Truth in Lending Act" on the consumer's right to rescind certain transactions.

Source: L. 2000: Entire article R&RE, p. 1222, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-501, as it existed prior to 2000.

Cross references: For the definition and federal statutory cite of the "Truth in Lending Act", see § 5-1-302.

5-3-402. Buyer's right to cancel.

(1) Except as provided in subsection (5) of this section, in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase that complies with this part 4.

(2) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

(3) Notice of cancellation, if given by mail, is given when it is deposited in a mail box properly addressed and postage prepaid.

(4) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(5) The buyer may not cancel a home solicitation sale if, by separate dated and signed statement that is not as to its material provisions a printed form and describes an emergency requiring immediate remedy, the buyer requests the seller to provide goods or services without delay in order to safeguard the health, safety, or welfare of natural persons or to prevent damage to property the buyer owns or for which the buyer is responsible, and:

(a) The seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation; and

(b) In the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

Source: L. 2000: Entire article R&RE, p. 1222, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-502, as it existed prior to 2000.

5-3-403. Form of agreement or offer - statement of buyer's rights.

(1) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller must present to the buyer, and obtain his signature to, a written agreement or offer to purchase that designates as the date of the transaction the date on which the buyer actually signs and contains a statement of the buyer's rights that complies with subsection (2) of this section. A copy of any writing required by this subsection (1) to be signed by the buyer, completed at least as to the date of the transaction and the name and mailing address of the seller, shall be given to the buyer at the time the buyer signs the writing.

(2) The statement shall comply with any notice of cancellation or a similar requirement of any trade regulation rule of the federal trade commission that by its terms applies to the home solicitation sale.

(3) Until the seller has complied with this section, the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of the buyer's intention to cancel; except that the buyer's right of cancellation shall expire three years after the date of the consummation of the home solicitation sale, notwithstanding the fact that the seller has not complied with this part 4.

Source: L. 2000: Entire article R&RE, p. 1223, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-503, as it existed prior to 2000.

5-3-404. Restoration of down payment.

(1) Within ten days after a notice of cancellation has been received by the seller or an offer to purchase has been otherwise revoked, the seller shall tender to the buyer any payments made by

the buyer, any note or other evidence of indebtedness, and any goods traded in. A provision permitting the seller to keep all or any part of any goods traded in, payment, note, or other evidence of indebtedness is in violation of this section and unenforceable.

(2) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) Until the seller has complied with the obligations imposed by this section, the buyer may retain possession of goods delivered to the buyer by the seller and has a lien on the goods in the buyer's possession or control for any recovery to which the buyer is entitled.

Source: L. 2000: Entire article R&RE, p. 1223, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-504, as it existed prior to 2000.

5-3-405. Duty of buyer - no compensation for services prior to cancellation.

(1) Except as provided by the provisions on retention of goods by the buyer contained in section 5-3-404 (3) and allowing for ordinary wear and tear or consumption of the goods contemplated by the transaction, within a reasonable time after a home solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale, but the buyer is not obligated to tender at any place other than the buyer's residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this section, forty days is presumed to be a reasonable time.

(2) The buyer has a duty to take reasonable care of the goods in his or her possession before cancellation or revocation and for a reasonable time thereafter during which time the goods are otherwise at the seller's risk.

(3) If a home solicitation sale is canceled, the seller is not entitled to compensation for any services the seller performed pursuant to it.

Source: L. 2000: Entire article R&RE, p. 1224, § 1, effective July 1.

Editor's note: This section is similar to former § 5-2-505, as it existed prior to 2000.

PART 5

CONSUMER INSURANCE PREMIUM FINANCING

5-3-501. Scope.

The provisions of this part 5 apply to consumer insurance premium loans.

Source: L. 2000: Entire article R&RE, p. 1224, § 1, effective July 1.

Editor's note: This section is similar to former § 5-7-101, as it existed prior to 2000.

5-3-502. Form of insurance premium loan agreement.

An agreement pursuant to which a consumer insurance premium loan is made shall contain the names of the insurance agent or broker negotiating each policy or contract and of the insurer issuing each policy or contract, the number and inception date of and premium for each policy or contract, the date on which the term of the loan begins, and a clear and conspicuous notice that each policy or contract may be canceled if payment is not made in accordance with the agreement. If a policy or contract has not been issued by the time the agreement is signed, the agreement may provide that the insurance agent or broker may insert the appropriate information in the agreement and, if he or she does so, shall furnish the information promptly in writing to the insured.

Source: L. 2000: Entire article R&RE, p. 1224, § 1, effective July 1.

Editor's note: This section is similar to former § 5-7-102, as it existed prior to 2000.

5-3-503. Notice of cancellation.

If a default exists on a consumer insurance premium loan and any right to cure that exists has expired without cure being effected, the lender may give notice of cancellation of each insurance policy or contract to be canceled. If given, the notice of cancellation shall be in writing and given

to the insurer who issued the policy or contract and to the insured. The insurer, within two business days after receipt of the notice of cancellation together with a copy of the insurance premium loan agreement if not previously given to the insurer, shall give any notice of cancellation required by the policy, contract, or law and, within ten business days after the effective date of the cancellation, pay to the lender any premium unearned on the policy or contract as of that effective date. Within ten business days after receipt of the unearned premium, the lender shall pay to the consumer indebted upon the insurance premium loan any excess of the unearned premium received over the amount owing by the consumer upon the insurance premium loan.

Source: L. 2000: Entire article R&RE, p. 1224, § 1, effective July 1.

Editor's note: This section is similar to former § 5-7-103, as it existed prior to 2000.

ARTICLE 3.1

Deferred Deposit Loan Act

5-3.1-101. Short title.
5-3.1-101.5. Legislative declaration.
5-3.1-102. Definitions.
5-3.1-103. Written agreement requirements.
5-3.1-104. Notice to consumers.
5-3.1-105. Authorized charges.
5-3.1-106. Maximum loan amount - right to rescind.
5-3.1-107. Multiple outstanding transactions notice.
5-3.1-108. Renewal - new loan - consecutive loans - payment plan - definitions.
5-3.1-109. Form of loan proceeds.
5-3.1-110. Endorsement of instrument.
5-3.1-111. Redemption of instrument.
5-3.1-112. Authorized dishonored instrument charge.
5-3.1-113. Posting of charges.
5-3.1-114. Notice on assignment or sale of instruments.
5-3.1-115. Records and annual reports.
5-3.1-116. License requirement.
5-3.1-117. Examination and investigation.
5-3.1-118. Denial of license - discipline.
5-3.1-119. Applicability of other provisions of this title.

5-3.1-120. Criminal culpability.
5-3.1-121. Unfair or deceptive practices.
5-3.1-122. Unconscionability.
5-3.1-123. Use of multiple agreements for deferred deposit loans.

5-3.1-101. Short title.

This article shall be known and may be cited as the "Deferred Deposit Loan Act".

Source: L. 2000: Entire article added, p. 439, § 1, effective July 1.

5-3.1-101.5. Legislative declaration.

The people of this state find and declare that payday lenders are charging up to two hundred percent annually for payday loans and that excess charges on such loans can lead Colorado families into a debt trap of repeat borrowing. It is the intent of the people to lower the maximum authorized finance charge for payday loans to an annual percentage rate of thirty-six percent.

Source: Initiated 2018: Entire section added, Proposition 111, L. 2019, p. 4539, § 1, effective February 1, 2019, proclamation of the Governor issued December 19, 2018.

Editor's note: This section was added by Proposition 111, with the proclamation of the governor on December 19, 2018. The vote count for the measure at the general election held November 6, 2018, was as follows:

FOR: 1,865,200

AGAINST: 549,357

5-3.1-102. Definitions.

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

(1) "Administrator" means the administrator of the "Uniform Consumer Credit Code".

(1.5) "Annual percentage rate" means an annual percentage rate as determined pursuant to section 107 of the federal "Truth in Lending Act", 15 U.S.C. sec. 1601 et seq. All finance charges shall be included in the calculation of the annual percentage rate.

(2) "Consumer" means a person other than an organization who is the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.

(2.5) "Default" means a consumer's failure to repay a deferred deposit loan in compliance with the terms contained in a deferred deposit loan agreement.

(3) "Deferred deposit loan" or "payday loan" means a consumer loan whereby the lender, for a fee, finance charge, or other consideration, does the following:

(a) Accepts a dated instrument from the consumer as sole security for the loan and no other collateral;

(b) Agrees to hold the instrument for a period of time prior to negotiation or deposit of the instrument; and

(c) Pays to the consumer, credits to the consumer's account, or pays to another person on the consumer's behalf the amount of the instrument, less finance charges permitted by section 5-3.1-105.

(4) "Instrument" means a personal check or authorization to transfer or withdraw funds from an account signed by the consumer and made payable to a person subject to this article.

(5) (a) "Lender" means any person who offers or makes a deferred deposit loan, who arranges a deferred deposit loan for a third party, or who acts as an agent for a third party, regardless of whether the third party is exempt from licensing under this article or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party, through any method including mail, telephone, internet, or any electronic means.

(b) Lender includes, but is not limited to, a supervised financial organization as defined in section 5-1-301 (45).

(c) Notwithstanding that a bank, saving and loan association, credit union, or supervised lender may be exempted by federal law from this code's interest rate, finance charges, and licensure provisions, all other applicable provisions of this code apply to both a deferred deposit loan and a deferred deposit lender.

(6) "Loan amount" means the amount financed as defined in regulation z of the federal "Truth in Lending Act", 12 CFR 226.18 (b), as amended, or as supplemented by this code, articles 1 to 9 of this title.

Source: L. 2000: Entire article added, p. 439, § 1, effective July 1. **L. 2001:** (5)(b) amended, p. 29, § 6, effective March 9. **L. 2004:** (2.5) added and (3) (a) amended, p. 317, § 1, effective July 1. **L. 2010:** (1.5) added and IP(3) and (5)(a) amended, (HB 10-1351), ch. 267, p. 1221, § 2, effective August 11.

Cross references: For the legislative declaration in the 2010 act adding subsection (1.5) and amending the introductory portion to subsection (3) and subsection (5)(a), see section 1 of chapter 267, Session Laws of Colorado 2010.

5-3.1-103. Written agreement requirements.

Each deferred deposit loan transaction and renewal shall be documented by a written agreement signed by both the lender and consumer. The written agreement shall contain the name of the consumer; the transaction date; the amount of the instrument; the annual percentage rate charged; a statement of the total amount of finance charges charged, expressed both as a dollar amount and an annual percentage rate; and the name, address, and telephone number of any agent or arranger involved in the transaction. In addition, the written agreement shall include all disclosures required by section 5-3-101 (2). The written agreement shall set a date upon which the instrument may be deposited or negotiated. There shall be no maximum loan term or minimum finance charge. The minimum loan term shall be six months from the loan transaction date. The lender shall accept prepayment from a consumer prior to the loan due date and shall not charge the consumer a penalty if the consumer opts to prepay the loan. A lender may hold an instrument and delay completion of the transaction beyond the loan due date without any additional written agreement or new disclosure, but the lender may not charge any additional fees for holding the instrument or delaying the completion of the transaction.

Source: L. 2000: Entire article added, p. 440, § 1, effective July 1. **L. 2001:** Entire section amended, p. 29, § 7, effective March 9. **L. 2003:** Entire section amended, p. 1893, § 6, effective July 1. **L. 2004:** Entire section amended, p. 317, § 2, effective July 1. **L. 2010:** Entire section amended, (HB 10-1351), ch. 267, p. 1222, § 3, effective August 11.

Cross references: For the legislative declaration in the 2010 act amending this section, see section 1 of chapter 267, Session Laws of Colorado 2010.

5-3.1-104. Notice to consumers.

A lender shall provide the following notice in a prominent place on each loan agreement in at least ten-point type:

A DEFERRED DEPOSIT LOAN IS NOT INTENDED TO MEET LONG-TERM FINANCIAL NEEDS.

A DEFERRED DEPOSIT LOAN SHOULD BE USED ONLY TO MEET SHORT-TERM CASH NEEDS.

RENEWING THE DEFERRED DEPOSIT LOAN RATHER THAN PAYING THE DEBT IN FULL WILL REQUIRE ADDITIONAL FINANCE CHARGES.

Source: L. 2000: Entire article added, p. 440, § 1, effective July 1.

5-3.1-105. Authorized charges.

A lender may charge a finance charge for each deferred deposit loan or payday loan that must not exceed an annual percentage rate of thirty-six percent. If the loan is prepaid prior to the maturity of the loan term, the lender shall refund to the consumer a prorated portion of the finance charge based upon the ratio of time left before maturity to the loan term. A lender may charge only those charges expressly authorized in this article in connection with a deferred deposit loan or payday loan.

Source: L. 2000: Entire article added, p. 441, § 1, effective July 1. **L. 2010:** Entire section amended, (HB 10-1351), ch. 267, p. 1222, § 4, effective August 11. **Initiated 2018:** Entire section amended, Proposition 111, L. 2019, p. 4539, § 2, effective February 1, 2019, proclamation of the Governor issued December 19, 2018.

Cross references: For the legislative declaration in the 2010 act amending this section, see section 1 of chapter 267, Session Laws of Colorado 2010.

5-3.1-106. Maximum loan amount - right to rescind.

(1) A lender shall not lend an amount greater than five hundred dollars nor shall the amount financed exceed five hundred dollars by any one lender at any time to a consumer. Nothing in this subsection (1) shall preclude a lender from making more than one loan to a consumer so long as the total amount financed does not exceed five hundred dollars at any one time and there is at least a thirty-day waiting period between loans.

(2) A consumer shall have the right to rescind the deferred deposit loan on or before 5 p.m. the next business day following the loan transaction.

Source: L. 2000: Entire article added, p. 441, § 1, effective July 1. **L. 2004:** (1) amended, p. 318, § 3, effective July 1. **L. 2010:** (1) amended, (HB 10-1351), ch. 267, p. 1223, § 5, effective August 11.

Cross references: For the legislative declaration in the 2010 act amending subsection (1), see section 1 of chapter 267, Session Laws of Colorado 2010.

5-3.1-107. Multiple outstanding transactions notice.

A lender shall provide the following notice in a prominent place on each deferred deposit loan agreement in at least ten-point type:

> STATE LAW PROHIBITS DEFERRED DEPOSIT LOANS EXCEEDING FIVE HUNDRED DOLLARS ($500) TOTAL DEBT PLUS APPLICABLE FINANCE CHARGES PERMITTED BY LAW FROM A DEFERRED DEPOSIT LENDER. EXCEEDING THIS AMOUNT MAY CREATE FINANCIAL HARDSHIPS FOR YOU AND YOUR FAMILY. YOU HAVE THE RIGHT TO RESCIND THIS TRANSACTION BY 5 P.M. THE NEXT BUSINESS DAY FOLLOWING THIS TRANSACTION.

Source: L. 2000: Entire article added, p. 441, § 1, effective July 1. **L. 2001:** Entire section amended, p. 29, § 8, effective March 9.

5-3.1-108. Renewal - new loan - consecutive loans - payment plan - definitions.

(1) A deferred deposit loan shall not be renewed more than once. After such renewal, the consumer shall pay the debt in cash or its equivalent. If the consumer does not pay the debt, then the lender may deposit the consumer's instrument.

(2) Upon renewal of a deferred deposit loan or payday loan, the lender may assess a finance charge that must not exceed an annual percentage rate of thirty-six percent. If the deferred deposit loan or payday loan is renewed prior to the maturity date, the lender shall refund to the consumer a prorated portion of the finance charge based upon the ratio of time left before maturity to the loan term.

(3) A transaction is completed when the lender presents the instrument for payment or the consumer redeems the instrument by paying the full amount of the instrument to the holder. Once the consumer has completed the deferred deposit transaction, the consumer may enter into a new deferred deposit agreement with the lender. If the consumer's instrument is dishonored by the payor financial institution after the transaction is complete and, before the lender receives a notice of dishonor, the lender makes a new loan that does not exceed the maximum allowable loan, the lender shall not be in violation of the maximum loan amount provisions in section 5-3.1-106.

(4) Nothing in this section prohibits a lender from refinancing a deferred deposit loan as a supervised loan subject to the provision of this code, articles 1 to 9 of this title; except that the lender may not contract for or receive the minimum finance charge contained in section 5-2-201 (7).

(5) (Deleted by amendment, L. 2010, (HB 10-1351), ch. 267, p. 1223, § 6, effective August 11, 2010.)

Source: L. 2000: Entire article added, p. 441, § 1, effective July 1. **L. 2001:** (4) amended, p. 29, § 9, effective March 9. **L. 2004:** (3) amended, p. 318, § 4, effective July 1. **L. 2007:** (5) added, p. 384, § 1, effective July 1. **L. 2010:** (2) and (5) amended, (HB 10-1351), ch. 267, p. 1223, § 6, effective August 11. **Initiated 2018:** (2) amended, Proposition 111, L. 2019, p. 4539, § 3, effective February 1, 2019, proclamation of the Governor issued December 19, 2018.

Cross references: For the legislative declaration in the 2010 act amending subsections (2) and (5), see section 1 of chapter 267, Session Laws of Colorado 2010.

5-3.1-109. Form of loan proceeds.

A lender may pay the proceeds from a deferred deposit loan to the consumer in the form of a business instrument, money order, cash, stored value card, internet transfer, or authorized automated clearinghouse transaction. The consumer shall not be charged an additional finance charge or fee for cashing the lender's business instrument or for negotiating forms of loan proceeds other than cash.

Source: L. 2000: Entire article added, p. 442, § 1, effective July 1. **L. 2004:** Entire section amended, p. 318, § 5, effective July 1.

5-3.1-110. Endorsement of instrument.

A lender shall not negotiate or present an instrument for payment unless the instrument is endorsed with the actual business name of the lender.

Source: L. 2000: Entire article added, p. 442, § 1, effective July 1.

5-3.1-111. Redemption of instrument.

Prior to the lender negotiating or presenting the instrument, the consumer shall have the right to redeem any instrument held by a lender as a result of a deferred deposit loan if the consumer pays the full amount of the instrument to the lender.

Source: L. 2000: Entire article added, p. 442, § 1, effective July 1.

5-3.1-112. Authorized dishonored instrument charge.

If an instrument held by a lender as a result of a deferred deposit loan is returned unpaid to the lender from a payor financial institution due to insufficient funds, a closed account, a stop-payment order, or any other reason, not including a bank error, the lender shall have the right to exercise all civil means authorized by law to collect the face value of the instrument; except that the provisions and remedies of section 13-21-109, C.R.S., are not applicable to any deferred deposit loan. In addition, the lender may contract for and collect one returned instrument charge for each deferred deposit loan, not to exceed twenty-five dollars, plus court costs and reasonable attorney fees as awarded by a court and incurred as a result of the default. However, such attorney fees shall not exceed the loan amount. The lender shall not collect any other fees as a result of default. A returned instrument charge shall not be allowed if the loan proceeds instrument is dishonored by the financial institution or the consumer places a stop-payment order due to forgery or theft.

Source: L. 2000: Entire article added, p. 442, § 1, effective July 1. **L. 2004:** Entire section amended, p. 318, § 6, effective July 1.

5-3.1-113. Posting of charges.

Any lender offering a deferred deposit loan shall post at any place of business where deferred deposit loans are made a notice of the finance charges imposed for such deferred deposit loans.

Source: L. 2000: Entire article added, p. 442, § 1, effective July 1. **L. 2003:** Entire section amended, p. 1894, § 7, effective July 1.

5-3.1-114. Notice on assignment or sale of instruments.

Prior to sale or assignment of instruments held by the lender as a result of a deferred deposit loan, the lender shall place a notice on the instrument in at least ten-point type to read:

THIS IS A DEFERRED DEPOSIT LOAN INSTRUMENT.

Source: L. 2000: Entire article added, p. 442, § 1, effective July 1.

5-3.1-115. Records and annual reports.

A lender shall maintain records and file an annual report in accordance with section 5-2-304.

Source: L. 2000: Entire article added, p. 442, § 1, effective July 1. **L. 2001:** Entire section amended, p. 30, § 10, effective March 9.

5-3.1-116. License requirement.

In accordance with section 5-2-301, no person shall engage in the business of deferred deposit loans without having first obtained a supervised lender's license pursuant to section 5-2-302. A separate license shall be required for each location where such business is conducted.

Source: L. 2000: Entire article added, p. 442, § 1, effective July 1. **L. 2001:** Entire section amended, p. 30, § 11, effective March 9.

5-3.1-117. Examination and investigation.

A lender may be examined and investigated in accordance with section 5-2-305.

Source: L. 2000: Entire article added, p. 443, § 1, effective July 1. **L. 2001:** Entire section amended, p. 30, § 12, effective March 9.

5-3.1-118. Denial of license - discipline.

(1) The administrator may deny a license or discipline a lender in accordance with sections 5-2-302, 5-2-303, and 5-2-306.

(2) (a) If the administrator finds that a lender has violated the code, articles 1 to 9 of this title, the administrator shall notify the lender in writing of such violations and the actions the lender must take to cure the violations. The administrator shall allow the lender thirty days after the postmark date of the notice, or the date of delivery if not mailed, to cure the violations before taking disciplinary action in accordance with subsection (1) of this section. If the administrator determines that such lender has performed such actions contained in such notice, the lender shall not be liable for the violations that have been cured.

(b) This subsection (2) shall not apply if the lender violated the code, articles 1 to 9 of this title, in a repeated or willful manner.

(c) If an alleged violation of the code, articles 1 to 9 of this title, is the result of a bona fide clerical oversight or computer-based error and not the product of the lender's established lending practices, and the alleged violation can be corrected without material change to the terms and conditions of a consumer's loan, the lender shall have thirty days after the postmark date of the notice, or the date of delivery if not mailed, to cure the alleged violation without incurring any fine or penalty or any required refund of any finance charges associated with the alleged violation. Nothing in this subsection (2) shall exempt a lender from making required refunds if the violation resulted in an overcharge or excess charge to the consumer.

(3) A lender shall have ninety days to comply with any rule, interpretation, or opinion of the administrator that requires a lender to implement new policies or procedures that involve the reprinting of the lender's forms to include new disclosures, or that requires the lender to revise existing computer programs or add new computer programs to comply with the rule, interpretation, or opinion. During the ninety-day period, the administrator shall not deem the lender to be in violation of articles 1 to 9 of this title for noncompliance with the new rule, interpretation, or opinion.

Source: L. 2000: Entire article added, p. 443, § 1, effective July 1. **L. 2001:** (1) amended, p. 30, § 13, effective March 9. **L. 2004:** (2) amended and (3) added, p. 319, § 7, effective July 1.

5-3.1-119. Applicability of other provisions of this title.

The provisions of the code, articles 1 to 9 of this title, apply to a lender unless such provisions are inconsistent with this article.

Source: L. 2000: Entire article added, p. 443, § 1, effective July 1.

5-3.1-120. Criminal culpability.

A consumer shall not be subject to any criminal penalty for entering into a deferred deposit loan agreement. A consumer shall not be subject to any criminal penalty in the event the instrument is dishonored, unless the consumer's account on which the instrument was written was closed before the agreed upon date of negotiation, subject to the provisions of section 18-5-205, C.R.S.

Source: L. 2000: Entire article added, p. 443, § 1, effective July 1.

5-3.1-121. Unfair or deceptive practices.

(1) No person shall engage in unfair or deceptive acts, practices, or advertising in connection with a deferred deposit loan.

(2) No person may engage in any device, subterfuge, or pretense to evade the requirements of this article, including making loans disguised as a personal property sale, and leaseback transaction; disguising loan proceeds as a cash rebate for the pretextual installment sale of goods or services; or making, offering, guaranteeing, assisting, or arranging a consumer to obtain a loan with a greater rate of interest, consideration, or charge than is permitted by this article through any method including mail, telephone, internet, or any electronic means regardless of whether the person has a physical location in the state.

Source: L. 2000: Entire article added, p. 443, § 1, effective July 1. **L. 2010:** Entire section amended, (HB 10-1351), ch. 267, p. 1224, § 7, effective August 11. **Initiated 2018:** (2) amended,

Proposition 111, L. 2019, p. 4540, § 4, effective February 1, 2019, proclamation of the Governor issued December 19, 2018.

Cross references: For the legislative declaration in the 2010 act amending this section, see section 1 of chapter 267, Session Laws of Colorado 2010.

5-3.1-122. Unconscionability.

(1) In applying the provisions of sections 5-5-109 and 5-6-112 to the actions of a lender, consideration shall be given to the following, among other factors:

(a) The financial benefits of the loan to the consumer and the level of risk incurred by the lender in extending credit;

(b) The absence of collateral other than the instrument executed by the consumer payable to the lender;

(c) The relation between the amount and terms of credit granted and the cost of making the loan.

(2) A lender shall require a consumer to fill out a loan application at least once in each twelve-month period of time and shall maintain this application on file. The application shall be signed and dated by the consumer.

(3) (a) A lender shall require the consumer to provide a pay stub or other evidence of income at least once each twelve-month period. Such evidence shall not be over forty-five days old when presented. If a lender requires a consumer to present a bank statement to secure a loan, the lender shall allow the consumer to delete from the statement the information regarding to whom the debits listed on the statement were payable.

(b) If the amount borrowed is not more than twenty-five percent of the consumer's monthly gross income and benefits, as evidenced by a paycheck stub or otherwise substantiated, a lender shall not be obligated to investigate the consumer's continued debt position, and the consumer's ability to repay the loan need not be further demonstrated.

(4) If a lender complies with the requirements of subsections (2) and (3) of this section, and the deferred deposit loan otherwise complies with this article and other applicable law, neither the consumer's inability to repay the loan nor the lender's decision to obtain or not obtain additional information concerning the consumer's creditworthiness shall be cause to determine that a loan is unconscionable.

Source: L. 2004: Entire section added, p. 320, § 8, effective July 1.

5-3.1-123. Use of multiple agreements for deferred deposit loans.

If a consumer obtains a deferred deposit loan voluntarily and separately from his or her spouse and the consumer's action is documented in writing, signed by the consumer, and retained by the lender, the transaction shall not be considered a violation of section 5-3-205.

Source: L. 2004: Entire section added, p. 320, § 9, effective July 1.

ARTICLE 3.5

Consumer Equity Protection

PART 1
OBLIGOR PROTECTION

5-3.5-101. Definitions.

5-3.5-102. Protection of obligors.

5-3.5-103. Restricted acts and practices.

5-3.5-104. Reporting to credit bureaus.

PART 2
ENFORCEMENT AND LIABILITY

5-3.5-201. Enforcement - liability.

PART 3
MISCELLANEOUS PROVISIONS

5-3.5-301. Effective date - applicability.

5-3.5-302. Severability.

5-3.5-303. Relationship to other laws.

PART 1

OBLIGOR PROTECTION

5-3.5-101. Definitions.

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

(1) "Bridge loan" means temporary or short-term financing with a maturity of less than eighteen months that requires payments of only interest until the entire unpaid balance is due and payable.

(2) "Covered loan" means a consumer credit transaction secured by property located within this state that is considered a mortgage under section 152 of the federal "Home Ownership and

Equity Protection Act of 1994", 15 U.S.C. sec. 1602 (aa), as amended, and regulations adopted pursuant thereto by the federal reserve board, including, without limitation, 12 CFR 226.32, as amended; except that, if the total points and fees paid by the obligor at or before closing exceed six percent of the total loan amount, such loan shall be deemed to be a covered loan if the transaction otherwise meets the requirements of this subsection (2).

(3) "Lender" means any individual or entity that originates one or more covered loans. The individual or entity to whom a covered loan is initially payable, either on the face of the note or contract or by agreement when there is no note or contract, shall be deemed to be the lender.

(4) "Mortgage broker" means a person other than an employee or exclusive agent of a lender who, for compensation, brings an obligor and lender together to obtain a covered loan.

(5) "Obligor" means each obligor, co-obligor, co-signer, or grantor obligated to repay a covered loan.

(6) "Political subdivision" means a county, city and county, city, town, service authority, school district, local improvement district, law enforcement authority, city or county housing authority, or water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

(7) "Principal balance" means the amount financed plus prepaid finance charges as defined in the federal "Truth in Lending Act", 15 U.S.C. sec. 1601 et seq., as amended.

(8) "Servicer" has the same meaning as set forth in section 2605 (i)(2) of the federal "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. sec. 2601 et seq., as amended.

Source: L. 2002: Entire article added, p. 1594, § 1, effective June 7. **L. 2003:** (2) amended, p. 1894, § 8, effective July 1.

5-3.5-102. Protection of obligors.

(1) A covered loan is subject to the following limitations:

(a) **Limitation on balloon payment.** No covered loan may contain a provision for a scheduled payment that is more than twice as large as the average of earlier regularly scheduled payments, unless such balloon payment becomes due and payable not less than one hundred twenty months after the date of execution of the loan. This prohibition does not apply when the payment schedule is adjusted to account for the seasonal or irregular income of the obligor or if the purpose of the loan is a bridge loan connected with, or related to, the acquisition or construction of a dwelling intended to become the obligor's principal dwelling.

(b) **No call provision.** No covered loan may contain a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This prohibition shall not apply when:

(I) Acceleration of repayment of the loan is justified:

(A) By default in which the obligor fails to meet the repayment terms of the agreement for any outstanding balance; or

(B) Pursuant to a due-on-sale provision;

(II) There is fraud or material misrepresentation by an obligor in connection with the loan;

(III) There is a provision permitting acceleration if the lender, in good faith, believes itself to be materially insecure or believes that the prospect of future payment has become materially impaired; or

(IV) There is any action or inaction by the obligor that adversely affects the lender's security for the loan or any rights of the lender in such security.

(c) **No negative amortization.** No covered loan may contract for a payment schedule with regular periodic payments that cause the principal balance to increase; except that this paragraph (c) shall not prohibit negative amortization as a consequence of a temporary forbearance or restructure sought by the obligor.

(d) **No increased interest rate upon default.** No covered loan may contract for any increase in the interest rate as a result of a default; except that this paragraph (d) shall not apply to periodic interest rate changes in a variable rate loan that is otherwise consistent with the provisions of the loan agreement if the change in the interest rate is not occasioned by the event of default or a permissible acceleration of the indebtedness.

(e) **Limitations on mandatory arbitration clauses.** No covered loan may be subject to a mandatory arbitration clause that:

(I) Does not comply with rules set forth by a nationally recognized arbitration organization such as the American arbitration association;

(II) Does not require the arbitration proceeding to be conducted:

(A) Within the federal judicial district in which the subject property is located;

(B) In the city nearest the obligor's residence where a federal district court is located; or

(C) At such other location as may be mutually agreed upon by the parties;

(III) Does not require the lender to contribute at least fifty percent of the amount of any filing fee; and

(IV) Does not require the lender to pay standard daily arbitration fees, both its own and those of the obligor, for at least the first day of arbitration.

(f) **No advance payments.** No covered loan may include terms under which any periodic payments required under the loan are paid in advance from the loan proceeds provided to the obligor.

(g) **Limitations on prepayment fees.**

(I) **First thirty-six months only.** A prepayment fee or penalty shall be permitted only on a refinance to a different lender other than pursuant to a sale and only during the first thirty-six months after the date of execution of a covered loan. Prepayment fees and penalties shall not exceed six months' interest for prepayment within the first three years of the loan. The prepayment fees or penalties permitted by this paragraph (g) shall apply only to covered loans that are secured by a first mortgage, deed of trust, or security interest to refinance, by amendment, payoff, or otherwise, an existing loan made to finance the acquisition or construction of a dwelling, including a refinance loan providing additional sums of money for any purpose, regardless of whether related to acquisition or construction. No prepayment fees or penalties shall be included in the loan documents or charged to the obligor for prepayment:

(A) After the third year of the loan;

(B) Pursuant to a refinance with the same lender; or

(C) That is partial.

(II) **No prepayment fees for certain refinancing.** No prepayment fee or penalty may be charged on a refinancing of a covered loan if the covered loan being refinanced is owned by the refinancing lender at the time of such refinancing.

(III) **Lender must offer choice.** A lender shall not include a prepayment penalty fee in a covered loan unless the lender offers the obligor the option of choosing a loan product without a prepayment penalty fee. A lender shall be deemed to have complied with this requirement if the obligor receives and executes the following disclosure, which may be incorporated with any other required disclosure:

LOAN PRODUCT CHOICE

I was provided with an offer to accept a product both with and without a prepayment penalty provision. I have chosen to accept the product _____ with / _____ without a prepayment penalty.

Source: L. 2002: Entire article added, p. 1595, § 1, effective June 7. **L. 2003:** (1)(a) amended, p. 1894, § 9, effective July 1.

5-3.5-103. Restricted acts and practices.

(1) The following acts and practices are prohibited in the making of a covered loan:

(a) **No lending without cautionary notice.**

(I) A lender may not make a covered loan unless the lender or a mortgage broker has given the following notice, or a substantially similar notice, in writing to the obligor within a reasonable period of time after determining that the loan would result in a covered loan, but no later than the time by which the notice is required under the notice provision contained in 12 CFR 226.31 (c), as amended:

CONSUMER CAUTION

If you obtain this loan, the lender will have a mortgage in Colorado; this is a deed of trust on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan. Mortgage loan rates and closing costs and fees vary based on many factors, including your particular credit and financial circumstances, your earnings history, the loan-to-value requested, and the type of property that will secure your loan. The loan rate and fees could vary based on which lender or broker you select.

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application. If you proceed with this mortgage loan, you should also remember that you may face serious financial risks if you use this loan to pay off credit card debts and other debts in connection with this transaction and then later incur significant new credit card charges or other debts. If you continue to accumulate debt after this loan is closed and then experience financial difficulties, you could lose your home and any equity you have in it if you do not meet your mortgage loan obligations.

Property taxes and homeowner's insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.

Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors.

(II) It shall be a rebuttable presumption that a lender or broker has met its obligation to provide this disclosure if the consumer provides the lender or broker with a signed acknowledgment of receipt of a copy of the notice set forth in subparagraph (I) of this paragraph (a).

(b) **No lending without due regard to repayment ability.**

(I) A lender may not make a covered loan to a consumer based on the consumer's collateral without regard to the consumer's repayment ability, including the consumer's current and expected income, current obligations, and employment.

(II) There is a presumption that a creditor has violated this paragraph (b) if the creditor engages in a pattern or practice of making loans subject to 12 CFR 226.32 without verifying and documenting consumers' repayment abilities.

(III) (A) In the case of a stated income loan, the reasonable basis for believing that there are sufficient funds to support the covered loan may not be based solely on the income stated by the obligor, but may include other information in the possession of the lender after the solicitation of all information that the lender customarily solicits in connection with stated income loans. A lender shall not knowingly or willfully originate a covered loan as a stated income loan with the intent of evading this subparagraph (III).

(B) A person who willfully and knowingly gives false or inaccurate information or fails to provide information that the person is required to disclose pursuant to applicable law may have violated and may be subject to penalties established in 15 U.S.C. sec. 1611.

(c) **Refinancing within a one-year period.** Within one year after having extended credit subject to this article, no lender shall refinance any covered loan to the same obligor into another covered loan unless the refinancing is in the obligor's interest. An assignee holding or servicing an extension of mortgage credit subject to this article shall not, for the remainder of the one-year period following the date of origination of the credit, refinance any covered loan to the same obligor into another covered loan unless the refinancing is in the obligor's interest. A creditor or assignee shall not engage in acts or practices to evade this paragraph (c), including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors, or modifying a loan agreement, regardless of whether the existing loan is satisfied and replaced by the new loan, and charging a fee.

(d) **No refinancing certain low-rate loans.** A lender shall not replace or consolidate a zero interest rate, or other low-rate, loan made by a governmental or nonprofit lender with a covered loan within the first ten years after the low-rate loan was made unless the current holder of the loan consents in writing to the refinancing. For purposes of this paragraph (d), a "low-rate" loan

is a loan that carries a current interest rate two percentage points or more below the current yield on United States department of the treasury securities with a comparable maturity. If the loan's current interest rate is either a discounted introductory rate or a rate that automatically steps up over time, then the fully-indexed rate or the fully stepped-up rate, as appropriate, should be used in lieu of the current rate to determine whether a loan is a low-rate loan.

(e) **Restrictions on covered loan proceeds to pay home improvement contracts.** A lender shall not pay a contractor under a home-improvement contract from the proceeds of a covered loan other than by an instrument payable to the obligor or jointly to the obligor and the contractor or, at the election of the obligor, through a third-party escrow agent in accordance with terms established in a written agreement signed by the obligor, the lender, and the contractor prior to the disbursement of funds to the contractor.

(f) **No financing of credit insurance.** No covered loan may include, directly or indirectly, financing of any premiums for any credit life, credit disability, credit property, or credit unemployment insurance, any other life or health insurance products, or any payments for any debt cancellation or suspension agreement or contracts; except that calculated insurance premiums or debt cancellation or suspension fees paid on a monthly basis shall not be considered to have been financed by the lender for purposes of this paragraph (f).

(g) **No recommending default.** No lender shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a covered loan that refinances all or any portion of such existing loan or debt.

(h) **No fee for payoff quote.** No creditor may charge a fee for informing or transmitting to any person the balance due to pay off a covered loan or to provide a release upon prepayment. A creditor shall provide a payoff balance within a reasonable time after a request, but in any event not more than five business days after a written request.

Source: L. 2002: Entire article added, p. 1597, § 1, effective June 7. **L. 2003:** (1)(c) amended, p. 1894, § 10, effective July 1.

5-3.5-104. Reporting to credit bureaus.

A lender or its servicer shall report at least quarterly both the favorable and unfavorable payment history information of the obligor on payments due to the lender on a covered loan to a nationally recognized consumer credit reporting agency. This section shall not prevent a lender or its servicer from agreeing with the obligor not to report specified payment history information in the event of a resolved or unresolved dispute with an obligor, and shall not apply to covered loans held or serviced by a lender for less than ninety days.

Source: L. 2002: Entire article added, p. 1600, § 1, effective June 7.

PART 2

ENFORCEMENT AND LIABILITY

5-3.5-201. Enforcement - liability.

The attorney general and any obligor of a covered loan may enforce this article with respect to such covered loan in the manner provided for violations of the federal "Home Ownership and Equity Protection Act of 1994", 15 U.S.C. sec. 1639, and regulations adopted pursuant thereto by the federal reserve board, including, without limitation, 12 CFR 226.32, as set forth in the federal "Truth in Lending Act", 15 U.S.C. sec. 1640, and regulations adopted pursuant thereto by the federal reserve board, including the provisions on civil liability, class actions, rescission, correction, and bona fide error. Persons engaged in the purchase, sale, assignment, securitization, or servicing of covered loans shall be liable under this article for the action or inaction of persons originating such loans only in the manner and to the extent provided for violation of the federal "Home Ownership and Equity Protection Act of 1994" and the federal "Truth in Lending Act", 15 U.S.C. sec. 1641, and regulations adopted pursuant thereto by the federal reserve board.

Source: L. 2002: Entire article added, p. 1600, § 1, effective June 7.

PART 3

MISCELLANEOUS PROVISIONS

5-3.5-301. Effective date - applicability.

Section 5-3.5-303 is intended to restate and confirm the existing law of this state, namely that the laws of this state relating to the financial and lending activities are to be applied on a uniform, statewide basis. Parts 1 and 2 of this article shall take effect January 1, 2003. This part 3 shall take effect upon passage. This article shall apply to covered loans offered or entered into on or after January 1, 2003.

Source: L. 2002: Entire article added, p. 1601, § 1, effective June 7.

5-3.5-302. Severability.

The provisions of this article are severable and if any of its provisions are held unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this article. It is hereby declared to be the legislative intent that this article would have been adopted if the unconstitutional provisions had not been included.

Source: L. 2002: Entire article added, p. 1601, § 1, effective June 7.

5-3.5-303. Relationship to other laws.

(1) **General rule.** All political subdivisions of this state, including municipalities, shall be prohibited from enacting and enforcing ordinances, resolutions, and regulations pertaining to lending activities.

(2) **Preemption.** Any provision of this article 3.5 preempted by federal law with respect to a national bank or federal savings association shall also, to the same extent, not apply to an operating subsidiary of a national bank or federal savings association that satisfies the requirements for operating subsidiaries established in 12 CFR 5.34, relating to operating subsidiaries, nor to a bank chartered under the laws of Colorado or any operating subsidiary of such a state chartered bank.

(3) **Interpretation.** The provisions of this article 3.5 shall be interpreted and applied to the fullest extent practical in a manner consistent with applicable federal laws and regulations and shall not be deemed to constitute an attempt to override federal law.

Source: L. 2002: Entire article added, p. 1601, § 1, effective June 7. **L. 2023:** (2) amended, (HB 23-1301), ch. 303, p. 1815, § 2, effective August 7.

ARTICLE 3.7

Consumer Credit Solicitation Protection

5-3.7-101. Consumer credit solicitation protection - definitions.

5-3.7-101. Consumer credit solicitation protection - definitions.

(1) A solicitor that makes a firm offer of credit for a lender credit card or a seller credit card to a consumer by mail solicitation and receives an acceptance of that offer that lists the address of the consumer accepting the offer as different from the address to which the offer was sent shall, prior to issuing or directing issuances of the lender credit card or seller credit card, verify that the consumer accepting the offer is the same consumer to whom the offer was sent.

(2) As used in this section, unless the context otherwise requires:

(a) "Firm offer of credit" shall have the same meaning as set forth in 15 U.S.C. sec. 1681a (l).

(b) "Solicitor" means the person making the offer by mail solicitation and does not include a card issuer or other creditor when that creditor or card issuer relies on an independent third party to provide the services.

(c) "Verify" means the use of commercially reasonable efforts to ascertain that the consumer responding to a mail solicitation is the same consumer to whom the solicitation was directed. For the purposes of this article, a solicitor shall be deemed to verify that the consumer accepting a mail solicitation is the same consumer to whom the solicitation was directed if:

(I) A consumer responding at a telephone number appearing in a publicly available directory or database as the telephone number of the consumer to whom the solicitation was mailed identifies himself or herself as the consumer to whom the solicitation was mailed and acknowledges the consumer's acceptance of the solicitation; or

(II) A consumer presents the solicitor, including presentation by facsimile transmission or mail, the original or a copy of one or more documents, including a driver's license, social security card, passport, or any other identification document issued by a state or federal governmental agency, that, on the face of the document or documents, appears to confirm such consumer's identity as the consumer to whom a solicitation was mailed and the consumer acknowledges acceptance of the solicitation; or

(III) The solicitor verified, by any means adopted in federal regulations, that the consumer accepting the solicitation is the consumer to whom the solicitation was directed; or

(IV) The solicitor verified by any other means, that under the standards and practices of the industry in which the solicitor is engaged would be deemed sufficient, that the consumer accepting the solicitation is the same consumer to whom the solicitation was sent.

Source: L. 2004: Entire article added, p. 657, § 1, effective July 1.

ARTICLE 4

Insurance

PART 1
INSURANCE IN GENERAL

5-4-101. Short title.

5-4-102. Scope - relation to credit insurance act - applicability to parties.

5-4-103. Definitions - "consumer credit insurance" - "Credit Insurance Act".

5-4-104. Creditor's provision of and charge for insurance - excess amount of charge.

5-4-105. Conditions applying to insurance to be provided by creditor.

5-4-106. Unconscionability.

5-4-107. Maximum charge by creditor for insurance.

5-4-108. Refund or credit required - amount.

5-4-109. Existing insurance - choice of insurer.

5-4-110. Charge for insurance in connection with a deferral, refinancing, or consolidation - duplicate charges.

5-4-111. Cooperation between administrator and commissioner of insurance.

5-4-112. Administrative action of commissioner of insurance.

PART 2
CONSUMER CREDIT INSURANCE

5-4-201. Term of insurance.

5-4-202. Amount of insurance.

5-4-203. Filing and approval of rates and forms.

PART 3
PROPERTY AND LIABILITY INSURANCE

5-4-301. Property insurance.

5-4-302. Insurance on creditor's interest only.

5-4-303. Liability insurance.

5-4-304. Cancellation by creditor.

PART 1

INSURANCE IN GENERAL

5-4-101. Short title.

This article shall be known and may be cited as "Uniform Consumer Credit Code - Insurance".

Source: L. 2000: Entire article R&RE, p. 1225, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-101, as it existed prior to 2000.

5-4-102. Scope - relation to credit insurance act - applicability to parties.

(1) This article applies to insurance provided or to be provided in relation to a consumer credit transaction.

(2) This article supplements and does not repeal the "Credit Insurance Act", article 10 of title 10, C.R.S. The provisions of this code concerning administrative controls, liabilities, and penalties do not apply to persons acting as insurers, and the similar provisions of the "Credit Insurance Act" do not apply to creditors and consumers.

Source: L. 2000: Entire article R&RE, p. 1225, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-102, as it existed prior to 2000.

5-4-103. Definitions - "consumer credit insurance" - "Credit Insurance Act".

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

(1) "Consumer credit insurance" means insurance, other than insurance on property, by which the satisfaction of debt in whole or in part is a benefit provided but does not include:

(a) Insurance, as to which a finance charge is imposed and provided in relation to a credit transaction in which a payment is scheduled more than ten years after the extension of credit;

(b) Insurance issued as an isolated transaction on the part of the insurer not related to an agreement or plan for insuring consumers of the creditor; or

(c) Insurance indemnifying the creditor against loss due to the consumer's default.

(2) "Credit Insurance Act" means the "Credit Insurance Act", article 10 of title 10, C.R.S.

Source: L. 2000: Entire article R&RE, p. 1225, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-103, as it existed prior to 2000.

5-4-104. Creditor's provision of and charge for insurance - excess amount of charge.

(1) Except as otherwise provided in this article and subject to the provisions on additional charges contained in section 5-2-202 and maximum charges contained in section 5-2-201, a creditor may agree to provide insurance and may contract for and receive a charge for insurance separate from and in addition to other charges. A creditor need not make a separate charge for insurance provided or required by the creditor. This code does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance.

(2) The excess amount of a charge for insurance provided for in agreements in violation of this article is an excess charge for the purposes of:

(a) The provisions on remedies and penalties contained in article 5 of this title as to effect of violations on rights of parties under section 5-5-201; and

(b) The provisions on administration contained in article 6 of this title as to civil actions by the administrator under section 5-6-114.

Source: L. 2000: Entire article R&RE, p. 1225, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-104, as it existed prior to 2000.

5-4-105. Conditions applying to insurance to be provided by creditor.

(1) If a creditor agrees with a consumer to provide insurance:

(a) The insurance shall be evidenced by an individual policy or certificate of insurance delivered to the consumer or sent to the consumer at his or her address as stated by the consumer within thirty days after the term of the insurance commences under the agreement between the creditor and consumer; or

(b) The creditor shall promptly notify the consumer of any failure or delay in providing the insurance.

Source: L. 2000: Entire article R&RE, p. 1226, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-105, as it existed prior to 2000.

5-4-106. Unconscionability.

(1) In applying the provisions of this code on unconscionability contained in sections 5-5-109 and 5-6-112 to a separate charge for insurance, consideration shall be given, among other factors, to:

(a) Potential benefits to the consumer including the satisfaction of the consumer's obligations;

(b) The creditor's need for the protection provided by the insurance; and

(c) The relation between the amount and terms of credit granted and the insurance benefits provided.

(2) If consumer credit insurance otherwise complies with this article and other applicable law, neither the amount nor the term of the insurance nor the amount of a charge therefor is in itself unconscionable.

Source: L. 2000: Entire article R&RE, p. 1226, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-106, as it existed prior to 2000.

5-4-107. Maximum charge by creditor for insurance.

(1) Except as provided in subsection (2) of this section, if a creditor contracts for or receives a separate charge for insurance, the amount charged to the consumer for the insurance may not exceed the premium to be charged by the insurer as computed at the time the charge to the consumer is determined conforming to any rate filings required by law and made by the insurer with the commissioner of insurance.

(2) A creditor who provides consumer credit insurance in relation to a revolving credit account may calculate the charge to the consumer in each billing cycle by applying the current premium rate to:

(a) The average daily unpaid balance of the debt in the cycle;

(b) The unpaid balance of the debt or a median amount within a specified range of unpaid balances of debt on approximately the same day of the cycle. The day of the cycle need not be the day used in calculating the finance charge, but the specified range shall be the range used for that purpose; or

(c) The unpaid balances of the amount financed calculated according to the actuarial method.

Source: L. 2000: Entire article R&RE, p. 1227, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-107, as it existed prior to 2000.

5-4-108. Refund or credit required - amount.

(1) (a) Except as provided in subsection (3) of this section, an appropriate refund or credit of unearned premiums shall be made to the person entitled thereto with respect to any separate charge made to the consumer for insurance if:

(I) The insurance is not provided or is provided for a shorter term than that for which the charge to the consumer for insurance was computed; or

(II) The insurance terminates prior to the end of the term for which it was written because of prepayment in full of the indebtedness or the insurance terminates for any other reason.

(b) All consumer credit insurance shall terminate upon prepayment in full of the indebtedness.

(2) If a refund or credit of unearned premiums is required pursuant to the provisions of subsection (1) of this section:

(a) The original creditor, if he or she is the holder of the indebtedness at the time of prepayment, shall either promptly make the appropriate refund or credit or shall promptly notify the consumer and the insurer in writing that a refund or credit is due. Upon the receipt of notice that a refund or credit is due, the insurer shall promptly make an appropriate refund or credit of unearned premiums pursuant to the provisions of section 10-10-110 (2), C.R.S. For purposes of this section, "original creditor" means the person to whom the indebtedness was initially payable,

and "insurer" means every person engaged as principal, indemnitor, surety, or contractor in the business of making contracts of insurance, excluding any licensed insurance agent.

(b) (I) The assignee, if the indebtedness has been assigned, shall either promptly make the appropriate refund or credit or shall promptly notify the consumer, the original creditor, and the insurer, if known, in writing that a refund or credit is due. For the purposes of this section, "assignee" means a person other than the original creditor who at the time of prepayment holds the indebtedness.

(II) The original creditor, upon receipt of notice pursuant to subparagraph (I) of this paragraph (b), shall either promptly make the appropriate refund or credit or shall promptly notify the insurer in writing that a refund or credit of unearned premiums is due.

(c) The insurer, upon the receipt of notice that a refund or credit is due pursuant to paragraph (a) or (b) of this subsection (2), shall make an appropriate refund or credit of unearned premiums pursuant to the provisions of section 10-10-110 (2), C.R.S., and subsection (1) of this section.

(d) An assignee or original creditor gives notice pursuant to this section upon delivery or mailing of the notice to the last address provided to him or her. Once an original creditor or an assignee has notified the appropriate party, as provided in paragraphs (a) and (b) of this subsection (2), the original creditor and the assignee shall have no further obligations.

(3) This article does not require a refund or credit of unearned premiums if:

(a) All refunds and credits due to the debtor under this article amount to less than one dollar; or

(b) The charge for insurance is computed from time to time on the outstanding balance of the indebtedness and the charge relates to only one premium period.

(4) Except as otherwise required, a refund or credit is not required because:

(a) The insurance is terminated by payment of proceeds under the policy; or

(b) The original creditor or assignee pays or accounts for premiums to the insurer in the amounts and at the times determined by the agreement between them; or

(c) The original creditor or assignee receives directly or indirectly under any policy of insurance a gain or advantage not prohibited by law.

(5) If a single type of insurance is terminated by the payment of proceeds under the policy pursuant to paragraph (a) of subsection (4) of this section, a refund or credit of unearned premiums for all other types of consumer credit insurance issued on the same indebtedness shall be made if so required by the provisions of this section and section 10-10-110 (2), C.R.S.

(6) A refund or credit required by subsection (1) of this section is appropriate as to amount if it is computed according to a method prescribed or approved by the commissioner of insurance

or a formula filed by the insurer with the commissioner of insurance at least thirty days before the consumer's right to a refund or credit becomes determinable unless the method or formula is employed after the commissioner of insurance notifies the insurer that he or she disapproves it.

Source: L. 2000: Entire article R&RE, p. 1227, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-108, as it existed prior to 2000.

5-4-109. Existing insurance - choice of insurer.

If a creditor requires insurance, upon notice to the creditor the consumer shall have the option of providing the required insurance through an existing policy of insurance owned or controlled by the consumer or through a policy to be obtained and paid for by the consumer, but the creditor may for reasonable cause decline the insurance provided by the consumer.

Source: L. 2000: Entire article R&RE, p. 1229, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-109, as it existed prior to 2000.

5-4-110. Charge for insurance in connection with a deferral, refinancing, or consolidation - duplicate charges.

(1) A creditor may not contract for or receive a separate charge for insurance in connection with a deferral described in section 5-2-204, a refinancing described in section 5-2-205, or a consolidation described in section 5-2-206 unless:

(a) The consumer agrees at or before the time of the deferral, refinancing, or consolidation that the charge may be made;

(b) The consumer is or is to be provided with insurance for an amount or a term, or insurance of a kind, in addition to that to which the consumer would have been entitled had there been no deferral, refinancing, or consolidation;

(c) The consumer receives a refund or credit on account of any unexpired term of existing insurance in the amount that would be required if the insurance were terminated under section 5-4-108; and

(d) The charge does not exceed the amount permitted under section 5-4-107.

(2) A creditor may not contract for or receive a separate charge for insurance that duplicates insurance with respect to which the creditor has previously contracted for or received a separate charge.

Source: L. 2000: Entire article R&RE, p. 1229, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-110, as it existed prior to 2000.

5-4-111. Cooperation between administrator and commissioner of insurance.

The administrator and the commissioner of insurance are authorized and directed to consult and assist one another in maintaining compliance with this article. They may jointly pursue investigations, prosecute suits, and take other official action, as may seem to them appropriate, if either of them is otherwise empowered to take the action. If the administrator is informed of a violation or suspected violation by an insurer of this article or of the insurance laws, rules, and regulations of this state, the administrator shall advise the commissioner of insurance of the circumstances.

Source: L. 2000: Entire article R&RE, p. 1229, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-111, as it existed prior to 2000.

5-4-112. Administrative action of commissioner of insurance.

(1) To the extent that the commissioner's responsibility under this article requires, the commissioner of insurance shall promulgate rules in accordance with article 4 of title 24, C.R.S., with respect to insurers, and with respect to refunds described in section 5-4-108, and, in case of violation, may make an order for compliance.

(2) Sections 24-4-102 to 24-4-106, C.R.S., apply to and govern all administrative action taken by the commissioner of insurance pursuant to this section.

Source: L. 2000: Entire article R&RE, p. 1230, § 1, effective July 1. **L. 2003:** (1) amended, p. 1895, § 11, effective July 1.

Editor's note: This section is similar to former § 5-4-112, as it existed prior to 2000.

PART 2

CONSUMER CREDIT INSURANCE

5-4-201. Term of insurance.

(1) Consumer credit insurance provided by a creditor may be subject to the furnishing of evidence of insurability satisfactory to the insurer. Whether or not such evidence is required, the term of the insurance shall commence no later than when the consumer becomes obligated to the creditor or when the consumer applies for the insurance, whichever is later, except as follows:

(a) If any required evidence of insurability is not furnished until more than thirty days after the term would otherwise commence, the term may commence on the date when the insurer determines the evidence to be satisfactory; or

(b) If the creditor provides insurance not previously provided covering debts previously created, the term may commence on the effective date of the policy.

(2) The originally scheduled term of the insurance shall extend at least until the due date of the last scheduled payment of the debt except as follows:

(a) If the insurance relates to a revolving credit account, the term need extend only until the payment of the debt under the account and may be sooner terminated after at least thirty days' notice to the consumer; or

(b) If the consumer is advised in writing that the insurance will be written for a specified shorter time, the term need extend only until the end of the specified time.

(3) The term of the insurance shall not extend more than thirty days after the originally scheduled due date of the last scheduled payment of the debt unless it is extended without additional cost to the consumer or as an incident to a deferral, refinancing, or consolidation.

Source: L. 2000: Entire article R&RE, p. 1230, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-201, as it existed prior to 2000.

5-4-202. Amount of insurance.

(1) Except as provided in subsection (2) of this section:

(a) In the case of consumer credit insurance providing life coverage, the amount of insurance may not initially exceed the debt and, if the debt is payable in installments, may not at any time exceed the greater of the scheduled or actual amount of the debt; or

(b) In the case of any other consumer credit insurance, the total amount of periodic benefits payable may not exceed the total of scheduled unpaid installments of the debt, and the amount of any periodic benefit may not exceed the original amount of debt divided by the number of periodic installments in which it is payable.

(2) If consumer credit insurance is provided in connection with a revolving credit account, the amounts payable as insurance benefits may be reasonably commensurate with the amount of debt as it exists from time to time. If consumer credit insurance is provided in connection with a commitment to grant credit in the future, the amounts payable as insurance benefits may be reasonably commensurate with the total from time to time of the amount of debt and the amount of the commitment.

Source: L. 2000: Entire article R&RE, p. 1231, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-202, as it existed prior to 2000.

5-4-203. Filing and approval of rates and forms.

(1) A creditor may not use a form or charge in connection with credit insurance that does not comply with section 10-10-109, C.R.S.

(2) and (3) (Deleted by amendment, L. 2003, p. 1895, § 12, effective July 1, 2003.)

Source: L. 2000: Entire article R&RE, p. 1231, § 1, effective July 1. **L. 2001:** (2) amended, p. 894, § 5, effective June 1. **L. 2003:** Entire section amended, p. 1895, § 12, effective July 1.

Editor's note: This section is similar to former § 5-4-203, as it existed prior to 2000.

PART 3

PROPERTY AND LIABILITY INSURANCE

5-4-301. Property insurance.

(1) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless:

(a) The insurance covers a substantial risk of loss of or damage to property related to the credit transaction;

(b) The amount, terms, and conditions of the insurance are reasonable in relation to the character and value of the property insured or to be insured; and

(c) The term of the insurance is reasonable in relation to the terms of credit.

(2) The term of the insurance is reasonable if it is customary and does not extend substantially beyond a scheduled maturity.

(3) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless the amount financed exclusive of charges for the insurance is one thousand dollars or more and the value of the property is one thousand dollars or more.

Source: L. 2000: Entire article R&RE, p. 1232, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-301, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "The Revolution in Consumer Credit Legislation", see 45 Den. L.J. 679 (1968).

5-4-302. Insurance on creditor's interest only.

If a creditor contracts for or receives a separate charge for insurance against loss of or damage to property, the risk of loss or damage not willfully caused by the consumer is on the consumer only to the extent of any deficiency in the effective coverage of the insurance even though the insurance covers only the interest of the creditor.

Source: L. 2000: Entire article R&RE, p. 1232, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-302, as it existed prior to 2000.

ANNOTATION

A creditor named as a beneficiary in a policy on the debtor's life is entitled out of the proceeds only to the amount of the actual debt, together with interest. Where the sole purpose to be accomplished in the issuance of an insurance policy upon the life of a debtor is to secure the payment of a debt to the creditor, or where the same single purpose is accomplished by a change in beneficiary, the creditor's right to the proceeds of the policy on the death of a debtor extends no further than indemnity. Under such circumstances all proceeds from the policy beyond the debt owed the creditor plus interest and premiums paid by him, are payable to the legal representatives of the deceased debtor. Forster v. Franklin Life Ins. Co., 135 Colo. 383, 311 P.2d 700 (1957) (decided under repealed § 73-5-1, CRS 53).

5-4-303. Liability insurance.

A creditor may not contract for or receive a separate charge for insurance against liability unless the insurance covers a substantial risk of liability arising out of the ownership or use of property related to the credit transaction.

Source: L. 2000: Entire article R&RE, p. 1232, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-303, as it existed prior to 2000.

5-4-304. Cancellation by creditor.

This section does not apply to an insurance premium loan. A creditor shall not request cancellation of a policy of property or liability insurance except after the consumer's default or in accordance with a written authorization by the consumer, and in either case the cancellation does not take effect until written notice is delivered to the consumer or mailed to the consumer at his or her address as stated by the consumer. The notice shall state that the policy may be canceled

on a date not less than ten days after the notice is delivered or, if the notice is mailed, not less than thirteen days after it is mailed.

Source: L. 2000: Entire article R&RE, p. 1233, § 1, effective July 1.

Editor's note: This section is similar to former § 5-4-304, as it existed prior to 2000.

ARTICLE 5

Remedies and Penalties

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PART 1

LIMITATIONS ON CREDITORS' REMEDIES

5-5-101. Short title.

This article shall be known and may be cited as the "Uniform Consumer Credit Code - Remedies and Penalties".

Source: L. 2000: Entire article R&RE, p. 1233, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-101, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "Legislative Overview of the Uniform Consumer Credit Code: A 1971 Perspective", see 48 Den. L.J. 27 (1971).

5-5-102. Scope.

This part 1 applies to actions or other proceedings to enforce rights arising from consumer credit transactions.

Source: L. 2000: Entire article R&RE, p. 1233, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-102, as it existed prior to 2000.

5-5-103. Restrictions on deficiency judgments in consumer credit sales.

(1) This section applies to a consumer credit sale of goods or services. A consumer is not liable for a deficiency unless the creditor has disposed of the goods in accordance with the provisions on the disposition of collateral of the "Uniform Commercial Code" contained in part 6 of article 9 of title 4, C.R.S.

(2) If the creditor repossesses, with or without the aid of judicial process, or voluntarily accepts surrender of goods that were the subject of the sale and in which the creditor has a security interest, the parties obligated are not personally liable to the creditor for the unpaid balance of the debt arising from the sale of a commercial unit of goods of which the cash sale price was three thousand dollars or less, and the creditor's duty to dispose of the collateral is governed by the provisions on the disposition of collateral of the "Uniform Commercial Code" contained in part 6 of article 9 of title 4, C.R.S.

(3) If the creditor repossesses, with or without the aid of judicial process, or voluntarily accepts surrender of goods that were not the subject of the sale but in which the creditor has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the cash price of the sale was three thousand dollars or less, the parties obligated are not personally liable to the creditor for the unpaid balance of the debt arising from the sale, and the creditor's duty to dispose of the collateral is governed by the provisions on disposition of collateral of the "Uniform Commercial Code" contained in part 6 of article 9 of title 4, C.R.S.

(4) For the purpose of determining the unpaid balance of consolidated debts or debts pursuant to revolving credit accounts, the allocation of payments to a debt shall be determined in the same manner as provided for determining the amount of debts secured by various security interests under sections 5-3-202 and 5-3-203.

(5) The consumer may be liable in damages to the creditor if the consumer has misused, abused, or wrongfully damaged the collateral or if, after default and demand in writing, the consumer has wrongfully failed to make the collateral available to the creditor. Nothing in this section shall limit or restrict the remedies of the holders of a security interest for damage to the collateral because of conversion, destruction, or other wrongful acts.

(6) If the creditor elects to bring an action against the consumer for a debt arising from a consumer credit sale of goods or services, when under this section the creditor would not be entitled to a deficiency judgment if the creditor took possession of the collateral, and obtains judgment:

(a) The creditor may not take possession of the collateral; and

(b) The collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

Source: L. 2000: Entire article R&RE, p. 1233, § 1, effective July 1. **L. 2001:** (1), (2), and (3) amended, p. 1444, § 36, effective July 1. **L. 2003:** (3) amended, p. 1896, § 13, effective July 1.

Editor's note: This section is similar to former § 5-5-103, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "State Variations of the Uniform Consumer Credit Code: The Case for Legislative Restraint", see 48 Den. L.J. 239 (1971).

5-5-104. Insecurity and impaired collateral.

(1) If a creditor takes possession of any collateral because the creditor deems himself or herself insecure or because the creditor feels his or her collateral is impaired, and the creditor fails to prove that, at the time possession was taken, the creditor, in good faith, had reasonable cause to believe that he or she was insecure or that his or her collateral was impaired:

(a) The creditor shall be liable to the consumer for court costs and attorney fees as determined by the court; and

(b) The consumer shall not be liable for any finance charge incurred during the period the consumer is without use of the collateral.

Source: L. 2000: Entire article R&RE, p. 1234, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-103.5, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "Secured Transactions — Part II: Default, Foreclosure and Bankruptcy", see 12 Colo. Law. 13 (1983).

5-5-105. No garnishment before judgment.

Prior to entry of judgment in an action against the consumer for debt arising from a consumer credit transaction, the creditor may not replevin goods, except motor vehicles, of the consumer with the use of force from a dwelling upon an ex parte order of court or attach unpaid earnings of the consumer by garnishment or like proceedings.

Source: L. 2000: Entire article R&RE, p. 1234, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-104, as it existed prior to 2000.

ANNOTATION

Shares of common stock debtor purchased through an employee stock purchase plan are not exempt earnings pursuant to this section and § 13-54-104. In re Kramer, 339 B.R. 761 (Bankr. D. Colo. 2006).

5-5-106. Limitation on garnishment - definitions.

(1) For the purposes of this part 1:

(a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld.

(b) "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

(2) (a) The maximum part of the aggregate disposable earnings of an individual for any workweek that is subjected to garnishment to enforce payment of a judgment arising from a consumer credit transaction may not exceed the lesser of:

(I) Twenty-five percent of the individual's disposable earnings for that week; or

(II) The amount by which the individual's disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by section 206 (a)(1) of the "Fair Labor Standards Act of 1938", 29 U.S.C. sec. 201 et seq., in effect at the time the earnings are payable; or

(III) The amount by which the individual's disposable earnings for that week exceed thirty times the state minimum hourly wage pursuant to section 15 of article XVIII of the state constitution in effect at the time the earnings are payable.

(b) In the case of earnings for a pay period other than a week, the administrator may prescribe by rule a multiple of the federal minimum hourly wage or the state minimum hourly wage, equivalent in effect to that set forth in subparagraphs (II) or (III) of paragraph (a) of this subsection (2).

(3) No court may make, execute, or enforce an order or process in violation of this section.

(4) It shall not be necessary for any individual to claim the exemptions for that portion of the aggregate disposable earnings that are not subject to garnishment as set forth in subsection (2) of

this section, and such exemption from garnishment shall be self-executing in any garnishment procedure.

(5) This section does not repeal, alter, or affect other statutes of this state prohibiting garnishments or providing for larger exemptions from garnishments than are allowed under this section.

Source: L. 2000: Entire article R&RE, p. 1234, § 1, effective July 1. **L. 2007:** (2) amended, p. 878, § 6, effective July 1.

Editor's note: This section is similar to former § 5-5-105, as it existed prior to 2000.

Cross references: For the legislative declaration contained in the 2007 act amending subsection (2), see section 1 of chapter 226, Session Laws of Colorado 2007.

ANNOTATION

Annotator's note. Since § 5-5-106 is similar to § 5-5-105 as it existed prior to the 2000 repeal and reenactment of articles 1 to 3 and 4 to 6 of this title, relevant cases construing that provision have been included in the annotations to this section.

This section is substantially similar to the federal wage garnishment law. First Nat'l Bank v. Columbia Credit Corp., 179 Colo. 242, 499 P.2d 1163 (1972).

Consequently, garnishments may be exempted from federal act. The secretary of labor may exempt from the garnishment provisions of the federal act garnishments under the law of any state which are substantially similar to those provided in the federal wage garnishment law. First Nat'l Bank v. Columbia Credit Corp., 179 Colo. 242, 499 P.2d 1163 (1972).

The federal wage garnishment law does not annul, alter, affect, or exempt any person from complying with state laws which prohibit garnishment, or which provide for more limited garnishments than are permitted under federal law. First Nat'l Bank v. Columbia Credit Corp., 179 Colo. 242, 499 P.2d 1163 (1972).

Whichever law is the more restrictive and results in the smaller garnishment is the one which must be applied in any given situation. First Nat'l Bank v. Columbia Credit Corp., 179 Colo. 242, 499 P.2d 1163 (1972).

Limitation inapplicable to child support obligations. The limitation contained in subsection (2) is inapplicable to an order of assignment of wages to enforce

child support obligations. In re McCue, 645 P.2d 854 (Colo. App. 1982).

Applied in Bernstein v. Richardson, 34 B.R. 611 (Bankr. D. Colo. 1983).

5-5-107. No discharge from employment for garnishment.

No employer shall discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit transaction.

Source: L. 2000: Entire article R&RE, p. 1235, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-106, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "Punitive Damages in Wrongful Discharge Cases", see 15 Colo. Law. 658 (1986).

5-5-108. Extortionate extensions of credit.

(1) If it is the understanding of the creditor and the consumer at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person, the repayment of the extension of credit is unenforceable through civil judicial processes against the consumer.

(2) If it is shown that an extension of credit was made at an annual percentage rate exceeding forty-five percent calculated according to the actuarial method and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation, or property of any person to collect extensions of credit or to punish the nonpayment thereof, there is prima facie evidence that the extension of credit was unenforceable under subsection (1) of this section.

Source: L. 2000: Entire article R&RE, p. 1235, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-107, as it existed prior to 2000.

5-5-109. Unconscionability - inducement by unconscionable conduct - unconscionable debt collection.

(1) With respect to a transaction that is, gives rise to, or leads the consumer to believe will give rise to a consumer credit transaction, if the court as a matter of law finds:

(a) The agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement; or

(b) Any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable term or part, or so limit the application of any unconscionable term or part as to avoid any unconscionable result.

(2) With respect to a consumer credit transaction, if the court as a matter of law finds that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt arising from that transaction, the court may grant an injunction and award the consumer any actual damages the consumer has sustained.

(3) If it is claimed or appears to the court that the agreement or transaction or any term or part thereof may be unconscionable or that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the agreement or transaction or term or part thereof or of the conduct to aid the court in making the determination.

(4) In applying subsection (2) of this section, consideration shall be given to each of the following factors, among others, as applicable:

(a) Using or threatening to use force or violence against the consumer or members of the consumer's family;

(b) Communicating with the consumer or a member of the consumer's family at frequent intervals or at unusual hours or under other circumstances so that it is a reasonable inference that the primary purpose of the communication was to harass the consumer;

(c) Using fraudulent, deceptive, or misleading representations such as a communication that simulates legal process or that gives the appearance of being authorized, issued, or approved by a government, governmental agency, or attorney at law when it is not or threatening or attempting to enforce a right with knowledge or reason to know that the right does not exist;

(d) Causing or threatening to cause injury to the consumer's reputation or economic status by:

(I) Disclosing information affecting the consumer's reputation for credit worthiness with knowledge or reason to know that the information is false;

(II) Communicating with the consumer's employer before obtaining a final judgment against the debtor, except, as permitted by statute, to verify the consumer's employment, to ascertain the consumer's whereabouts, or to request that the consumer contact the creditor;

(III) Disclosing to a person, with knowledge or reason to know that the person does not have a legitimate business need for the information, or in any way prohibited by statute, information affecting the consumer's credit or other reputation; or

(IV) Disclosing information concerning the existence of a debt known to be disputed by the consumer without disclosing that fact;

(e) Engaging in conduct with knowledge that like conduct has been restrained or enjoined by a court in a civil action by the administrator against any person pursuant to the provisions on injunctions against fraudulent or unconscionable agreements or conduct contained in section 5-6-112.

(5) If, in an action in which unconscionability is claimed, the court finds unconscionability pursuant to subsection (1) or (2) of this section, the court may award reasonable fees to the attorney for the consumer. If the court does not find unconscionability and the consumer claiming unconscionability has brought or maintained an action the consumer knew to be groundless, the court may award reasonable fees to the attorney for the party against whom the claim is made. In determining attorney fees, the amount of the recovery on behalf of the consumer is not controlling.

(6) The remedies of this section are in addition to remedies otherwise available for the same conduct under laws other than this code, but double recovery of actual damages may not be had.

(7) For the purpose of this section, a charge or practice expressly permitted by this code is not in itself unconscionable.

Source: L. 2000: Entire article R&RE, p. 1236, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-108, as it existed prior to 2000.

Cross references: For the "Colorado Fair Debt Collection Practices Act", see article 16 of this title 5.

ANNOTATION

Law reviews. For article, "Secured Transactions — Part II: Default, Foreclosure and Bankruptcy", see 12 Colo. Law. 13 (1983). For article, "Default Judgments Against Consumers: Has the System Failed?", see 67 Den. U. L. Rev. 357 (1990).

Annotator's note. Since § 5-5-109 is similar to § 5-5-108 as it existed prior to the 2000 repeal and reenactment of articles 1 to 3 and 4 to 6 of this title, relevant cases construing that provision have been included in the annotations to this section.

Section 1681h(e) of the Fair Credit Reporting Act does not furnish defendant immunity from a statutory claim under this section since nothing in this section is inconsistent with the regulatory provisions of the Act and since an action under this section is to enforce a statutory right, and is not an action in the nature of defamation or invasion of privacy. Conley v. Greenwood Trust Co., 923 P.2d 307 (Colo. App. 1996), aff'd in part, rev'd in part on other grounds, 938 P.2d 1141 (Colo. 1997).

Claim that bank failed to report mortgagee's debt to credit reporting agencies as disputed is preempted by the federal Fair Credit Reporting Act, 15 U.S.C. § 1681t(b)(a)(F). Collins v. BAC Home Loans Servicing LP, 912 F. Supp. 2d 997 (D. Colo. 2012).

Liability under this section is not dependent upon proof demonstrating that the plaintiff was legally indebted to defendant. Once the purported creditor treats another party as a debtor, that party will be recognized as such for purposes of this section. Conley v. Greenwood Trust Co., 923 P.2d 307 (Colo. App. 1996).

This section applies to consumer credit, lease, or loan transactions and does not apply to a loan made by a person who was not in the business of making loans; therefore, even though 50% interest rate on note was usurious, realtor who made loan was entitled to maximum legal rate of 45% interest on note. Brown v. Fenner, 757 P.2d 184 (Colo. App. 1988).

5-5-110. Notice of right to cure.

(1) With respect to a consumer credit transaction, after a consumer has been in default for ten days for failure to make a required payment and has not voluntarily surrendered possession of goods or the mobile home that are collateral, a creditor may give the consumer the notice described in this section. A creditor gives notice to the consumer pursuant to this section when the creditor delivers the notice to the consumer or mails the notice to the consumer at the consumer's residence, as defined in section 5-1-201 (6).

(2) Except as provided in subsection (3) of this section, the notice shall be in writing and conspicuously state: The name, address, and telephone number of the creditor to which payment is to be made, a brief identification of the credit transaction, the right to cure the default, and the amount of payment and date by which payment must be made to cure the default. A notice in substantially the following form complies with this subsection (2):

__(Name, address, and telephone number of creditor)__

__(Account number, if any)__

__(Brief identification of credit transaction)__

__(Date)__ is the LAST DATE FOR PAYMENT.

__(Amount)__ is the AMOUNT NOW DUE.

You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above) by the LAST DAY FOR PAYMENT (above), you may continue with the contract as though you were not late. If you do not pay by this date, we may exercise our rights under the law.

If you are late again in making your payments, we may exercise our rights without sending you another notice like this one. If you have questions, write or telephone the creditor promptly.

(3) If the consumer credit transaction is a consumer insurance premium loan, the notice shall conform to the requirements of subsection (2) of this section, and a notice in substantially the form specified in subsection (2) of this section shall be deemed compliance with this subsection (3) except for the following:

(a) In lieu of a brief identification of the credit transaction, the notice shall identify the transaction as a consumer insurance premium loan and shall identify each policy or contract that may be canceled;

(b) In lieu of the statement in the form of notice specified in subsection (2) of this section that the creditor may exercise its rights under law, a statement shall be included that each policy or contract identified in the notice may be canceled; and

(c) The last paragraph of the form of notice specified in subsection (2) of this section shall be omitted.

(4) A notice of right to cure delivered or mailed to a cosigner pursuant to this section shall be modified to state that the consumer is late in making his or her payment, include the consumer's name, and that if the amount now due is not paid by the last date for payment, the creditor may exercise its rights against the consumer, cosigner, or both.

Source: L. 2000: Entire article R&RE, p. 1237, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 5-5-111, as it existed prior to 2000.

(2) Although this section was effective on July 1, 2000, section 5 of chapter 265, Session Laws of Colorado 2000, provides that the disclosures described in subsection (4) are effective January 1, 2001.

ANNOTATION

Law reviews. For article, "Mechanic's Liens — The 'Intent' Provisions Explored", see 11 Colo. Law. 1492 (1982). For article, "Secured Transactions — Part II: Default, Foreclosure and Bankruptcy", see 12 Colo. Law. 13 (1983). For article, "Setoff and Security Interests In Deposit Accounts", see 17 Colo. Law. 2108 (1988). For article, "Default Judgments Against Consumers: Has the System Failed?", see 67 Den. U. L. Rev. 357 (1990).

Annotator's note. Since § 5-5-110 is similar to § 5-5-111 as it existed prior to the 2000 repeal and reenactment of articles 1 to 3 and 4 to 6 of this title, relevant cases construing that provision have been included in the annotations to this section.

Buyer may also be entitled to redeem. In addition to the right to cure, as provided by this section and § 5-5-112, a buyer may be entitled to redeem, but only if the trial court determines that the equities so warrant. Woods v. Monticello Dev. Co., 656 P.2d 1324 (Colo. App. 1982).

Creditor choosing not to effect actual delivery must use method of mail likely to insure that the notice is actually delivered to the debtors' residence. Aetna Fin. Co. v. Summers, 44 Colo. App. 491, 618 P.2d 726 (1980), aff'd, 642 P.2d 926 (Colo. 1982).

Mailing by certified mail return receipt requested does not per se constitute notice to the debtor under subsection (1). Aetna Fin. Co. v. Summers, 44 Colo. App. 491, 618 P.2d 726 (1980), aff'd, 642 P.2d 926 (Colo. 1982).

Statutory notice method required when debtor had knowledge alternate method failed. Once the creditor has actual knowledge that the debtor has not received a notice mailed by certified mail, return receipt requested, it was incumbent upon creditor to satisfy the statutory notice requirement by personal service or by

sending the notice by regular mail to debtor's home. Aetna Fin. Co. v. Summers, 642 P.2d 926 (Colo. 1982).

5-5-111. Cure of default.

(1) With respect to a consumer credit transaction, except as provided in subsection (2) of this section, after a default consisting only of the consumer's failure to make a required payment, a creditor, because of that default, may neither accelerate maturity of the unpaid balance of the obligation nor take possession of or otherwise enforce a security interest in the goods or the mobile home that are collateral until twenty days after giving the consumer a notice of right to cure described in section 5-5-110. Until the expiration of the minimum applicable period after the notice is given, all defaults consisting of a failure to make the required payment may be cured by tendering to the creditor the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges. Cure restores the consumer to his or her rights under the agreement as though the defaults had not occurred.

(2) With respect to defaults on the same obligation, other than defaults on an obligation secured by a mobile home, after a creditor has once given the consumer a notice of right to cure described in section 5-5-110, this section gives no right to cure and imposes no limitation on the creditor's right to proceed against the consumer or goods that are collateral with respect to any subsequent default that occurs within twelve months of such notice. With respect to defaults on the same obligation that is secured by a mobile home, this section gives no right to cure and imposes no limitation on the creditor's right to proceed against the consumer or goods that are collateral with respect to any third default that occurs within twelve months of such notice. For the purpose of this section, in connection with revolving credit accounts, the obligation is the consumer's account, and there is no right to cure and no limitation on the creditor's rights with respect to any default that occurs within twelve months after an earlier default as to which a creditor has given the consumer notice of right to cure.

(3) Unless a creditor has provided the cosignor on a consumer credit transaction with a notice of right to cure that complies with section 5-5-110 and this section, in addition to the notice of right to cure provided to the consumer, the creditor may neither accelerate maturity of the unpaid balance of the obligation as to the cosignor nor report that amount on the cosignor's consumer report with a consumer reporting agency, as defined in section 5-18-103 and 15 U.S.C. sec. 1681a.

(4) This section and the provisions on waiver, agreements to forego rights, and settlement of claims do not prohibit a consumer from voluntarily surrendering possession of goods that are collateral and the creditor from thereafter enforcing its security interest in the goods at any time after default.

(5) This section shall not apply to consumer credit transactions that are payable in four or fewer installments.

Source: L. 2000: Entire article R&RE, p. 1239, § 1, effective July 1. **L. 2017:** (3) amended, (HB 17-1238), ch. 260, p. 1170, § 8, effective August 9.

Editor's note: (1) This section is similar to former § 5-5-112, as it existed prior to 2000.

(2) Although this section was effective on July 1, 2000, section 5 of chapter 265, Session Laws of Colorado 2000, provides that the disclosures described in subsection (3) are effective January 1, 2001.

ANNOTATION

Law reviews. For article, "Secured Transactions — Part II: Default, Foreclosure and Bankruptcy", see 12 Colo. Law. 13 (1983).

Annotator's note. Since § 5-5-111 is similar to § 5-5-112 as it existed prior to the 2000 repeal and reenactment of articles 1 to 3 and 4 to 6 of this title, relevant cases construing that provision have been included in the annotations to this section.

Buyer may also be entitled to redeem. In addition to the right to cure, as provided by this section and § 5-5-111, a buyer may be entitled to redeem, but only if the trial court determines that the equities so warrant. Woods v. Monticello Dev. Co., 656 P.2d 1324 (Colo. App. 1982).

Penalty for violation. An appropriate penalty for the violation of this section is the penalty imposed by § 4-9-507 (1). D.E.B. Adjustment Co. v. Cawthorne, 623 P.2d 82 (Colo. App. 1981).

A lender must strictly comply with notice provisions of the UCCC before it can accelerate a loan and repossess collateral. This section permits acceleration only after a notice of a debtor's right to cure is given. Accelerating a loan prior to the giving of notice as required by this section is improper. First Nat. Bank v. Union Tavern Corp., 794 P.2d 261 (Colo. App. 1990).

This section prohibits a lender from charging default interest against a debtor prior to giving notice of default as required by this section. First Nat. Bank v. Union Tavern Corp., 794 P.2d 261 (Colo. App. 1990).

This section and next section preclude a creditor under a consumer credit transaction from pursuing a replevin remedy prior to the expiration of the 20-day notice period set forth in this section. Green Tree Fin. v. Short, 10 P.3d 721 (Colo. App. 2000).

Applied in Aetna Fin. Co. v. Summers, 642 P.2d 926 (Colo. 1982).

5-5-112. Attorney fees.

(1) With respect to a consumer credit transaction, the agreement may provide for the payment by the consumer of reasonable attorney fees not in excess of fifteen percent of the unpaid debt after default and referral to an attorney not a salaried employee of the creditor or such additional fee as may be directed by the court. A provision in violation of this section is unenforceable.

(2) This section does not authorize the imposition of attorney fees for preparation of a notice of right to cure if the consumer cures the default pursuant to sections 5-5-110 and 5-5-111.

Source: L. 2000: Entire article R&RE, p. 1240, § 1, effective July 1.

Editor's note: This section is similar to former §§ 5-2-413, 5-3-404, and 5-3-514, as they existed prior to 2000.

ANNOTATION

Law reviews. For article, "State Variations of the Uniform Consumer Credit Code: The Case for Legislative Restraint", see 48 Den. L.J. 239 (1971).

Where litigation involved an installment sale contract entered into prior to October 1, 1971, this section did not apply. John Deere Co. v. Catalano, 186 Colo. 101, 525 P.2d 1153 (1974) (decided under law in effect prior to the 2000 repeal and reenactment).

Applied in Nat'l City Bank of Denver v. Sather, 677 P.2d 432 (Colo. App. 1983) (decided under law in effect prior to the 2000 repeal and reenactment).

PART 2

CONSUMERS' REMEDIES

5-5-201. Effect of violations on rights of parties.

(1) If a creditor has violated the provisions of this code applying to limitations on the schedule of payments or loan term for supervised loans contained in section 5-2-308 or authority to make supervised loans contained in section 5-2-301, the consumer is not obligated to pay the

finance charge and has a right to recover from the person violating this code or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt a penalty in an amount determined by the court not in excess of three times the amount of the finance charge. With respect to violations arising from consumer credit transactions made pursuant to revolving credit accounts, no action pursuant to this subsection (1) may be brought more than two years after the violation occurred. With respect to violations arising from other consumer credit transactions, no action pursuant to this subsection (1) may be brought more than one year after the due date of the last scheduled payment of the agreement with respect to which the violation occurred.

(2) A consumer is not obligated to pay a charge in excess of that allowed by this code, and if a consumer has paid an excess charge he or she has a right to a refund. A refund may be made by reducing the consumer's obligation by the amount of the excess charge. If the consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may recover the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against consumers arising from the debt.

(3) If a consumer is entitled to a refund and a person liable to the consumer refuses to make a refund within a reasonable time after demand, the consumer may recover from that person a penalty in an amount determined by a court not exceeding the greater of either the amount of the finance charge or ten times the amount of the excess charge. If the creditor has made an excess charge in deliberate violation of or in reckless disregard for this code, the penalty may be recovered even though the creditor has refunded the excess charge. No penalty pursuant to this subsection (3) may be recovered if a court has ordered a similar penalty assessed against the same person in a civil action by the administrator described in section 5-6-114. With respect to excess charges arising from revolving credit accounts, no action pursuant to this subsection (3) may be brought more than two years after the time the excess charge was made. With respect to excess charges arising from other consumer credit transactions, no action pursuant to this subsection (3) may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made.

(4) Except as otherwise provided, no violation of this code impairs rights on a debt.

(5) If an employer discharges an employee in violation of the provisions prohibiting discharge contained in section 5-5-107, the employee may within ninety days bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks.

(6) If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid the error, no liability is imposed under subsections (1) and (3) of this section, and the validity of the transaction is not affected.

(7) In any case in which it is found that a creditor has violated this code, the court may award reasonable attorney fees incurred by the consumer.

(8) If a creditor repeatedly fails to provide a consumer with a statement of an annual percentage rate or finance charge as and to the extent required by the provisions on disclosure contained in section 5-3-101 of this code and has received written notice from the administrator of such repeated failure, any such subsequent failure by the creditor shall relieve any consumer receiving such defective disclosure from any obligation to pay any finance charge in connection with such consumer credit transaction.

Source: L. 2000: Entire article R&RE, p. 1240, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-202, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "Colorado Usury", see 11 Colo. Law. 2557 (1982).

Annotator's note. Since § 5-5-201 is similar to § 5-5-202 as it existed prior to the 2000 repeal and reenactment of articles 1 to 3 and 4 to 6 of this title, relevant cases construing that provision have been included in the annotations to this section.

Section 5-5-204(2) is interpreted to be as "otherwise provided" under subsection (5) of this section, which states that "except as otherwise provided, no violation of this code impairs rights on a debt". Strader v. Beneficial Fin. Co., 191 Colo. 206, 551 P.2d 720 (1976).

Section 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 preempted plaintiff's claims against a Delaware bank that the bank's late charges violated this section and § 5-5-203. Stoorman v. Greenwood Trust Co., 888 P.2d 289 (Colo. App. 1994).

"Interest" under § 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 includes late fees and, therefore, Colorado law is preempted by the federal law with respect to late charges. Stoorman v. Greenwood Trust Co., 888 P.2d 289 (Colo. App. 1994).

Plaintiff's common law challenges were preempted by § 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 since that law creates an exclusive federal remedy and an exclusive federal remedy is inconsistent with the idea that a plaintiff can seek relief under state common law theories. Stoorman v. Greenwood Trust Co., 888 P.2d 289 (Colo. App. 1994).

Applied in Greeley Nat. Bank v. Sloan, 677 P.2d 409 (Colo. App. 1983).

5-5-202. Civil liability for violation of disclosure provisions.

(1) Except as otherwise provided in this section, a creditor who, in violation of the provisions on disclosure contained in section 5-3-101, other than the provisions on advertising, fails to disclose information to a person entitled to the information under this code is liable to that person in an amount equal to the sum of:

(a) Twice the amount of the finance charge in connection with the transaction, but the liability pursuant to this paragraph (a) shall be not less than one hundred dollars nor more than one thousand dollars; and

(b) In the case of a successful action to enforce the liability under paragraph (a) of this subsection (1), the costs of the action together with reasonable attorney fees as determined by the court.

(2) A creditor has no liability under this section if, within sixty days after discovering an error and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay a finance charge in excess of the amount or percentage rate actually disclosed.

(3) A creditor may not be held liable in any action brought under this section for a violation of this code if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

(4) Any action that may be brought under this section against the original creditor in any credit transaction involving a security interest in land may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment unless the assignment was involuntary or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this code and that it maintained procedures reasonably adapted to apprise it of the existence of the violations.

(5) No action pursuant to this section may be brought more than one year after the date of the occurrence of the violation.

(6) In this section, creditor includes a person who in the ordinary course of business regularly extends or arranges for the extension of credit or offers to arrange for the extension of credit.

(7) No provision of this section or section 5-5-201 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, interpretation, or written response to a person pursuant to a written request on behalf of such identified person by the administrator or the board of governors of the federal reserve system pursuant to the federal "Truth in Lending Act" or federal "Consumer Leasing Act", notwithstanding that, after such act or omission has occurred, such rule, regulation, interpretation, or written response is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(8) The multiple failure to disclose to any person any information required under this code to be disclosed in connection with a single account under a revolving credit account, other single consumer credit sale, consumer loan, or other extension of consumer credit shall entitle the person to a single recovery under this section, but continued failure to disclose after recovery has been granted shall give rise to rights to additional recoveries.

Source: L. 2000: Entire article R&RE, p. 1241, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-203, as it existed prior to 2000.

Cross references: For the definitions and federal statutory cites of the "Truth in Lending Act" and the "Consumer Leasing Act", see § 5-1-302.

ANNOTATION

Annotator's note. Since § 5-5-202 is similar to § 5-5-203 as it existed prior to the 2000 repeal and reenactment of articles 1 to 3 and 4 to 6 of this title, relevant cases construing that provision have been included in the annotations to this section.

This section specifically authorized the award of reasonable attorney's fees "as determined by the court". Rachbach v. Cogswell, 547 F.2d 502 (10th Cir. 1976).

In an action under the Truth in Lending Act (15 U.S.C. § 1601 et seq.), even if the Colorado law were applicable to the issue of attorney's fees, where the record contained no showing of what were reasonable fees, the federal circuit court could not determine whether the trial court abused its discretion in denying those fees. Rachbach v. Cogswell, 547 F.2d 502 (10th Cir. 1976).

Borrowers not barred in demand for attorneys' fees. Where, by its continued breach of its duty, even after being ordered to take corrective action by the Colorado uniform consumer credit code administration, a lender delayed the borrowers' knowledge of the true 19.07

percent interest rate on the loan for a period of five and one-half months, to permit the lender to raise the statute of limitations to bar the borrowers would be unjust, and, therefore, the borrowers were not barred by the statute of limitations in their demand for attorneys' fees. Strader v. Beneficial Fin. Co., 191 Colo. 206, 551 P.2d 720 (1976).

Applied in Hull v. Bowest Corp., 649 P.2d 334 (Colo. App. 1982).

5-5-203. Consumer's right to rescind certain transactions.

In the case of a consumer credit transaction with respect to which a security interest is retained or acquired in any property that is used as the principal dwelling of the person to whom credit is extended, the consumer shall have the same right to rescind the transaction as provided in the federal "Truth in Lending Act" and regulations thereunder. In order to comply with this code, a creditor shall comply with those provisions on the right of rescission of certain transactions.

Source: L. 2000: Entire article R&RE, p. 1243, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-204, as it existed prior to 2000.

Cross references: For the definition and federal statutory cite of the "Truth in Lending Act", see § 5-1-302.

ANNOTATION

Law reviews. For case note, "Consequences of the Creditor's Failure to Acknowledge Rescission by the Debtor Under Strader v. Beneficial Fin. Co.", see 48 U. Colo. L. Rev. 437 (1977). For article, "An Overview of Home Equity as Security for a Line of Credit", see 14 Colo. Law. 226 (1985).

Annotator's note. Since § 5-5-203 is similar to § 5-5-204 as it existed prior to the 2000 repeal and reenactment of articles 1 to 3 and 4 to 6 of this title, relevant cases construing that provision have been included in the annotations to this section.

This section expressly applies to consumer credit sales and consumer loans. Strader v. Beneficial Fin. Co., 191 Colo. 206, 551 P.2d 720 (1976).

The consumer borrower and the consumer buyer are to be treated the same under this section. Strader v. Beneficial Fin. Co., 191 Colo. 206, 551 P.2d 720 (1976).

Subsection (2) is interpreted to be as "otherwise provided" under § 5-5-202(5), which states that "except as otherwise provided, no violation of this code impairs rights on a debt". Strader v. Beneficial Fin. Co., 191 Colo. 206, 551 P.2d 720 (1976).

The requirement of tender arises only after the security interest is released. Strader v. Beneficial Fin. Co., 191 Colo. 206, 551 P.2d 720 (1976).

The creditor is specifically obligated to take any action necessary or appropriate to reflect the termination of the security interest within 10 days after receipt of the notice of rescission and no duty is imposed upon the debtor until after the performance of the creditor's obligations. Strader v. Beneficial Fin. Co., 191 Colo. 206, 551 P.2d 720 (1976).

When debtor relieved of obligation to tender. If the security interest is not released within the 10 days following notice of rescission, the debtor is relieved of the obligation to tender and the property vests in the debtor. Strader v. Beneficial Fin. Co., 191 Colo. 206, 551 P.2d 720 (1976).

Effect of failure to take possession of property tendered. After tender by the debtor, if the creditor fails to take possession of the property tendered, "ownership of the property vests in the debtor without obligation to pay . . . ". This statutory provision is intended as an impetus for the creditor to take immediate action to clear title and to fulfill its obligations. Strader v. Beneficial Fin. Co., 191 Colo. 206, 551 P.2d 720 (1976).

Applied in Griffin v. United Bank, 40 Colo. App. 513, 580 P.2d 818 (1978); Griffin v. United Bank, 198 Colo. 239, 599 P.2d 866 (1979); Varady v. White, 42 Colo. App. 389, 595 P.2d 272 (1979); Varady v. White, 661 P.2d 284 (Colo. App. 1982); Campbell v. Commercial Credit Plan, Inc., 670 P.2d 813 (Colo. App. 1983).

5-5-204. Interests in land.

For purposes of the provisions on civil liability for violation of the disclosure provisions contained in section 5-5-202 and on a consumer's right to rescind certain transactions contained in section 5-5-203, "consumer credit transaction" includes a transaction primarily secured by an interest in land without regard to the rate of the finance charge if the transaction is otherwise a consumer credit transaction.

Source: L. 2000: Entire article R&RE, p. 1243, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-201, as it existed prior to 2000.

5-5-205. Refunds and penalties as set-off to obligation.

Refunds or penalties to which the consumer is entitled pursuant to this part 2 may be set off against the consumer obligation and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by said sections.

Source: L. 2000: Entire article R&RE, p. 1243, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-205, as it existed prior to 2000.

5-5-206. Civil liability for discrimination.

If a person has failed to comply with section 5-3-210, the person aggrieved by such failure to comply has a right to recover actual damages from such person but in no event less than one hundred dollars for actual and exemplary damages nor more than one thousand dollars for actual and exemplary damages. In the case of a successful action to enforce such right of recovery, the aggrieved person shall recover the costs of the action together with reasonable attorney fees as determined by the court.

Source: L. 2000: Entire article R&RE, p. 1243, § 1, effective July 1.

Editor's note: This section is similar to former § 5-5-206, as it existed prior to 2000.

Cross references: For discrimination, see article 34 of title 24.

PART 3

CRIMINAL PENALTIES

5-5-301. Willful violations.

(1) A supervised lender who willfully makes charges in excess of those permitted by the provisions of this code commits a class 2 misdemeanor.

(2) A person, other than a supervised financial organization, who willfully engages in the business of making supervised loans without a license in violation of the provisions of this code

applying to the authority to make supervised loans described in section 5-2-301 commits a class 2 misdemeanor.

(3) A person who willfully engages in the business of making consumer credit transactions or of taking assignments of rights against consumers arising therefrom and undertakes direct collection of payments or enforcement of these rights without complying with the provisions of this code concerning notification contained in section 5-6-202 or payment of fees contained in section 5-6-203 commits a class 2 misdemeanor.

(4) Any person who violates the provisions of this section and by the same act or acts violates the provisions of section 18-15-104 or 18-15-107, C.R.S., or both, shall be prosecuted for the violation of either or both of said sections and not for a violation of this section.

Source: L. 2000: Entire article R&RE, p. 1243, § 1, effective July 1. **L. 2021:** (1), (2), and (3) amended, (SB 21-271), ch. 462, p. 3133, § 54, effective March 1, 2022.

Editor's note: This section is similar to former § 5-5-301, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "Criminal Prosecutions under the Colorado Securities Act", see 47 U. Colo. L. Rev. 233 (1976).

5-5-302. Disclosure violations.

(1) A person commits a class 2 misdemeanor if such person willfully and knowingly:

(a) Gives false or inaccurate information or fails to provide information that such person is required to disclose under the provisions of this code on disclosure and advertising or of any related rule of the administrator adopted pursuant to this code;

(b) Uses any rate table or chart in a manner which consistently understates the annual percentage rate determined according to those provisions; or

(c) Otherwise fails to comply with any requirement of the provisions of this code on disclosure and advertising or of any related rule of the administrator adopted pursuant to this code.

Source: L. 2000: Entire article R&RE, p. 1244, § 1, effective July 1. **L. 2021:** IP(1) amended, (SB 21-271), ch. 462, p. 3133, § 55, effective March 1, 2022.

Editor's note: This section is similar to former § 5-5-302, as it existed prior to 2000.

ARTICLE 6

Administration

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PART 1

POWERS AND FUNCTIONS OF ADMINISTRATOR

5-6-101. Short title.

This article shall be known and may be cited as "Uniform Consumer Credit Code - Administration".

Source: L. 2000: Entire article R&RE, p. 1244, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-101, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "Legislative Overview of the Uniform Consumer Credit Code: A 1971 Perspective", see 48 Den. L.J. 27 (1971).

5-6-102. Applicability.

(1) This part 1 applies to persons who in this state:

(a) Make or solicit consumer credit transactions; or

(b) Directly collect payments from or enforce rights against consumers arising from sales, leases, or loans specified in paragraph (a) of this subsection (1) wherever they are made.

Source: L. 2000: Entire article R&RE, p. 1244, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-102, as it existed prior to 2000.

5-6-103. Definitions - "administrator".

"Administrator" means the assistant attorney general to be designated by the attorney general. Any district attorney may, with the consent of the administrator, exercise the powers and perform the duties of the administrator as provided in section 5-6-104 (1)(a) and (1)(b) and sections 5-6-105 to 5-6-116.

Source: L. 2000: Entire article R&RE, p. 1245, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-103, as it existed prior to 2000.

5-6-104. Powers of administrator - harmony with federal regulations - reliance on rules.

(1) In addition to other powers granted by this code, the administrator, within the limitations provided by law, may:

(a) Receive and act on complaints, take action designed to obtain voluntary compliance with this code, or commence proceedings on his or her own initiative;

(b) Counsel persons and groups on their rights and duties under this code;

(c) Establish programs for the education of consumers with respect to credit practices and problems;

(d) Make studies appropriate to effectuate the purposes and policies of this code and make the results available to the public;

(e) With approval of the council of advisors on consumer credit subcommittee, adopt, amend, and repeal substantive rules and regulations to carry out the specific provisions of this code, but not with respect to unconscionable agreements or fraudulent or unconscionable conduct, and adopt, amend, and repeal procedural rules to carry out the provisions of this code;

(f) Maintain offices within this state;

(g) Enforce the provisions of article 19 of this title 5;

(h) Employ administrative law judges from the office of administrative courts in the department of personnel to conduct hearings on any matter within the administrator's jurisdiction;

(i) License and regulate collection agencies pursuant to article 16 of this title 5;

(j) Exchange information with another governmental agency or official that has regulatory authority comparable to that of the administrator, subject to an appropriate confidentiality agreement between the administrator and the other agency or official or as otherwise permitted by law. This paragraph (j) shall not be construed to allow the exchange of information with lenders or creditors.

(k) Receive and act on complaints pursuant to section 23-5-113.5.

(2) The administrator may adopt rules not inconsistent with the federal "Truth in Lending Act" and federal "Consumer Leasing Act" to assure a meaningful disclosure of credit terms so that a prospective consumer will be able to compare more readily the various credit terms available to him or her and to avoid the uninformed use of credit. Such rules shall supersede any provisions of this code that are inconsistent with the federal "Truth in Lending Act" and federal "Consumer Leasing Act", may contain classifications, differentiations, or other provisions, and may provide for adjustments and exceptions for any class of transactions subject to this code that, in the judgment of the administrator, are necessary or proper to effectuate the purposes of, or to prevent circumvention or evasion of, or to facilitate compliance with, the provisions of this code relating to disclosure of credit terms.

(3) To keep the administrator's rules in harmony with the federal "Truth in Lending Act" and the federal "Consumer Leasing Act" and the regulations prescribed from time to time pursuant to that act by the board of governors of the federal reserve system and with the rules of administrators in other jurisdictions that enact the "Uniform Consumer Credit Code", the administrator, so far as is consistent with the purposes, policies, and provisions of this code, shall:

(a) Before adopting, amending, and repealing rules and regulations, advise and consult with administrators in other jurisdictions that enact the "Uniform Consumer Credit Code"; and

(b) In adopting, amending, and repealing rules and regulations, take into consideration:

(I) The regulations so prescribed by the board of governors of the federal reserve system; and

(II) The rules of administrators in other jurisdictions that enact the "Uniform Consumer Credit Code".

(4) Except for a refund of an excess charge, no liability is imposed under this code for an act done or omitted in good faith in conformity with a rule, regulation, interpretation, or written response to a person pursuant to a written request on behalf of such identified person by the administrator, notwithstanding that after the act or omission the rule, regulation, interpretation, or written response may be amended or repealed or be determined by judicial or other authority to be invalid for any reason.

Source: L. 2000: Entire article R&RE, p. 1245, § 1, effective July 1; (1)(i) added, p. 945, § 26, effective July 1. **L. 2003:** (1)(j) added, p. 1896, § 14, effective July 1. **L. 2005:** (1)(h) amended, p. 853, § 7, effective June 1. **L. 2017:** (1)(g) and (1)(i) amended, (HB 17-1238), ch. 260, p. 1171, § 9, effective August 9. **L. 2022:** (1)(i) amended and (1)(k) added, (HB 22-1049), ch. 118, p. 552, § 2, effective April 21.

Editor's note: (1) This section is similar to former § 5-6-104, as it existed prior to 2000.

(2) Subsection (1)(h) from House Bill 00-1182 was harmonized with House Bill 00-1185 and renumbered as subsection (1)(i).

Cross references: For the definitions and federal statutory cites of the "Truth in Lending Act" and the "Consumer Leasing Act", see § 5-1-302.

ANNOTATION

Law reviews. For article, "Colorado Usury", see 11 Colo. Law. 2557 (1982).

5-6-105. Administrative powers with respect to supervised financial organizations.

(1) With respect to supervised financial organizations, the powers of examination and investigation described in sections 5-2-305 and 5-6-106 and administrative enforcement described in section 5-6-108 shall be exercised by the official or agency to whose supervision the organization is subject. All other powers of the administrator under this code may be exercised by the administrator with respect to a supervised financial organization.

(2) If the administrator receives a complaint or other information concerning noncompliance with this code by a supervised financial organization, the administrator shall inform the official or agency having supervisory authority over the organization concerned. The administrator may request information about supervised financial organizations from the officials or agencies supervising them.

(3) The administrator and any official or agency of this state having supervisory authority over a supervised financial organization are authorized and directed to consult and assist one another in maintaining compliance with this code. They may jointly pursue investigations, prosecute suits, and take other official action, as they deem appropriate, if either of them otherwise is empowered to take the action. The administrator may recover from a supervised financial organization the administrator's reasonable costs incurred in such investigation, suit, or

other official action as part of any relief granted the administrator by a court of competent jurisdiction.

Source: L. 2000: Entire article R&RE, p. 1246, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-105, as it existed prior to 2000.

5-6-106. Investigatory powers.

(1) If the administrator has reasonable cause to believe that a person has engaged in an act that is subject to action by the administrator, the administrator may make an investigation to determine if the act has been committed, and, to the extent necessary for this purpose, may administer oaths or affirmations, and, upon his or her own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence. In any civil action brought by the administrator as a result of such an investigation, the administrator may recover the reasonable costs of making the investigation if the administrator prevails in the action.

(2) If the person's records are located outside this state, the person at his or her option shall either make them available to the administrator at a convenient location within this state or pay the reasonable and necessary expenses for the administrator or the administrator's representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the administrator's behalf.

(3) Upon failure without lawful excuse to obey a subpoena or to give testimony, the administrator may apply to the district court for an order compelling compliance.

(4) The administrator shall not make public the name or identity of a person whose acts or conduct he or she investigates pursuant to this section or the facts disclosed in the investigation, but this subsection (4) does not apply to disclosures in actions or enforcement proceedings pursuant to this code.

Source: L. 2000: Entire article R&RE, p. 1247, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-106, as it existed prior to 2000.

ANNOTATION

Absent a waiver of immunity, an Indian tribe is immune from any action—criminal, civil, or injunctive—the attorney general may bring in a court to enforce the Uniform Consumer Credit Code. State ex rel. Suthers v. Cash Ad. & Pref., 205 P.3d 389 (Colo. App. 2008), aff'd on other grounds sub nom. Cash Advance & Pref. Cash Loans v. State, 242 P.3d 1099 (Colo. 2010).

Tribal sovereign immunity does not prevent the enforcement of the attorney general's subpoenas for information relevant to the determination by the trial court of whether sovereign immunity applies to a business affiliated with the tribe. State ex rel. Suthers v. Cash Ad. & Pref., 205 P.3d 389 (Colo. App. 2008), aff'd on other grounds sub nom. Cash Advance & Pref. Cash Loans v. State, 242 P.3d 1099 (Colo. 2010).

Under this section the state has investigative authority to subpoena records from out-of-state nontribal entities, and state courts have authority to enforce those subpoenas. State ex rel. Suthers v. Tulips Invs., LLC, 2012 COA 206, 343 P.3d 977, aff'd, 2015 CO 1, 340 P.3d 1126.

5-6-107. Application of administrative procedures - provisions.

Except as otherwise provided, the provisions of sections 24-4-102 to 24-4-106, C.R.S., apply to and govern all rules promulgated and all administrative action taken by the administrator pursuant to this article or the provisions on supervised loans contained in part 3 of article 2 of this title; except that section 24-4-104 (3), C.R.S., shall not apply to any such action.

Source: L. 2000: Entire article R&RE, p. 1247, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-107, as it existed prior to 2000.

5-6-108. Judicial review.

Any person aggrieved by any final action or order of the administrator and affected thereby is entitled to a review thereof by the Colorado court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S.

Source: L. 2000: Entire article R&RE, p. 1247, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-108, as it existed prior to 2000.

5-6-109. Administrative enforcement orders.

(1) After notice and hearing, the administrator may order a creditor or a person acting in the creditor's behalf to cease and desist from engaging in violations of this code or any rule or order lawfully made pursuant to this code. The order issued by the administrator may also require the creditor or person to make refunds to consumers of excess charges under this code and pay a penalty up to a maximum of one thousand dollars for each violation, all or part of which may be specifically designated for consumer and creditor educational purposes.

(2) A respondent aggrieved by an order of the administrator may obtain judicial review of the order in the Colorado court of appeals. The administrator may obtain an order of the court for enforcement of the administrator's order in the district court under section 24-4-106, C.R.S. All proceedings under this section shall be governed by sections 24-4-105 and 24-4-106, C.R.S.

(3) With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the administrator may not issue an order pursuant to this section but may bring a civil action for an injunction under section 5-6-112.

Source: L. 2000: Entire article R&RE, p. 1248, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-108, as it existed prior to 2000.

5-6-110. Assurance of discontinuance.

If it is claimed that a person has engaged in conduct subject to an order by the administrator described in section 5-6-108 or by a court described in sections 5-6-111 to 5-6-113, the administrator may accept an assurance in writing that the person will not engage in the conduct in the future. The assurance may also require the person to make refunds to consumers of excess charges under this code, pay a penalty up to a maximum of one thousand dollars for each violation, all or part of which may be specifically designated for consumer and creditor educational purposes, and reimburse the administrator for the administrator's reasonable costs incurred in investigating the conduct. If a person giving an assurance of discontinuance fails to

comply with its terms, the assurance is evidence that prior to the assurance such person engaged in the conduct described in the assurance.

Source: L. 2000: Entire article R&RE, p. 1248, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-109, as it existed prior to 2000.

5-6-111. Injunctions against violations of code.

The administrator may bring a civil action to restrain a person from violating this code or rules or regulations promulgated thereunder and for other appropriate relief.

Source: L. 2000: Entire article R&RE, p. 1248, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-110, as it existed prior to 2000.

Cross references: For injunctions, see C.R.C.P. 65.

5-6-112. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

(1) The administrator may bring a civil action to restrain a creditor or a person acting in the creditor's behalf from engaging in a course of:

(a) Making or enforcing unconscionable terms or provisions of consumer credit transactions;

(b) Fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit transactions;

(c) Conduct of any of the types specified in paragraph (a) or (b) of this subsection (1) with respect to transactions that give rise to or lead persons to believe they will give rise to consumer credit transactions; or

(d) Fraudulent or unconscionable conduct in the collection of debts arising from consumer credit transactions.

(2) In an action brought pursuant to this section, the court may grant relief only if it finds:

(a) That the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;

(b) That the agreements or conduct of the respondent has caused or is likely to cause injury to consumers; and

(c) That the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions.

(3) In applying this section, consideration shall be given to each of the following factors, among others:

(a) Whether the creditor should have reasonably believed at the time consumer credit transactions were made that, according to the credit terms or schedule of payments, there was no reasonable probability of payment in full of the obligation by the consumer;

(b) Whether the creditor reasonably should have known, at the time of the transaction, of the inability of the consumer to receive substantial benefits from the transaction;

(c) Gross disparity between the price of the transaction and its value measured by the price at which similar transactions are readily obtainable by like consumers;

(d) The fact that the creditor contracted for or received separate charges for insurance with respect to consumer credit transactions with the effect of making the transactions, considered as a whole, unconscionable;

(e) The fact that the respondent has knowingly taken advantage of the inability of the consumer reasonably to protect his or her interests by reason of physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of the agreement, or similar factors; and

(f) Any of the factors set forth in section 5-5-109 (4).

(4) The administrator may bring a civil action to restrain a creditor or a person acting in the creditor's behalf from engaging in a course of making or arranging consumer loans to enable consumers to buy or lease from a particular seller or lessor goods or services, a principal purpose of which course of action is to avoid giving the consumers those rights that they would have had if the transactions were entered into as a consumer credit sale if:

(a) The lender is a person related to the seller or lessor unless the relationship is remote or is not a factor in the transaction;

(b) The seller or lessor guarantees the loans or otherwise assumes the risk of loss by the lender upon the loans;

(c) The loans are conditioned upon the consumer's purchase or lease of the goods or services from the particular seller or lessor, but the lender's payment of proceeds of the loan to the seller or lessor does not in itself establish that the loan was so conditioned; or

(d) The lender, before the lender makes the consumer loan, has knowledge or, from the lender's course of dealing with the particular seller or lessor or from the lender's records, notice of substantial complaints by other consumers of the particular seller's or lessor's failure or refusal to perform his or her contracts with them and of the particular seller's or lessor's failure to remedy his or her defaults within a reasonable time after notice to him or her of the complaints.

(5) In an action brought pursuant to this code, a charge or practice expressly permitted by this code is not in itself unconscionable.

Source: L. 2000: Entire article R&RE, p. 1248, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-111, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "Default Judgments Against Consumers: Has the System Failed?", see 67 Den. U. L. Rev. 357 (1990).

Probability of repayment factor. Subsection (3)(a) does not, by its terms, require a court to consider the circumstances of the particular consumer, but rather unambiguously directs courts to consider, among other things, whether, according to the credit terms or schedule of payments, the creditor should have reasonably believed that there was no reasonable probability of payment in full of the obligation by the consumer. State v. Ctr. for Excellence in Higher Educ., 2023 CO 23, 529 P.3d 599.

5-6-113. Temporary relief.

With respect to an action brought to enjoin violations of this code under section 5-6-111 or unconscionable agreements or fraudulent or unconscionable conduct under section 5-6-112, the administrator may apply to the court for a temporary restraining order or a preliminary injunction against a respondent pending final determination of proceedings. If the court finds after a hearing that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in conduct sought to be restrained, it may grant any such temporary restraining order or preliminary injunction it deems appropriate. The court may also issue such orders or judgments as may be necessary to completely compensate or restore to his or her original position any

consumer affected by such violation, agreement, or conduct or if there is reasonable cause to believe funds to make refunds of excess charges under this code will not be available at a future date. No bond or other security is required of the administrator before relief under this section may be granted.

Source: L. 2000: Entire article R&RE, p. 1250, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-112, as it existed prior to 2000.

5-6-114. Civil actions by administrator.

(1) (a) The administrator may bring a civil action against a creditor for making or collecting charges in excess of those permitted by this code, violating any of the provisions of this code applying to limitations on the schedule of payments or loan term for supervised loans or authority to make supervised loans, or for disclosure violations. An action may relate to transactions with more than one consumer. If it is found that an excess charge has been made, the court shall order the respondent to refund to the consumer the amount of the excess charge and to pay a penalty to the consumer as provided in sections 5-5-201 and 5-5-202. In addition, the court may assess a civil penalty of up to one thousand dollars for each violation of this code.

(b) If a creditor has made an excess charge in deliberate violation of or in reckless disregard for this code or if a creditor has refused to refund an excess charge within a reasonable time after demand by the consumer or the administrator, the court may also order the respondent to pay to the consumers a civil penalty in an amount determined by the court not in excess of the greater of either the amount of the finance charge or ten times the amount of the excess charge. Refunds and penalties to which the consumer is entitled pursuant to this subsection (1) may be set off against the consumer's obligation.

(c) If a consumer brings an action against a creditor to recover an excess charge or civil penalty, an action by the administrator to recover for the same excess charge or civil penalty shall be stayed while the consumer's action is pending and shall be dismissed if the consumer's action is dismissed with prejudice or results in a final judgment granting or denying the consumer's claim. There shall be no double recovery for refunds of excess charges or a penalty payable to the consumer.

(d) With respect to excess charges arising from revolving accounts, no action pursuant to this subsection (1) may be brought more than four years after the time the excess charge was made. With respect to excess charges arising from other consumer credit transactions, no action

pursuant to this subsection (1) may be brought more than four years after the due date of the last scheduled payment of the agreement pursuant to which the charge was made.

(e) If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection (1).

(2) The administrator may bring a civil action against a creditor or a person acting in the creditor's behalf to recover a civil penalty for willfully violating this code, and, if the court finds that the defendant has engaged in a course of repeated and willful violations of this code, it may assess a civil penalty of no more than five thousand dollars. All or part of the penalty under this subsection (2) may be specifically designated for consumer and creditor education. No civil penalty pursuant to this subsection (2) may be imposed for violations of this code occurring more than four years before the action is brought or for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

(3) If the administrator prevails in an action brought under this section, the administrator may recover his or her reasonable costs in investigating and bringing the action and request an order for reimbursement of his or her reasonable attorney fees.

Source: L. 2000: Entire article R&RE, p. 1250, § 1, effective July 1. **L. 2011:** (1)(a) amended, (HB 11-1221), ch. 121, p. 381, § 3, effective July 1.

Editor's note: This section is similar to former § 5-6-113, as it existed prior to 2000.

5-6-115. Jury trial.

In an action brought by the administrator under this code, the administrator has no right to trial by jury, but this will not prevent a defendant from requesting a jury trial under the Colorado rules of civil procedure.

Source: L. 2000: Entire article R&RE, p. 1252, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-114, as it existed prior to 2000.

Cross references: For jury trials, see C.R.C.P. 38.

5-6-116. Consumers' remedies not affected.

The grant of powers to the administrator in this article does not affect remedies available to consumers under this code or under other principles of law or equity.

Source: L. 2000: Entire article R&RE, p. 1252, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-115, as it existed prior to 2000.

PART 2

NOTIFICATION AND FEES

5-6-201. Applicability.

(1) Except as provided in subsections (2) and (3) of this section, this part 2 applies if a person:

(a) Makes consumer credit sales and charges or collects a finance charge, or makes consumer leases; or

(b) Takes assignments of and undertakes direct collection of payments from, or enforcement of rights against, consumers arising from consumer credit sales or consumer leases.

(2) This part 2 does not apply to supervised lenders described in section 5-1-301 (46), persons making consumer loans described in section 5-1-301 (15), or to persons licensed as collection agencies pursuant to article 16 of this title 5.

(3) Section 5-6-204 applies to all fees collected under this code.

Source: L. 2000: Entire article R&RE, p. 1252, § 1, effective July 1. **L. 2009:** (1)(a) amended, (HB 09-1141), ch. 41, p. 158, § 4, effective January 1, 2010. **L. 2017:** (2) amended, (HB 17-1238), ch. 260, p. 1171, § 10, effective August 9. **L. 2023:** (3) amended, (SB 23-248), ch. 360, p. 2148, § 3, effective August 7.

Editor's note: This section is similar to former § 5-6-201, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "Colorado Usury", see 11 Colo. Law. 2557 (1982).

5-6-202. Notification.

(1) Persons subject to this part 2 shall file notification with, and pay the fee prescribed in section 5-6-203 to, the administrator within thirty days after commencing business in this state and, thereafter, on or before July 1 of each year. The notification must state:

(a) Name of the person;

(b) Name in which business is transacted if different from paragraph (a) of this subsection (1);

(c) Address of principal office, which may be outside this state;

(d) Address of all offices or retail stores, if any, in this state at which consumer credit sales or consumer leases are made or, in the case of a person taking assignments of obligations, the offices or places of business within this state at which business is transacted;

(e) If consumer credit sales or consumer leases are made otherwise than at an office or retail store in this state, a brief description of the manner in which they are made;

(f) Address of designated agent upon whom service of process may be made in this state described in section 5-1-203; and

(g) Whether supervised loans are made.

(2) If information in a notification becomes inaccurate after filing, no further notification is required until the following notification.

Source: L. 2000: Entire article R&RE, p. 1252, § 1, effective July 1. **L. 2023:** IP(1) and (2) amended, (SB 23-248), ch. 360, p. 2148, § 4, effective August 7.

Editor's note: This section is similar to former § 5-6-202, as it existed prior to 2000.

ANNOTATION

Law reviews. For article, "Colorado Usury", see 11 Colo. Law. 2557 (1982).

5-6-203. Fees.

(1) (a) A person required to file notification shall, with the first notification on or before July 1, 2024, and on or before July 1 each year thereafter, pay to the administrator a nonrefundable annual notification fee. The administrator may examine the loans, business, and records of such a person without issuance of a subpoena.

(b) Repealed.

(2) (Deleted by amendment, L. 2009, (HB 09-1141), ch. 41, p. 158, § 5, effective January 1, 2010.)

(3) (a) Persons required to file notification who are assignees of consumer credit sales or consumer leases shall pay an additional nonrefundable annual volume fee on or before July 1, 2024, and on or before July 1 each year thereafter, for one hundred thousand dollars, or part thereof, of the unpaid balances at the time of the assignment of obligations arising from consumer credit sales or consumer leases made in this state and taken by assignment during the preceding calendar year. Persons required to file notification shall report any such volume to the administrator on or before March 1 in the form and manner determined by the administrator. The administrator may charge a late fee for failure to report such a volume.

(b) Repealed.

(4) The administrator shall impose a penalty of five dollars per day on any person that fails to comply with this section. If a person required to file notification and pay a notification fee fails to do so, the consumer has no obligation to pay the finance charge due under the consumer credit transaction, and any finance charges paid shall be refunded to the consumer. In addition, if the administrator examines the loans, business, or records of such person, the person shall pay the reasonable and necessary examination expenses of the administrator.

(5) Repealed.

Source: L. 2000: Entire article R&RE, p. 1253, § 1, effective July 1. **L. 2009:** Entire section amended, (HB 09-1141), ch. 41, p. 158, § 5, effective January 1, 2010. **L. 2010:** (5) amended, (HB 10-1422), ch. 419, p. 2063, § 7, effective August 11. **L. 2015:** (5) amended, (HB 15-1261), ch. 322, p. 1312, § 2, effective June 5. **L. 2023:** (1), (3), and (4) amended and (5) repealed, (SB 23-248), ch. 360, p. 2149, § 5, effective August 7.

Editor's note: (1) This section is similar to former § 5-6-203, as it existed prior to 2000.

(2) Subsections (1)(b)(II) and (3)(b)(II) provided for the repeal of subsections (1)(b) and (3)(b), respectively, effective July 1, 2026. (See L. 2023, p. 2149.)

5-6-204. Cash fund created - definition.

(1) Repealed.

(1.5) On and after July 1, 2024, the state treasurer shall credit all fees collected under this article 6 to the consumer credit unit cash fund created in section 5-2-302 (11).

(2) and (3) Repealed.

(4) Notwithstanding subsection (1) of this section, the state treasurer shall transfer the penalties collected pursuant to section 5-6-114 (1)(a) to the general fund.

Source: L. 2000: Entire article R&RE, p. 1254, § 1, effective July 1. **L. 2001:** Entire section amended, p. 30, § 14, effective March 9. **L. 2002:** Entire section amended, p. 150, § 1, effective March 27. **L. 2003:** (3) added, p. 454, § 1, effective March 5. **L. 2011:** (4) added, (HB 11-1221), ch. 121, p. 382, § 4, effective July 1. **L. 2015:** (2) and (3) repealed, (SB 15-264), ch. 259, p. 941, § 6, effective August 5. **L. 2017:** (1) amended, (HB 17-1238), ch. 260, p. 1171, § 11, effective August 9. **L. 2023:** (1) amended and (1.5) added, (SB 23-248), ch. 360, p. 2150, § 6, effective August 7.

Editor's note: (1) This section is similar to former § 5-6-204, as it existed prior to 2000.

(2) Subsection (1)(c) provided for the repeal of subsection (1), effective July 1, 2026. (See L. 2023, p. 2150.)

PART 3

COUNCIL OF ADVISORS ON CONSUMER CREDIT

5-6-301. Council of advisors on consumer credit.

(1) There is hereby created the council of advisors on consumer credit consisting of nine members who shall be appointed by the governor. One of the advisors shall be designated by the governor as chairperson. In appointing members of the council, the governor shall seek to achieve a fair representation from the various segments of the consumer credit industry and public.

(2) The term of office of each member of the council is three years. A member chosen to fill a vacancy arising otherwise than by expiration of a term shall be appointed for the unexpired term of the member whom he or she is to succeed. A member of the council is eligible for reappointment.

(3) Members of the council shall serve without compensation but are entitled to reimbursement of actual and necessary expenses incurred in the performance of their duties.

Source: L. 2000: Entire article R&RE, p. 1254, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-301, as it existed prior to 2000.

5-6-302. Function of council - conflict of interest.

(1) The council shall advise and consult with the administrator concerning the exercise of the administrator's powers under this code and may make recommendations to the administrator. Members of the council may assist the administrator in obtaining compliance with this code. Since it is an objective of this part 3 to obtain competent representatives of creditors and the public to serve on the council and to assist and cooperate with the administrator in achieving the objectives of this code, service on the council shall not in itself constitute a conflict of interest regardless of the occupations or associations of the members.

(2) (a) There is hereby created a subcommittee of the council of advisors on consumer credit for the purpose specified in paragraph (b) of this subsection (2). The subcommittee shall consist of the attorney general, the chairperson of the council, and three members of the council appointed by such chairperson. Of the subcommittee members who are also members of the council, two shall be representatives of the consumer credit industry and two shall be representatives of the public. Any action taken by a majority of the subcommittee shall constitute action by the council.

(b) The subcommittee may review, repeal, amend, or modify any rule promulgated by the administrator pursuant to section 5-6-104 (1)(e).

Source: L. 2000: Entire article R&RE, p. 1254, § 1, effective July 1.

Editor's note: This section is similar to former § 5-6-302, as it existed prior to 2000.

5-6-303. Repeal of part - subject to review.

This part 3 is repealed, effective September 1, 2032. Before the repeal, the council of advisors on consumer credit is scheduled for review in accordance with section 2-3-1203.

Source: L. 2026: Entire section added, (HB 26-1426), ch. 334, p. 1982, § 4, effective August 12.

ARTICLE 7

Insurance Premium Financing

5-7-101 to 5-7-103. (Repealed)

Source: L. 2001: Entire article repealed, p. 30, § 15, effective March 9.

Editor's note: This article was added in 1977. For amendments to this article prior to its repeal in 2001, consult the 2000 Colorado Revised Statutes and the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 9

Effective Date

5-9-101. Time of taking effect prior to June 30, 2000 - provisions for transition.
5-9-101.5. Time of taking effect - provisions for transition.
5-9-102. Continuation of licensing prior to July 1, 2000.
5-9-102.5. Continuation of licensing after July 1, 2000.
5-9-103. (Reserved)

5-9-101. Time of taking effect prior to June 30, 2000 - provisions for transition.

(1) Except as otherwise provided in this section, this code as it existed prior to the enactment of House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, took effect at 12:01 a.m. on October 1, 1971, and was in effect through June 30, 2000.

(2) To the extent appropriate to permit the administrator to prepare for operation of this code as it existed prior to the enactment of House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, when it took effect and to act on applications for licenses to make supervised loans under this code as it existed prior to the enactment of House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, (subsection (1) of section 5-3-503), the provisions on supervised loans (part 5) of the article on loans (article 3 of this title) and of the article on administration (article 6 of this title) took effect on July 1, 1971, and were in effect through June 30, 2000.

(3) Transactions entered into before October 1, 1971, and the rights, duties, and interests flowing from them thereafter, may be terminated, completed, consummated, or enforced as required or permitted by any statute, rule of law, or other law amended, repealed, or modified by this code as though the repeal, amendment, or modification had not occurred, but this code, as it existed prior to the enactment of House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, applies to:

(a) Refinancings, consolidations, and deferrals made on or after October 1, 1971, and before July 1, 2000, concerning sales, leases, and loans whenever made;

(b) Sales or loans made on or after October 1, 1971, and before July 1, 2000, pursuant to revolving charge accounts (section 5-2-108) and revolving loan accounts (section 5-3-108) entered into, arranged, or contracted for before October 1, 1971; and

(c) All credit transactions made before October 1, 1971, insofar as the article on remedies and penalties (article 5 of this title) limits the remedies of creditors.

(4) With respect to revolving charge accounts (section 5-2-108) and revolving loan accounts (section 5-3-108) entered into, arranged, or contracted for before October 1, 1971, disclosure pursuant to the provisions on disclosure (section 5-2-310 and section 5-3-309), shall be made not later than thirty days after October 1, 1971.

Source: L. 71: R&RE, p. 851, § 1. **C.R.S. 1963:** § 73-9-101. **L. 2000:** (1), (2), (3)(a), and (3)(b) amended, p. 1255, § 2, effective July 1.

Editor's note: The provisions referenced in this section reflect the provisions as they existed prior to the repeal and reenactment of articles 2 and 3 of this title in 2000. For the referenced provisions, see the 1999 Colorado Revised Statutes.

OFFICIAL COMMENT

COLORADO COMMENT

5-9-101.5. Time of taking effect - provisions for transition.

(1) Except as otherwise provided in this section, this code as it exists following the repeal and reenactment contained in House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, takes effect at 12:01 a.m. on July 1, 2000.

(2) Transactions entered into before July 1, 2000, and the rights, duties, and interests flowing from them thereafter, may be terminated, completed, consummated, or enforced as required or permitted by any statute, rule of law, or other law amended, repealed, or modified by this code as though the repeal, amendment, or modification had not occurred, but this code applies to:

(a) Refinancings, consolidations, and deferrals made on or after July 1, 2000, concerning sales, leases, and loans whenever made;

(b) Sales or loans made on or after July 1, 2000, pursuant to revolving credit accounts entered into, arranged, or contracted for before July 1, 2000; and

(c) All credit transactions made before July 1, 2000, insofar as article 5 of this title limits the remedies of creditors. Notwithstanding anything to the contrary, the disclosures described in sections 5-3-105 (5), 5-3-106, 5-5-110 (4), and 5-5-111 (3) of this code take effect January 1, 2001.

Source: L. 2000: Entire section added, p. 1256, § 4, effective July 1.

5-9-102. Continuation of licensing prior to July 1, 2000.

Notwithstanding the repeal and reenactment of articles 2 and 3 of chapter 73, C.R.S. 1963, by this code, all persons licensed or otherwise authorized under the provisions of articles 2 or 3 of chapter 73, C.R.S. 1963, immediately prior to October 1, 1971, are licensed to make supervised loans under this code as it existed prior to the enactment of House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, pursuant to the provisions on supervised loans of the article on loans (part 5 of article 3 of this title) in effect on and after October 1, 1971, but before July 1, 2000, and all provisions of said sections apply to the persons so previously licensed or authorized. The administrator may, but is not required to, deliver evidence of licensing to the persons so previously licensed or authorized.

Source: L. 71: R&RE, p. 851, § 1. **C.R.S. 1963:** § 73-9-102. **L. 2000:** Entire section amended, p. 1256, § 3, effective July 1.

OFFICIAL COMMENT

This section provides automatic licensing under Article 3, Part 5 [Section 5-3-501 et seq.] for all lenders previously licensed under the State's licensed lender statutes prior to the effective date. No application or administrative action is required and the formal license under the prior statute, which will be repealed, will be a license under Part 5 of Article 3. The Administrator, at such time as his new duties under the Code permit him an opportunity, may substitute new licenses for those in the lenders' possession, but this is entirely a ministerial act.

5-9-102.5. Continuation of licensing after July 1, 2000.

Notwithstanding the repeal and reenactment of part 5 of article 3 of this title by House Bill 00-1185, as enacted at the second regular session of the sixty-second general assembly, all persons licensed or otherwise authorized under the provisions of part 5 of article 3 immediately prior to July 1, 2000, are licensed to make supervised loans under this code pursuant to the provisions on supervised loans contained in part 3 of article 2 of this title, and all provisions of said part 3 apply to the persons so previously licensed or authorized. The administrator may, but is not required to, deliver evidence of licensing to the persons so previously licensed or authorized.

Source: L. 2000: Entire section added, p. 1256, § 4, effective July 1.

5-9-103. (Reserved)

ARTICLE 9.3

Guaranteed Asset Protection Agreements

5-9.3-101. Definitions.

5-9.3-102. Applicability.

5-9.3-103. Guaranteed asset protection agreement requirements - application.

5-9.3-104. Guaranteed asset protection fees.

5-9.3-105. Calculation and payment of deficiency balance.

5-9.3-106. Cancellation of GAP agreement.
5-9.3-107. Filing of claim.
5-9.3-108. Prohibitions on sale of guaranteed asset protection agreements.
5-9.3-109. Enforcement.

5-9.3-101. Definitions.

As used in this article 9.3, unless the context otherwise requires:

(1) "Consumer finance agreement" or "finance agreement" means a retail installment sales contract or consumer credit transaction, other than a consumer lease, for the purchase or refinance of a motor vehicle.

(2) "Deficiency balance" means the amount owed by the consumer under a consumer finance agreement at the time of a total loss of the consumer's motor vehicle that was collateral securing the consumer finance agreement, calculated in accordance with the terms of the finance agreement.

(3) "Guaranteed asset protection administrator" or "GAP administrator" means the person, other than the creditor or insurer, that performs the administrative or operational functions pursuant to the GAP agreement.

(4) (a) "Guaranteed asset protection agreement" or "GAP agreement" means an agreement, structured as either an insurance policy or a contractual term, sold or written in connection with a consumer finance agreement, that relieves all or part of a consumer's liability for the deficiency balance remaining, after the payment of all insurance proceeds, upon the total loss of the consumer's motor vehicle that was collateral securing the consumer finance agreement, whether the loss occurred from the total destruction of the motor vehicle, the unrecovered theft of the motor vehicle, or both.

(b) A GAP agreement may also provide a consumer with a benefit that waives a certain amount or provides a credit for a certain amount toward the purchase of a replacement motor vehicle.

(5) "Guaranteed asset protection fee" or "GAP fee" means the fee, charge, premium, or other amount that a creditor may charge a consumer for a guaranteed asset protection agreement.

(6) "Motor vehicle" means a self-propelled or towed vehicle designed for personal or commercial use, including but not limited to automobiles, trucks, motorcycles, recreational vehicles, all-terrain vehicles, snowmobiles, campers, boats, personal watercrafts, and related trailers.

(7) "Original creditor" means the creditor that makes or arranges a consumer finance agreement with a consumer and to which the finance agreement is initially payable. "Original creditor" does not include any assignee of the finance agreement.

(8) "Retail installment sales contract" means a retail contract to sell a motor vehicle to a consumer in which:

(a) The consumer agrees to pay the retail seller over time, in installments, the cost of the motor vehicle plus interest; and

(b) The retail seller takes or retains a security interest in the motor vehicle.

Source: L. 2023: Entire article added, (HB 23-1181), ch. 425, p. 2498, § 3, effective January 1, 2024.

5-9.3-102. Applicability.

(1) This article 9.3 applies to every creditor, whether the creditor is an assignee or holder of a finance agreement that includes a GAP agreement. A creditor, assignee, or holder does not have any subrogation rights against the consumer.

(2) This article 9.3 does not apply to a GAP agreement that is included in:

(a) A consumer lease;

(b) A loan that does not involve a consumer as defined in section 4-1-201 (10.5);

(c) A product that does not meet the definition of a guaranteed asset protection agreement; or

(d) A transaction that is not subject to the "Uniform Consumer Credit Code", articles 1 to 9 of this title 5.

Source: L. 2023: Entire article added, (HB 23-1181), ch. 425, p. 2499, § 3, effective January 1, 2024.

5-9.3-103. Guaranteed asset protection agreement requirements - application.

(1) A creditor may offer, sell, provide, or administer a guaranteed asset protection agreement in connection with a consumer finance agreement only if the creditor and the guaranteed asset protection agreement comply fully with this article 9.3 and meet all of the following conditions:

(a) The creditor provides to the consumer a written notice, in bold-face type, that specifies the following:

(I) That the consumer is not required to purchase a GAP agreement in order to obtain the credit or any particular or favorable credit terms;

(II) The amount of the GAP fee;

(III) That the consumer may wish to consult an insurance agent to determine whether similar coverage may be obtained through an insurance product and at what cost;

(IV) That the GAP agreement benefits may decrease over the term of the finance agreement;

(V) That the consumer may cancel the GAP agreement for any or no reason within thirty days after the effective date of the GAP agreement, and that the consumer will receive a full refund of the GAP fee so long as no loss or event covered by the GAP agreement has occurred; and

(VI) That the GAP agreement is not a substitute for collision or property damage insurance;

(b) (I) The creditor provides the consumer with a cancellation method that is conspicuously displayed in the GAP agreement or in a separate, written cancellation form and that includes:

(A) The name, mailing address, email address, or phone number that may be used to cancel the GAP agreement;

(B) A statement that the consumer may cancel the GAP agreement for any or no reason within thirty days after the effective date of the GAP agreement, and that the consumer will receive a full refund of the GAP fee so long as no loss or event covered by the GAP agreement has occurred; and

(C) A statement that the consumer must complete and return the cancellation form or send other written notice of cancellation to the mailing address or email address that the creditor provides or call the phone number listed in order to cancel the GAP agreement;

(II) If a creditor wants to provide an alternative cancellation method other than the one described in subsection (1)(b)(I) of this section, the creditor must clearly and conspicuously state the alternative method and instructions on how to cancel the GAP agreement in the finance agreement;

(c) The consumer provides to the creditor an affirmative, written authorization for the purchase of the GAP agreement; and

(d) The creditor delivers to the consumer, in writing, the GAP agreement, which must include:

(I) A written description of the GAP agreement's benefits, terms, conditions, and exclusions;

(II) A statement that discloses any limitation in coverage under the GAP agreement; and

(III) The procedure and timing to be followed in order to submit a claim after a total loss.

Source: L. 2023: Entire article added, (HB 23-1181), ch. 425, p. 2499, § 3, effective January 1, 2024.

5-9.3-104. Guaranteed asset protection fees.

(1) (a) The maximum GAP fee that a creditor may charge for a GAP agreement must not exceed four percent of the total amount financed in the finance agreement, or six hundred dollars, whichever amount is greater.

(b) This subsection (1) does not apply to any GAP agreement that is subject to regulation by the division of insurance pursuant to title 10.

(2) (a) A creditor may contract for, charge, and receive only one GAP fee as part of a GAP agreement, regardless of the number of co-borrowers, cosigners, or guarantors in the finance agreement.

(b) In the event that the GAP agreement has been sold and a valid claim has been made, the creditor may not seek indemnification from the consumer, co-borrowers, cosigners, or guarantors.

(3) Every finance agreement that includes a GAP fee for a GAP agreement shall contain, either in the finance agreement or GAP agreement signed by the consumer, the following statement:

> If this transaction contains a fee, charge, or premium for guaranteed asset protection, all holders and assignees of this consumer credit transaction are subject to all claims and defenses that the consumer could assert against the original creditor resulting from the consumer's purchase of the guaranteed asset protection.

Source: L. 2023: Entire article added, (HB 23-1181), ch. 425, p. 2501, § 3, effective January 1, 2024.

5-9.3-105. Calculation and payment of deficiency balance.

(1) The calculation of the payment or waiver of the deficiency balance may exclude the following, as long as these exclusions are clearly specified in the GAP agreement:

(a) Amounts owed for unpaid installments under the finance agreement, including any fees or surcharges imposed as late charges for unpaid installments;

(b) Legally permitted fees incurred after the effective date of the finance agreement;

(c) Fees for the return or dishonor of checks or other instruments tendered as payment;

(d) Premiums or fees for legally permitted insurance added after the effective date of the finance agreement;

(e) Refunds owed on cancellable service contracts and other protection products that were financed in the finance agreement;

(f) The salvage value of the motor vehicle, as determined by the consumer's primary insurer of the motor vehicle, if the totaled motor vehicle is retained by the consumer; and

(g) Deductions taken by the consumer's primary insurer of the motor vehicle for prior unrepaired damage to the motor vehicle if, before taking the deduction, the GAP administrator or lender has documentary proof that:

(I) The consumer submitted an insurance claim related to prior unrepaired damage to the motor vehicle; or

(II) The consumer received payment for the prior unrepaired damage to the motor vehicle.

(2) Except as provided in this article 9.3, the GAP agreement must pay or waive all of the deficiency balance that would have been owed if:

(a) The consumer had maintained property damage insurance covering the actual cash value of the motor vehicle as of the date of loss, even if the consumer has not maintained such property damage insurance; or

(b) The creditor had purchased property damage insurance for the motor vehicle pursuant to section 5-2-209.

(3) The GAP agreement must provide the consumer with a full refund or a credit of the amount of the consumer's deductible charged for property damage, up to five hundred dollars, as part of the payment of, or relief from, liability for the deficiency balance. The GAP agreement may provide additional coverage for the consumer's deductible in excess of five hundred dollars.

Source: L. 2023: Entire article added, (HB 23-1181), ch. 425, p. 2501, § 3, effective January 1, 2024.

5-9.3-106. Cancellation of GAP agreement.

(1) The original creditor must refund to the consumer the unearned GAP fee paid pursuant to the GAP agreement if:

(a) The finance agreement is prepaid prior to maturity or the motor vehicle is no longer in the consumer's possession due to the creditor's lawful repossession and disposition of the collateral; and

(b) The consumer has not made a claim under the GAP agreement.

(2) (a) If the GAP agreement is provided as a contractual term of the finance agreement, any refund issued must be calculated using a pro rata method or any other method approved by the administrator.

(b) If the GAP agreement is provided as insurance, any refund issued must be calculated using a method authorized under applicable insurance statutes, rules, or interpretations of the commissioner of insurance pursuant to title 10.

(3) (a) In the event that the consumer finance agreement has been assigned to a person other than the original creditor, the assignee shall send notice to the original creditor requesting, on behalf of the consumer, a refund of the unearned GAP fee pursuant to the GAP agreement. Upon receipt of such notice from the assignee, the original creditor shall provide the unearned GAP fee to the consumer within thirty days.

(b) If the original creditor has not refunded the unearned GAP fee to the consumer within thirty days pursuant to subsection (3)(a) of this section, the assignee shall provide the refund to the consumer, and the original creditor or GAP administrator shall reimburse the assignee for the amount of such refund no later than forty-five days after the original creditor or GAP administrator has received notice from the assignee.

(4) A cancellation fee of not more than twenty-five dollars may be charged to a consumer if the consumer cancels the GAP agreement more than thirty days after the effective date of the GAP agreement.

Source: L. 2023: Entire article added, (HB 23-1181), ch. 425, p. 2502, § 3, effective January 1, 2024.

5-9.3-107. Filing of claim.

A consumer has ninety days after the loss settlement from any property damage insurance or from the date the creditor notifies the consumer of any deficiency balance owed, whichever is later, to file a claim under the GAP agreement or seek debt cancellation from the creditor.

Source: L. 2023: Entire article added, (HB 23-1181), ch. 425, p. 2503, § 3, effective January 1, 2024.

5-9.3-108. Prohibitions on sale of guaranteed asset protection agreements.

(1) A GAP agreement shall not be sold to a consumer if:

(a) The consumer is ineligible for a GAP agreement;

(b) The finance agreement terms preclude coverage under a GAP agreement;

(c) The motor vehicle used as collateral for the finance agreement is ineligible for coverage under a GAP agreement;

(d) The GAP agreement limits coverage to a maximum loan-to-value ratio and the terms of the finance agreement exceed the maximum loan-to-value ratio stated in the GAP agreement;

(e) The maximum loan-to-value ratio in the GAP agreement exceeds one hundred fifty percent; or

(f) The transaction would be unconscionable as described in section 5-4-106, 5-5-109, or 5-6-112.

Source: L. 2023: Entire article added, (HB 23-1181), ch. 425, p. 2503, § 3, effective January 1, 2024.

5-9.3-109. Enforcement.

The administrator designated in section 5-6-103 may enforce the provisions of this article 9.3, pursuant to article 6 of this title 5, against any creditor or GAP administrator who violates this article 9.3.

Source: L. 2023: Entire article added, (HB 23-1181), ch. 425, p. 2503, § 3, effective January 1, 2024.

REFUND ANTICIPATION LOANS

ARTICLE 9.5

Refund Anticipation Loans

5-9.5-101 to 5-9.5-109. (Repealed)

Editor's note: (1) This article 9.5 was added in 2010. For amendments to this article prior to its repeal in 2019, consult the 2019 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 5-9.5-109 (1) provided for the repeal of this article, effective September 1, 2019.

RENTAL PURCHASE

ARTICLE 10

Rental Purchase Agreements

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PART 1

GENERAL PROVISIONS

5-10-101. Short title.

This article shall be known and may be cited as the "Colorado Rental Purchase Agreement Act".

Source: L. 90: Entire article added, p. 366, § 1, effective January 1, 1991.

5-10-102. Legislative declaration.

(1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are to:

(a) Simplify, clarify, and modernize the law governing rental purchase agreements;

(b) Provide certain disclosures to consumers who enter into rental purchase agreements and to promote consumer understanding of the terms of rental purchase agreements;

(c) To protect consumers against unfair practices by some rental purchase dealers, having due regard for the interest of legitimate and scrupulous rental dealers; and

(d) To permit and encourage the development of fair and economically sound rental purchase practices.

Source: L. 90: Entire article added, p. 366, § 1, effective January 1, 1991.

5-10-103. Waiver - agreement to forego rights - prohibited.

Except as otherwise provided in this article, a lessor or lessee, as those terms are defined in section 5-10-301, may not waive or agree to forego rights or benefits under this article, and any attempt to waive or agree to forego such rights or benefits is void.

Source: L. 90: Entire article added, p. 367, § 1, effective January 1, 1991.

5-10-104. Effective date.

Notwithstanding the provisions of section 5-9-101, this article shall take effect January 1, 1991.

Source: L. 90: Entire article added, p. 367, § 1, effective January 1, 1991.

5-10-105. Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this article, the "Uniform Commercial Code" and the principles of law and equity, including the law relative to capacity to contract, principal

and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause, supplement the provisions of this article.

Source: L. 90: Entire article added, p. 367, § 1, effective January 1, 1991.

Cross references: For the "Uniform Commercial Code", see title 4.

PART 2

SCOPE OF ARTICLE

5-10-201. Application.

(1) This article shall apply to a rental purchase agreement, or acts, practices, or conduct relating to a rental purchase agreement if:

(a) The rental purchase agreement is entered into in this state; or

(b) The lessee is a resident of this state at the time the lessor offering the rental purchase agreement solicits the rental purchase agreement or modification thereof, whether such solicitation is made personally, by mail, or by telephone.

(2) For the purposes of this article, the residence of the lessee is the address given by the lessee as the lessee's residence in any writing signed by the lessee in connection with the rental purchase agreement. Unless the lessee notifies the lessor in writing of a new or different residence address, the given residence address is presumed to be unchanged.

Source: L. 90: Entire article added, p. 367, § 1, effective January 1, 1991.

5-10-202. Exclusions.

(1) This article shall not apply to, and an agreement that complies with this article is not governed by the provision relating to:

(a) A "consumer credit sale" as that term is defined in section 5-1-301 (11);

(b) A "consumer lease" as that term is defined in section 5-1-301 (14);

(c) A "consumer loan" as that term is defined in section 5-1-301 (15);

(d) and (e) Repealed.

(f) A "home solicitation sale" as that term is defined in section 5-3-401;

(g) A "sale of goods" as that term is defined in section 5-1-301 (39);

(h) A "security interest" as that term is defined in section 4-1-201 (b)(35), C.R.S.;

(i) Any lease for agricultural, business, or commercial purposes;

(j) Any lease of money or intangible personal property.

Source: L. 90: Entire article added, p. 367, § 1, effective January 1, 1991. **L. 96:** (1)(d) and (1)(e) repealed, p. 407, § 11, effective July 1. **L. 2000:** IP(1), (1)(a), (1)(b), (1)(c), (1)(f), and (1)(g) amended, p. 1870, § 101, effective August 2. **L. 2006:** (1)(h) amended, p. 503, § 45, effective September 1.

PART 3

DEFINITIONS

5-10-301. Definitions.

(1) As used in this article, unless otherwise required by the context:

(a) "Administrator" means the administrator designated in section 5-6-103.

(b) "Advertisement" means a commercial message in any medium that aids, promotes, or assists, directly or indirectly, a rental purchase agreement.

(c) "Cash price" means the price at which a lessor in the ordinary course of business would offer the property that is the subject of a rental purchase agreement to the lessee for cash on the date of the execution of the rental purchase agreement.

(d) "Consummate" means the act of the lessee in entering into a rental purchase agreement.

(e) "Lessee" means a natural person who rents personal property under a rental purchase agreement.

(f) "Lessor" means a person, firm, or corporation who in the ordinary course of business, regularly leases, offers to lease, or arranges for the leasing of property under a rental purchase agreement.

(g) "Liability damage waiver" means a contract or contractual provision, whether separate from or a part of a rental purchase agreement, whereby the lessor agrees, for a charge, to waive

any and all claims against the lessee for any damages to, or loss of, the property which is the subject of the rental purchase agreement during the term of the rental agreement.

(h) "Period" means a day, week, month, or other subdivision of the year.

(i) "Personal property" means any property which is made available for a rental purchase agreement and which is not considered real property under the laws of this state.

(j) "Rental purchase agreement" means an agreement for the use of personal property by an individual primarily for personal, family, or household purposes, for an initial period of four months or less, whether or not there is any obligation beyond the initial period, that is automatically renewable with each payment and that permits the lessee to become the owner of the property.

Source: L. 90: Entire article added, p. 368, § 1, effective January 1, 1991.

PART 4

DISCLOSURES AND FORM OF WRITING

5-10-401. Disclosures.

(1) A lessor shall disclose to a lessee in a rental purchase agreement the information required either by this part 4 or by the provisions of the federal "Consumer Credit Protection Act" if the federal "Consumer Credit Protection Act" is amended to cover disclosure in a rental purchase agreement. In a rental purchase agreement, the lessor shall disclose the following:

(a) A brief description of the leased property, sufficient to identify the property to the lessee and lessor;

(b) The total number of payments and the total amount of such payments necessary to acquire ownership;

(c) The number, amount, and timing of each payment, including taxes paid to or through the lessor;

(d) A statement that the lessee will not own the property until the lessee has made the total number of payments and the total amount of such payments necessary to acquire ownership;

(e) A statement of all other charges which the lessee may have to pay together with the amount of any such charge and the conditions under which any such charge shall be incurred;

(f) If applicable, a statement that the lessee is responsible for the fair market value of the property if and as of the time it is lost, stolen, damaged, or destroyed;

(g) A statement indicating whether the property is new or used; except that it is not a violation of this paragraph (g) to indicate that the property is used if it is actually new;

(h) A statement that, at any time after the first lease payment is made, the lessee may acquire ownership of the property, and a brief explanation of the price, formula, or other method for determining the price at which the property may be purchased;

(i) A brief explanation of the lessee's right to reinstate, and a description of the amount, or method of determining the amount, of any penalty or other charge for reinstatement as established in section 5-10-602;

(j) The cash price of the property subject to the rental purchase agreement; and

(k) A statement of the maintenance services, if any, the lessor will provide with respect to the property subject to the rental purchase agreement.

(2) In addition to the disclosures required pursuant to subsection (1) of this section, the lessor shall also make the following disclosure:

NOTICE TO LESSEE -- READ BEFORE SIGNING

(1) DO NOT SIGN THIS BEFORE YOU READ THE ENTIRE AGREEMENT INCLUDING ANY WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED.

(2) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.

(3) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.

(4) YOU HAVE THE RIGHT TO EXERCISE ANY EARLY BUY-OUT OPTION AS PROVIDED IN THIS AGREEMENT. EXERCISE OF THIS OPTION MAY RESULT IN A REDUCTION OF YOUR TOTAL COST TO ACQUIRE OWNERSHIP UNDER THIS AGREEMENT.

(5) IF YOU ELECT TO MAKE WEEKLY RATHER THAN MONTHLY PAYMENTS AND EXERCISE YOUR PURCHASE OPTION, YOU MAY PAY MORE FOR THE LEASED PROPERTY.

Source: L. 90: Entire article added, p. 368, § 1, effective January 1, 1991.

Cross references: For the federal "Consumer Credit Protection Act", see Pub.L. 90-321.

5-10-402. Form requirements.

(1) The information required by this part 4:

(a) Shall be disclosed in writing in a rental purchase agreement;

(b) Shall be set forth clearly and conspicuously, in not less than eight point standard type;

(c) Shall be set apart and not contain any information not directly related to the disclosures;

(d) Shall be stated using words and phrases of common meaning;

(e) Need not be contained in a single writing or made in the order set forth in this part 4; and

(f) May be supplemented by additional information or explanations supplied by the lessor, so long as the additional information is not stated, utilized, or placed in a manner which will confuse the lessee or contradict, obscure, or distract attention from the required information. The additional information or explanations shall not have the effect of circumventing, evading, or unduly complicating the information required to be disclosed.

(2) The lessor shall disclose all information required by this part 4 before the rental purchase agreement is consummated.

(3) Before any payment is due, the lessor shall furnish the lessee with an exact copy of the rental purchase agreement, which shall be signed by the lessee and which shall evidence the lessee's agreement. If there is more than one lessee in a rental purchase agreement, delivery of a copy of the rental purchase agreement to one of the lessees constitutes compliance with this subsection (3).

Source: L. 90: Entire article added, p. 370, § 1, effective January 1, 1991.

5-10-403. Receipts.

The lessor shall furnish the lessee a written receipt for each payment made in cash or by any other method of payment that does not provide evidence of payment when any such payment is delivered in person during normal working hours.

Source: L. 90: Entire article added, p. 370, § 1, effective January 1, 1991.

PART 5

LIMITATION ON AGREEMENTS AND PRACTICES

5-10-501. Acquiring ownership.

At any time after the first lease payment is made, the lessee may acquire ownership of the property under the terms specified in the rental purchase agreement.

Source: L. 90: Entire article added, p. 370, § 1, effective January 1, 1991.

5-10-502. Prohibited provisions.

(1) A rental purchase agreement shall not contain a provision requiring any of the following:

(a) **Assignment of earnings.** No lessor shall accept an assignment of earnings from the lessee for payment or as security for payment of a charge arising out of a rental purchase agreement. An assignment of earnings in violation of this paragraph (a) is unenforceable by the assignee of the earnings and revocable by the lessee. This paragraph (a) shall not prohibit a lessee from voluntarily authorizing deductions from his earnings if the authorization is revocable and otherwise permitted by law.

(b) **Authorization to confess judgment.** No lessor shall take or accept a power of attorney or other authorization from the lessee, or other person acting on his behalf, to confess judgment.

(c) **Waivers.** No lessor may require a lessee to waive service of process or to waive any defense, counterclaim, or right of action against the lessor, or a person acting on the lessor's behalf as the lessor's agent in collection of payments under the lease or in the repossession of the lease property.

(d) **Breach of the peace.** No lessor may require a lessee to authorize the lessor or a person acting on the lessor's behalf to enter unlawfully upon the lessee's premises or to commit any breach of the peace in the repossession of the lease property.

(e) **Garnishment of wages.** No lessor may require a lessee to authorize a prejudgment garnishment of the lessee's wages.

Source: L. 90: Entire article added, p. 370, § 1, effective January 1, 1991.

5-10-503. Balloon payments.

A lessee shall not be required to make a payment in addition to regular lease payments in order to acquire ownership of the lease property, nor shall the lessee be required to pay lease payments totaling more than the cost to acquire ownership, as provided in section 5-10-401 (1)(b).

Source: L. 90: Entire article added, p. 371, § 1, effective January 1, 1991.

5-10-504. Prohibited charges.

(1) A lessor shall not contract for or receive charges for any of the following:

(a) The purchase of insurance by the lessee from the lessor;

(b) A penalty for early termination of a rental purchase agreement or for the return of an item at any point, except for those charges authorized by sections 5-10-601 and 5-10-602; or

(c) A payment by a co-signer of the rental purchase agreement for any fees or charges which could not be imposed upon the lessee as part of the rental purchase agreement.

(2) No payment or obligation on the part of the lessee shall accrue when the property is being repaired or replaced unless a loaner is provided to the lessee.

Source: L. 90: Entire article added, p. 371, § 1, effective January 1, 1991.

PART 6

LIMITATIONS ON CHARGES

5-10-601. Additional charges.

(1) A lessor may contract for and receive an initial nonrefundable fee not to exceed ten dollars per contract. Should any security deposit be required by the lessor, the amount of such deposit and the conditions under which it will be returned shall be disclosed with the disclosures required by section 5-10-401.

(2) A lessor may contract for and receive an initial delivery charge per contract not to exceed fifteen dollars in the case of a rental purchase agreement covering five or fewer items and a delivery charge not to exceed forty-five dollars in the case of a rental purchase agreement covering more than five items, if, in either case, the lessor actually delivers the items to the lessee's dwelling and the delivery charge is disclosed with the disclosures required by section 5-

10-401. Said delivery charge shall be assessed in lieu of and not in addition to the initial charge in subsection (1) of this section. A lessor may not contract for or receive a delivery charge on property redelivered after repair or maintenance.

(3) A lessor may contract for and receive a charge for picking up late payments from the lessee if the lessor is required to do so pursuant to the rental purchase agreement or is requested to visit the lessee to pick up a payment. In a rental purchase agreement with payment or renewal dates which are on a monthly basis, this charge may not be assessed more than three times in any six-month period. In rental purchase agreements with payments or renewal options on a weekly or biweekly basis, this charge may not be assessed more than six times in any six-month period. No charge assessed pursuant to this subsection (3) may exceed ten dollars. A pickup fee may be assessed pursuant to this subsection (3) only in lieu of and not in addition to any late charge assessed pursuant to subsection (4) of this section.

(4) (a) The parties may contract for late charges as follows:

(I) For rental purchase agreements with monthly renewal dates, a late charge not exceeding five dollars may be assessed on any payment not made within five days after payment is due, or return of the property is required.

(II) For rental purchase agreements with weekly or bi-weekly renewal dates, a late charge not exceeding three dollars may be assessed on any payments not made within three days after payment is due, or return of the property is required.

(b) A late charge on a rental purchase agreement may be collected only once on any accrued payment, no matter how long it remains unpaid. A late charge may be collected at the time it accrues or at any time thereafter. A lessor may elect to waive imposition of a late charge due on an accrued payment in accordance with the terms of the rental purchase agreement; except that, such waiver shall be in writing and, once a late charge is waived for a specific payment, the lessor may not thereafter seek to impose a late fee for the accrued payment in question. No late charge may be assessed against a payment that is timely made, even though an earlier late charge has not been paid in full.

Source: L. 90: Entire article added, p. 371, § 1, effective January 1, 1991.

5-10-602. Reinstatement fees.

A reinstatement fee as provided for in section 5-10-701 shall equal the outstanding balance of any accrued missed payments and late charges plus an additional fee not to exceed five dollars.

Source: L. 90: Entire article added, p. 372, § 1, effective January 1, 1991.

5-10-603. Liability damage waivers - fees.

(1) In addition to the other charges permitted by this part 6, the parties may contract for a liability waiver fee not to exceed the greater of ten percent of any periodic lease payment due or two dollars in the case of any rental purchase agreement with weekly or biweekly renewal dates, and not to exceed the greater of ten percent of any periodic lease payment due or five dollars in the case of any rental purchase agreement with monthly renewal dates. The selling or offering for sale of a liability damage waiver pursuant to this article is subject to the following prohibitions and requirements:

(a) A lessor may not sell or offer to sell a liability damage waiver unless all restrictions, conditions, and exclusions are printed in the rental purchase agreement, or in a separate agreement, in eight-point type, or larger, or written in pen and ink or typewritten in or on the face of the rental purchase agreement in a blank space provided therefor. The liability damage waiver may exclude only loss or damage to the property which is the subject of the rental purchase agreement due to moisture, scratches, mysterious disappearance, vandalism, abandonment of the property, or due to any other damages caused intentionally by the lessee or which result from the lessee's willful or wanton misconduct.

(b) The liability damage waiver agreement must include a statement of the total charge for the liability damage waiver. The liability damage waiver agreement must display in eight-point boldface type the following notice:

NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A LIABILITY DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE PROPERTY. BEFORE DECIDING WHETHER TO PURCHASE THE LIABILITY DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN HOMEOWNERS OR CASUALTY INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL PROPERTY, AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS LIABILITY DAMAGE WAIVER IS NOT MANDATORY AND MAY BE DECLINED.

(c) The restrictions, conditions, and exclusions of the liability damage waiver must be disclosed on a separate agreement, sheet, or handout given to the lessee prior to entering into the

rental purchase agreement. The separate contract, sheet, or handout must be signed, or otherwise acknowledged by the lessee as being received prior to entering into the rental purchase agreement.

Source: L. 90: Entire article added, p. 372, § 1, effective January 1, 1991.

5-10-604. Taxes.

In addition to those charges allowable by this part 6, the lessor may require the lessee to pay all applicable state sales and use taxes levied in connection with the rental purchase agreement.

Source: L. 90: Entire article added, p. 373, § 1, effective January 1, 1991.

PART 7

REMEDIES

5-10-701. Lessee's remedies - reinstatement.

(1) A lessee who breaches any rental purchase agreement, including but not limited to the failure to make timely rental payments, has the right to reinstate the original rental purchase agreement without losing any rights or options previously acquired under the rental purchase agreement if both of the following apply:

(a) Subsequent to having failed to make a timely rental payment, the lessee has promptly surrendered the property to the lessor, in the manner as set forth in the rental purchase agreement, and if and when requested by lessor; and

(b) Not more than sixty days have passed since the lessee returned the lease property; except that if the lessee has made more than sixty percent of the total number of payments required under the rental purchase agreement to acquire ownership, such sixty-day period shall be extended to a one-hundred-twenty-day period.

(2) As a condition precedent to reinstatement of the rental purchase agreement, a lessor may collect a reinstatement fee as set forth in section 5-10-602, plus delivery charges allowable by section 5-10-601 (2) if redelivery of the item is necessary.

(3) If reinstatement occurs pursuant to this section, the lessor shall provide the lessee with either the same item leased by the lessee prior to reinstatement or a substitute item of equivalent

quality and condition. If a substitute item is provided, the lessor shall provide the lessee with all the information required by section 5-10-401.

Source: L. 90: Entire article added, p. 373, § 1, effective January 1, 1991.

5-10-702. Limitations on lessor's remedies.

With respect to a debt arising from a rental purchase agreement, regardless of where made, the lessor may not attach unpaid earnings of the debtor by garnishment or like proceedings prior to the entry of judgment in an action against the lessee arising from the said rental purchase agreement.

Source: L. 90: Entire article added, p. 374, § 1, effective January 1, 1991.

5-10-703. Assignee liability.

(1) With respect to a rental purchase agreement, an assignee of the rights of the lessor is subject to all claims and defenses of the lessee against the lessor arising from the lease of property or services, notwithstanding that the assignee is the holder in due course of a negotiable instrument issued in violation of the provisions prohibiting certain negotiable instruments.

(2) A claim or defense of a lessee specified in subsection (1) of this section may be asserted against the assignee under this section only to the extent of the amount owing and paid to the assignee and assignor.

(3) An agreement may not limit or waive the claims or defenses of a lessee under this section.

Source: L. 90: Entire article added, p. 374, § 1, effective January 1, 1991.

5-10-704. Notice of assignment.

The lessee is authorized to pay the original lessor until the lessee receives written notification that the rights to payment pursuant to a rental purchase agreement have been assigned to an assignee and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned shall be ineffective. If requested by the lessee, the

assignee shall furnish reasonable proof that the assignment has been made, and, unless he does so, the lessee may pay the lessor.

Source: L. 90: Entire article added, p. 374, § 1, effective January 1, 1991.

PART 8

ENFORCEMENT

5-10-801. Administrator responsibility.

(1) The administrator shall enforce this article. To carry out this responsibility, the administrator shall be authorized to:

(a) Receive and act on complaints, take action designed to obtain voluntary compliance with this article, or commence proceedings on the administrator's own initiative;

(b) Issue and enforce cease-and-desist or other administrative enforcement orders in the same manner as set forth in section 5-6-109;

(c) Make investigations; issue subpoenas to require the attendance of witnesses or the production of documents, which subpoenas may be issued to any person, whether located in this state or elsewhere, who has engaged in or is engaging in any violation of this article; administer oaths; conduct hearings in aid of any investigation or inquiry necessary to administer the provisions of this article; and apply to the appropriate court for an appropriate order to effect the purposes of this article;

(d) Counsel persons and groups on their rights and duties under this article;

(e) Establish programs for the education of consumers with respect to rental purchase agreement practices and problems;

(f) Bring a civil action to restrain a person from violating this article and for other appropriate relief in the same manner as set forth in sections 5-6-111 to 5-6-114 and for a civil penalty of up to one thousand dollars per violation; and

(g) Use any of his enforcement powers to restrain or take other action against any person found to be making or enforcing rental purchase agreements which contain any unconscionable provisions or clauses.

Source: L. 90: Entire article added, p. 374, § 1, effective January 1, 1991. **L. 2000:** (1)(b) and (1)(e) amended, p. 1870, § 102, effective August 2. **L. 2011:** (1)(e) amended, (HB 11-1221), ch.

121, p. 381, § 2, effective July 1. **L. 2013:** (1) amended, (SB 13-248), ch. 270, p. 1418, § 4, effective July 1.

5-10-802. Lessor's records and investigations.

(1) In administering this article and in order to determine compliance with this article, the administrator may examine the books and records of persons subject to the article and may make investigations of persons necessary to determine compliance. For this purpose, the administrator may administer oaths or affirmations, and, upon the administrator's own motion or upon request of any party, may subpoena witnesses, compel their attendance, compel testimony, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of, any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence. If the administrator prevails in any civil action brought as a result of such an investigation, the court shall award the administrator costs and a reasonable attorney fee.

(2) If the person's records are located outside Colorado, the person shall, at the person's option, either make them available to the administrator at a convenient location in Colorado, or pay the reasonable and necessary expenses for the administrator or the administrator's representative to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the administrator's behalf.

(3) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the administrator may apply to a court for an order compelling compliance.

(4) The administrator may not make public the name or identity of a person whose acts or conduct the administrator investigates under this section or the facts disclosed in the investigation, but this subsection (4) shall not apply to disclosures in actions or enforcement proceedings under this article.

Source: L. 90: Entire article added, p. 375, § 1, effective January 1, 1991.

5-10-803. Assurance of discontinuance.

If it is claimed that a person has engaged in conduct subject to an order by the administrator or by a court under this article, the administrator may accept an assurance in writing that the person will not engage in the conduct in the future. If a person giving an assurance of discontinuance

fails to comply with its terms, the assurance shall be evidence that before the assurance the person engaged in the conduct described in the assurance.

Source: L. 90: Entire article added, p. 375, § 1, effective January 1, 1991.

5-10-804. Notification by lessors - contents.

(1) A lessor shall file a notification as prescribed in subsection (2) of this section with the administrator:

(a) Within thirty days after soliciting or entering into a rental purchase agreement subject to this article; and

(b) (I) Before July 1 in each subsequent year that the lessor solicits or enters into a rental purchase agreement subject to this article 10.

(II) Repealed.

(2) The notification required under subsection (1) of this section shall state the following:

(a) The name of the lessor and, if different, the name in which business is transacted;

(b) The address of the lessor's principal office, which may be outside Colorado;

(c) The address of all offices or stores, if any, in Colorado at which rental purchase agreements are made;

(d) If rental purchase agreements are made in a place other than an office or store in Colorado, a brief description of the place and manner in which they are made; and

(e) The address of the registered agent upon whom service of process may be made in Colorado.

(3) If information in a notification becomes inaccurate after filing, no further notification is required until the lessor is required to file a subsequent notification pursuant to subsection (1) of this section.

Source: L. 90: Entire article added, p. 376, § 1, effective January 1, 1991. **L. 2023:** (1)(b) amended, (SB 23-248), ch. 360, p. 2150, § 7, effective August 7.

Editor's note: Subsection (1)(b)(II)(B) provided for the repeal of subsection (1)(b)(II), effective July 1, 2026. (See L. 2023, p. 2150.)

5-10-805. Fees.

(1) A lessor required to file a notification with the administrator under section 5-10-804 shall pay to the administrator the following fees:

(a) A fee in an amount to be established by the administrator for each address listed in section 5-10-804 (2)(c), paid at the time of the filing of the initial notification with the administrator;

(b) A fee in an amount to be established by the administrator for each address listed in section 5-10-804 (2)(c), paid at the time of the filing of each annual notification subsequently filed with the administrator.

(2) In addition to the fees required under subsection (1) of this section, if the administrator examines the books and records of the lessor, the lessor shall pay to the administrator a fee of two hundred dollars for each day required for the administrator or the administrator's representative to conduct the examination. However, the sum of all fees collected from a lessor under this subsection (2) may not exceed one thousand dollars in any calendar year.

(3) Repealed.

(4) On and after July 1, 2024, the state treasurer shall credit all fees collected under this article 10 to the consumer credit unit cash fund created in section 5-2-302 (11).

Source: L. 90: Entire article added, p. 376, § 1, effective January 1, 1991. **L. 98:** (3) added, p. 1320, § 12, effective June 1. **L. 2023:** (1) amended, (3) repealed, and (4) added, (SB 23-248), ch. 360, p. 2151, § 8, effective August 7.

PART 9

VIOLATIONS AND PENALTIES

5-10-901. Unlawful acts - fines - deceptive trade practice.

(1) Any person who willfully and intentionally violates any provision of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars.

(2) Any intentional violation of the provisions of this article shall constitute a deceptive trade practice and shall be subject to the provisions of article 1 of title 6, C.R.S.

Source: L. 90: Entire article added, p. 376, § 1, effective January 1, 1991.

5-10-902. Remedies of lessee.

(1) In case of a violation by a lessor of any provision of this article with respect to any rental purchase agreement, the lessee in such agreement may bring a suit in any court of competent jurisdiction to recover from such lessor or may set off or counterclaim in any action by such lessor actual damages. If the court finds that any such violation has occurred, it shall award a minimum recovery of two hundred fifty dollars or twenty-five percent of the total cost to acquire ownership under the rental purchase agreement, whichever is greater.

(2) The remedies specified in subsection (1) of this section are in addition to, and not in limitation of, any other remedies provided by law.

(3) In any action brought pursuant to this section, the court shall award the prevailing party the costs of the action and a reasonable attorney fee.

Source: L. 90: Entire article added, p. 377, § 1, effective January 1, 1991.

5-10-903. Unconscionability.

(1) With respect to a rental purchase transaction, if the court as a matter of law finds the transaction, the agreement, or any clause of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) If it is claimed or appears to the court that the transaction, the agreement, or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making any such determination related to unconscionability.

(3) If, in an action in which unconscionability is claimed, the court finds unconscionability pursuant to this section, the court may award the costs of the action and a reasonable attorney fee to the lessee. If the court does not find unconscionability and does find that the lessee claiming unconscionability brought or maintained an action he knew to be groundless, the court may award the costs of the action and a reasonable attorney fee to the party against whom the claim was made. In determining such attorney fee, the amount of recovery claimed on behalf of the lessee shall not be controlling.

(4) The remedies of this section are in addition to remedies otherwise available for the same conduct authorized under law other than in this article, but double recovery of actual damages may not be had.

(5) For the purpose of this section, a charge or practice expressly permitted by this article is not in itself unconscionable.

Source: L. 90: Entire article added, p. 377, § 1, effective January 1, 1991.

5-10-904. Effect of correction.

Notwithstanding sections 5-10-801 and 5-10-902, any failure to comply with any provisions of this article resulting from a bona fide or clerical error may be corrected by the lessor within sixty days after discovering an error and prior to the institution of any action under this article, or within sixty days of the receipt of written notice of the error after the date of execution of the rental purchase agreement by the lessee. If so corrected, neither the lessor nor any holder is subject to penalty under this section. A copy of any rental purchase agreement to which such a correction is made shall be promptly sent to the lessee.

Source: L. 90: Entire article added, p. 377, § 1, effective January 1, 1991.

5-10-905. Statute of limitations.

No action shall be brought by a lessee under this article more than three years after the lessee knew or should have known of the occurrence of the alleged violation. This section does not bar a person from asserting a violation of this article in any action to collect the debt which was brought more than three years from the date of the occurrence of the violation as a matter of defense by recoupment or setoff in such action.

Source: L. 90: Entire article added, p. 378, § 1, effective January 1, 1991.

Cross references: For statutes of limitations generally, see article 80 of title 13.

PART 10

ADVERTISING

5-10-1001. Advertising.

(1) An advertisement for a rental purchase agreement shall not state or imply that a specific item is available at specific amounts or terms unless the lessor usually and customarily offers or will offer that item at those amounts or terms.

(2) If any advertisement for a rental purchase agreement refers to or states the amount of any payment or the right to acquire ownership for a specific item, the advertisement must also clearly and conspicuously state the following terms as applicable:

(a) That the transaction is a rental purchase agreement or rent-to-own agreement;

(b) The total number of payments and amount of such payments necessary to acquire ownership; and

(c) That the lessee will not own the property until the total of such payments is paid in full or is paid by prepayment.

(3) Advertising which complies with the "Federal Consumer Credit Protection Act" does not violate this section.

(4) With the exception of the lessor, this section imposes no liability on the owner or personnel of any medium in which an advertisement appears or through which it is disseminated.

Source: L. 90: Entire article added, p. 378, § 1, effective January 1, 1991.

INTEREST RATES

ARTICLE 12

Interest - General Provisions

5-12-101. Legal rate of interest.
5-12-102. Statutory interest - definition - rules.
5-12-103. Greater rate may be stipulated.
5-12-104. Warrants to bear six percent.
5-12-105. Interest upon foreclosure.
5-12-106. Rate of interest on judgments which are appealed.
5-12-107. Commercial credit plans - definitions.

5-12-101. Legal rate of interest.

If there is no agreement or provision of law for a different rate, the interest on money shall be at the rate of eight percent per annum, compounded annually.

Source: L. 71: R&RE, p. 852, § 1. **C.R.S. 1963:** § 73-12-101. **L. 75:** Entire section amended, p. 257, § 1, effective July 1. **L. 79:** Entire section amended, p. 315, § 1, effective June 20.

Cross references: For interest on damages for personal injuries, see § 13-21-101.

COLORADO COMMENT

The provisions of this Article 12 are derived in part from Article 1 of Chapter 73, C.R.S. 1963, in effect prior to this Code.

ANNOTATION

Law reviews. For article, "Notice to Attorneys", see 12 Dicta 196 (1935). For article, "A Decade of Colorado Law: Conflict of Laws, Security, "Colorado Interest Law", see 34 Dicta 398 (1957). For article, "The Revolution in Consumer Credit Legislation", see 45 Den. L.J. 679 (1968). For article, "Collecting Pre- and Post-Judgment Interest in Colorado: A Primer", see 15 Colo. Law. 753 (1986). For article, "An Update of Appendices from Collecting Pre- and Post-Judgment Interest in Colorado", see 15 Colo. Law. 990 (1986). For article, "Recovery of Interest: Parts I and II", see 18 Colo. Law. 1063 and 1307 (1989). For article, "Show Me the Money: The Surprising Complexity of Cash Bequests", see 55 Colo. Law. 42 (Mar. 2026).

Annotator's note. Since § 5-12-101 is similar to repealed § 73-1-1, C.R.S. 1963, CSA, C. 88, § 1, and laws antecedent to CSA, C. 88, § 1, relevant cases construing those provisions have been included in the annotations to this section.

Change in legal rate does not affect preexisting contracts. Salazar v. Taylor, 18 Colo. 538, 33 P. 369 (1893); Bankers Trust Co. v. Int'l Trust Co., 108 Colo. 15, 113 P.2d 656 (1941).

Interest awarded. M.L.G. Corp. v. Davis, 672 P.2d 1019 (Colo. App. 1983).

This section does not apply to a situation covered by the prompt payment statute. To the extent there is a conflict, the more specific prompt payment statute prevails over this section. New Design Constr. Co. v. Hamon Contractors, Inc., 215 P.3d 1172 (Colo. App. 2008).

Applied in Farmers State Bank v. Klein, 159 Colo. 165, 410 P.2d 632 (1966); Equal Emp. Opportunity Comm'n v. Safeway Stores, Inc., 634 F.2d 1273 (10th Cir. 1980); Martinez v. Cont'l Enters., 730 P.2d 308 (Colo. 1986); Hansen v. Lederman, 759 P.2d 810 (Colo. App. 1988); Colo. Springs v. Timberlane Assoc., 807 P.2d 1177 (Colo. App. 1990).

5-12-102. Statutory interest - definition - rules.

(1) Except as provided in section 13-21-101, C.R.S., when there is no agreement as to the rate thereof, creditors shall receive interest as follows:

(a) When money or property has been wrongfully withheld, interest shall be an amount which fully recognizes the gain or benefit realized by the person withholding such money or property from the date of wrongful withholding to the date of payment or to the date judgment is entered, whichever first occurs; or, at the election of the claimant,

(b) Interest shall be at the rate of eight percent per annum compounded annually for all moneys or the value of all property after they are wrongfully withheld or after they become due to the date of payment or to the date judgment is entered, whichever first occurs.

(2) When there is no agreement as to the rate thereof, creditors shall be allowed to receive interest at the rate of eight percent per annum compounded annually for all moneys after they become due on any bill, bond, promissory note, or other instrument of writing, or money due on mutual settlement of accounts from the date of such settlement and on money due on account from the date when the same became due.

(3) Interest shall be allowed as provided in subsection (1) of this section even if the amount is unliquidated at the time of wrongful withholding or at the time when due.

(4) Except as provided in section 5-12-106, creditors shall be allowed to receive interest on any judgment recovered before any court authorized to enter the same within this state from the date of entering said judgment until satisfaction thereof is made either:

(a) At the rate specified in a contract or instrument in writing which provides for payment of interest at a specified rate until the obligation is paid; except that if the contract or instrument provides for a variable rate, at the rate in effect under the contract or instrument on the date judgment enters; or

(b) In all other cases where no rate is specified, at the rate of eight percent per annum compounded annually.

(5) (a) The maximum rate of interest on medical debt is three percent per annum.

(b) As used in this subsection (5), "medical debt" has the meaning set forth in section 5-16-103 (10.5).

(c) On or before December 31, 2026, the administrator designated in section 5-6-103 shall adopt rules or issue guidance clarifying the application of this subsection (5) to consumer credit transactions for medical debt.

Source: L. 71: R&RE, p. 852, § 1. **C.R.S. 1963:** § 73-12-102. **L. 75:** Entire section amended, p. 257, § 2, effective July 1. **L. 79:** Entire section R&RE, p. 315, § 2, effective June 20. **L. 82:** (4) amended, p. 227, § 2, effective January 1, 1983. **L. 83:** (4) amended, p. 394, § 1, effective July 1. **L. 84:** (4)(a) amended, p. 286, § 1, effective July 1. **L. 2023:** (5) added, (SB 23-093), ch. 152, p. 643, § 1, effective May 4. **L. 2026:** (5)(c) added, (HB 26-1426), ch. 334, p. 1982, § 5, effective August 12.

ANNOTATION

I. General Consideration.

III. Nonallowance of Interest.

IV. Notice or Demand.

V. Computation.

I. GENERAL CONSIDERATION.

Law reviews. For note, "Curious Origin of the Compound Interest Rule in Colorado", see 1 Rocky Mt. L. Rev. 148 (1929). For note, "Interest as Damages in Colorado", see 16 Rocky Mt. L. Rev. 162 (1944). For note, "Interest as Damages in Colorado", see 28 Dicta 285 (1951). For note, "Colorado Interest Law", see 34 Dicta 398 (1957). For article, "One Year Review of Contracts", see 36 Dicta 19 (1959). For article, "One Year Review of Contracts", see 37 Dicta 1 (1960). For article, "One Year Review of Contracts", see 39 Dicta 161 (1962). For article, "A Creditor's Right to Interest in Colorado", see 35 U. Colo. L. Rev. 190 (1963). For article, "The Revolution in Consumer Credit Legislation", see 45 Den. L.J. 679 (1968). For article, "Rates of Interest on State and Federal Court Judgments: An Update", see 12 Colo. Law. 446 (1983). For article, "Colorado's Prejudgment Interest Statute: Potential for Market Rate Interest", see 12 Colo. Law. 1605 (1983). For article, "Collecting Pre- and Post-Judgment Interest in Colorado: A Primer", see 15 Colo. Law. 753 (1986). For article, "An Update of Appendices from Collecting Pre- and Post-Judgment Interest in Colorado", see 15 Colo. Law. 990 (1986). For article, "Let the Builder-Vendor Beware: Defenses and Damages in Home Builder

Litigation — Part II", see 16 Colo. Law. 629 (1987). For article, "Recovery of Interest: Parts I and II", see 18 Colo. Law. 1063 and 1307 (1989). For article, "Prejudgment Interest for Wrongful Withholding in Constructive Trust Remedy Actions", see 23 Colo. Law. 351 (1994).

Annotator's note. Since § 5-12-102 is similar to repealed § 73-1-2, C.R.S. 1963, § 73-1-2, CRS 53, CSA, C. 88, § 2, and laws antecedent to CSA, C. 88, § 2, relevant cases construing those provisions have been included in the annotations to this section.

Interest is a compensation for the use of money for its detention. City of Denver v. Barber Asphalt Paving Co., 141 F. 69 (8th Cir. 1905).

Recovery of that compensation may be pursued as prejudgment interest in accordance with the terms of this section, or in circumstances in which statutory interest would not be available, it may be sought as moratory interest which recognizes interest as a part of compensatory damages. Scognamillo v. Olsen, 795 P.2d 1357 (Colo. App. 1990).

In historical perspective. The exaction or taking of interest or compensation for the use of money was regarded as usurious, whether moderate or excessive, both in biblical times and by the early common law prior to the reign of Henry VIII. It seems to have been held by the church that the taking of interest was actually sinful as against the laws of God and morality and by the courts that it was unlawful on the theory of the classical and medieval economists from the time of Aristotle that money was only a medium of exchange and naturally barren and unproductive. By the 16th century the gap between religious theory and commercial practice had been further narrowed, and the new protestant ethics regarded only excessive exactions as usury. In the United States, the courts have always viewed the allowance of interest with greater favor than have the courts in England. The English common law has never been suited to the conditions existing in this country, and the American courts have never doubted the right to interest where it has been expressly contracted for, or where an undertaking to pay interest may be implied from the usages of trade. Stone v. Currigan, 138 Colo. 442, 334 P.2d 740 (1959).

In Colorado. Interest having become recognized as lawful and just compensation for the use of money rightfully belonging to another, the first session of the general assembly of the territory of Colorado adopted an interest statute, which, with only slight changes, now appears as § 5-12-102. Stone v. Currigan, 138 Colo. 442, 334 P.2d 740 (1959).

Hence, interest is a creature of statute. Hendrie v. Bd. of County Comm'rs, 153 Colo. 432, 387 P.2d 266 (1963).

When there is no applicable federal law regarding prejudgment interest, it is appropriate to look to state law as a matter of convenience and practicality. In re Sun, 535 B.R. 358 (10th Cir. 2015).

Where no agreement. Interest, when there is no agreement therefor, is a matter of statute. In re Estate of Granberry, 30 Colo. App. 590, 498 P.2d 960 (1972).

The right to interest, absent an independent agreement, is statutory and is limited to those circumstances enumerated in the statute. Messler v. Phillips, 867 P.2d 128 (Colo. App. 1993); Indian Mtn. Metro. Recreation & Park Dist. v. J.P. Campbell & Assocs., 921 P.2d 65 (Colo. App. 1996); Bd. of County Comm'rs of Dolores County v. Shell W. E & P, Inc., 12 P.3d 1219 (Colo. App. 2000).

Where there is no "judgment" entered in a "court" to which subsection (4) could apply, a claim for post-judgment interest pursuant to subsection (4) is properly rejected. Bd. of County Comm'rs of Dolores County v. Shell W. E & P, Inc., 12 P.3d 1219 (Colo. App. 2000).

Interest is the compensation allowed by law, or fixed by the parties, for the use, detention, or forbearance of money or its equivalent. Stone v. Currigan, 138 Colo. 442, 334 P.2d 740 (1959).

This section is intended to provide for award of interest from the time plaintiffs were wronged. Combined Com. Corp. v. Pub. Serv. Co., 865 P.2d 893 (Colo. App. 1993); Porter Constr. Servs. v. Ehrhardt, Keefe, Steiner, & Hottman, P.C., 131 P.3d 1115 (Colo. App. 2005).

Purpose of statutory interest is to discourage delaying payment of a claim. Mesa Sand & Gravel v. Landfill, Inc., 776 P.2d 362 (Colo. 1989); Michaelson v. Michaelson, 884 P.2d 695 (Colo. 1994); Stansbury v. Comm'r of Internal Rev., 102 F.3d 1088 (10th Cir. 1996); Scott v. Comm'r of Internal Rev., 236 F.3d 1239 (10th Cir. 2001); Ross v. Old Republic Ins. Co., 134 P.3d 505 (Colo. App. 2006), aff'd on other grounds, 180 P.3d 427 (Colo. 2008).

This section to be strictly construed. Isbill Assocs., Inc. v. City & County of Denver, 666 P.2d 1117 (Colo. App. 1983); Mesa Sand & Gravel v. Landfill, Inc., 776 P.2d 362 (Colo. 1989); Michaelson v. Michaelson, 884 P.2d 695 (Colo. 1994).

The appellate court's authority to determine interest is exclusive. While the appellate court may, of course, remand to the trial court for a determination of the proper statutory interest, the trial court, without such an instruction, lacks jurisdiction to enter any amount of interest not stated in the mandate. Pet, Inc. v. Goldberg, 37 Colo. App. 257, 547 P.2d 943 (1975); Thompson v. United Sec. Alli., 2016 COA 128, 433 P.3d 50, rev'd on other grounds, 2018 CO 95, 431 P.3d 224.

The proper method of attacking an appellate court's instructions as to interest is to petition for amendment or recall of the mandate. Such a procedure is available in Colorado. Pet, Inc. v. Goldberg, 37 Colo. App. 257, 547 P.2d 943 (1975).

Relationship of section to C.A.R. 37. While this section states the circumstances wherein interest shall be allowed to a creditor or on a judgment, C.A.R. 37 requires and empowers the appellate court to make the determination of interest to be allowed, if any, and to include instructions concerning the entry of such interest in its mandate when a judgment is modified or reversed with directions for entry of a money judgment. Pet, Inc. v. Goldberg, 37 Colo. App. 257, 547 P.2d 943 (1975).

No conflict with § 38-1-116. There is no conflict between § 38-1-116, which provides for six percent interest in an eminent domain proceeding from the date of possession until the date the commission's award is filed with the court, and this section, pertaining to interest thereafter, since once the amount of the valuation award has been ascertained by the commission, the result is like any other judgment. Denver Urban Renewal Auth. v. Hayutin, 40 Colo. App. 559, 583 P.2d 296 (1978).

This section is not limited to breaches of either contract or fiduciary duty. Victims of tortious conduct are clearly entitled to prejudgment interest under the statute. United Int'l Holdings, Inc. v. Wharf (Holdings) Ltd., 210 F.3d 1207 (D. Colo. 2000), aff'd, 532 U.S. 588 (2001).

Party that prevailed on its contract and tort claims was entitled to prejudgment interest under this section. United Int'l Holdings, Inc. v. Wharf (Holdings) Ltd., 210 F.3d 1207 (D. Colo. 2000), aff'd, 532 U.S. 588 (2001).

Interest questions in a suit on a contract brought in federal court are to be determined by state law, whether jurisdiction is founded on a federal question or diversity of citizenship. Rocky Mt. Tool & Mach. Co. v. Tecon Corp., 371 F.2d 589 (10th Cir. 1966).

This section affects rate of interest held not to be paid on the redemption of land. O'Mahoney v. People ex rel. Stone, 24 Colo. 524, 52 P. 796 (1898).

This section does not apply to the collection of interest on overdue taxes because there must be an agreement expressing mutuality of contract before this section applies, and a contractual relationship clearly is not involved in a claim for overdue taxes. State Farm Mut. Auto. Ins. Co. v. Temple, 176 Colo. 537, 491 P.2d 1371 (1971).

For the "unreasonable and vexatious delay in payment" clause contained in earlier provision, see Craig v. Chandler, 6 Colo. 543 (1883); Corson v. Neatheny, 9 Colo. 212, 11 P. 82 (1886); Keys v. Morrison, 3 Colo. App. 441, 34 P. 259 (1893); Young v. Kimber, 44 Colo. 448, 98 P. 1132 (1909).

This section allows pre-judgment interest on a judgment against the state because nothing in this section precludes such interest. Plaintiff, a public officer, was, therefore, entitled to pre-judgment interest on the underpaid portion of his accumulated vacation leave. Wilkerson v. State, 830 P.2d 1121 (Colo. App. 1992).

Awarding interest is compensation for actual, pecuniary damage suffered by the victim incidental to the defendant's crime of fraudulently obtaining funds because the victim loses the use of the money involved. Interest is awarded as restitution to compensate the victim for such loss of use, it is not intended to reimburse the victim for interest that otherwise would have been earned on the funds. Valenzuela v. People, 893 P.2d 97 (Colo. 1995).

An insurer is liable for prejudgment interest pursuant to this section for underinsured motorist coverage from the date of the insurer's wrongful refusal or

failure to pay, notwithstanding a policy provision that provided that liability and the amount of damages were to be determined by agreement of the parties or by arbitration. Bowen v. Farmers Ins. Exch., 929 P.2d 14 (Colo. App. 1996).

This section governs award of prejudgment interest in non-personal injury cases only. Liability of insurer in personal-injury case is normally governed by § 13-21-101 and case law under that section treating prejudgment interest as an element of compensatory damages, subject to limitations on coverage stated in policy. Award of prejudgment interest under this section is not appropriate unless insurer breached its contract with insured or otherwise wrongfully withheld amounts due. Old Republic Ins. Co. v. Ross, 180 P.3d 427 (Colo. 2008).

Plaintiff is entitled to recover prejudgment interest from date of injury until issuance of initial arbitration award but only to the limits of the uninsured motorist policy. Swan v. Am. Family Mut. Ins. Co., 8 P.3d 546 (Colo. App. 2000).

Applied in Big O Tire Dealers, Inc. v. Goodyear Tire & Rubber Co., 408 F. Supp. 1219 (D. Colo. 1976); Alexander Dawson, Inc. v. Sage Creek Canyon Co., 37 Colo. App. 339, 546 P.2d 969 (1976); Weather Eng'r & Mfg., Inc. v. Pinon Springs Condos., Inc., 192 Colo. 495, 563 P.2d 346 (1977); Gundelach v. Gollehon, 42 Colo. App. 437, 598 P.2d 521 (1979); A-1 Plumbing & Heating Co. v. Thirteenth St. Corp., 44 Colo. App. 13, 616 P.2d 141 (Colo. App. 1980); M & T, Inc. v. Fuel Res. Dev. Co., 518 F. Supp. 285 (D. Colo. 1981); In re Lucas, 631 P.2d 1175 (Colo. App. 1981); Surplus Elecs. Corp. v. Gallin, 653 P.2d 752 (Colo. App. 1982); Acme Delivery Serv., Inc. v. Samsonite Corp., 663 P.2d 621 (Colo. 1983); E. Larimer County Water v. Centric Corp., 693 P.2d 1019 (Colo. App. 1984); Weston v. Mincomp Corp., 698 P.2d 274 (Colo. App. 1985); Autocon Indus., Inc. v. W. States Constr. Co., Inc., 728 P.2d 374 (Colo. App. 1986); Nat'l Sur. Corp. v. Citizens State Bank, 734 P.2d 663 (Colo. App. 1986); Recreational Dev. Co. v. Am. Const., 749 P.2d 1002 (Colo. App. 1987); Britvar v. Schainuck, 791 P.2d 1183 (Colo. App. 1989); Arguelles v. Ridgeway, 827 P.2d 553 (Colo. App. 1991); Flexisystems, Inc. v. Am. Standards Testing Bureau, Inc., 847 P.2d 207 (Colo. App. 1992); Smith v. Mehaffy, 30 P.3d 727 (Colo. App. 2000); Atmel Corp. v. Vitesse Semiconductor Corp., 160 P.3d 347 (Colo. App. 2007); In re Weaver, 579 B.R. 865 (Bankr. D. Colo. 2017).

II. ALLOWANCE OF INTEREST.

A. In General.

B. Bonds.

C. Promissory Notes.

D. Other Instruments of Writing.

E. Judgments.

F. Accounts and Money Due on Account.

G. Money Fraudulently Converted.

A. In General.

The right to interest, independent of an agreement to pay it, is statutory. Weaver v.

First Nat'l Bank, 138 Colo. 83, 330 P.2d 142 (1958); York Plumbing & Heating Co. v. Groussman Inv. Co., 166 Colo. 382, 443 P.2d 986 (1968).

The subject of interest is governed by statute, and in no case where interest is not so provided is it recoverable, unless specially contracted for, except in the nature of damages, where a refusal to pay has been wilful, wrongful, fraudulent, or without reasonable cause. Since this section points out in detail and especially enumerates the cases in which interest is allowable, assuming to cover the whole field, it is not recoverable in any case not thus expressly enumerated, or included by fair implication. When the general assembly assumed to declare in what cases interest could be allowed, under the rule that the expression of the one is the exclusion of another, no interest can be allowed in any case not specified. Cobb v. Stratton's Estate, 56 Colo. 278, 138 P. 35 (1914).

The right to interest, independent of an agreement to pay it, is statutory; it is not given by the common law. However, there has always been a statute providing for interest, enumerating the cases in which it might be allowed and this section is substantially the same as the older statutes. Greeley, S. L. & Pac. Ry. v. Yount, 7 Colo. App. 189, 42 P. 1023 (1895); Bd. of Comm'rs v. Wheeler, 39 Colo. 207, 89 P. 50 (1907); Bankers Trust Co. v. Int'l Trust Co., 108 Colo. 15, 113 P.2d 656 (1941).

In the absence of agreement, interest can be recovered only in the cases mentioned in this section. Keys v. Morrison, 3 Colo. App. 441, 34 P. 259 (1893); Hanauer v. Bartels, 2 Colo. 514 (1875); Greeley, S. L. & Pac. Ry. v. Yount, 7 Colo. App. 189, 42 P. 1023 (1895), distinguishing Machette v. Wanless, 2 Colo. 169 (1873); Omaha & Grant Smelting & Ref. Co. v. Tabor, 13 Colo. 41, 21 P. 925 (1889) (recovery allowed as damages and not as interest, the legal rate of interest being merely used as a convenient way of arriving at their amount); Morris v. Redak, 124 Colo. 27, 234 P.2d 908 (1951); Mitton v. Granite State Fire Ins. Co., 196 F.2d 988 (10th Cir. 1952); Hunter v. Wilson, 147 Colo. 36, 362 P.2d 553 (1961).

In the absence of any contractual provision, prejudgment interest can only be recovered in the cases enumerated in this section. Denver Ass'n for Retarded Children v. Sch. Dist. No. 1, 188 Colo. 310, 535 P.2d 200 (1975).

This section enumerates the cases in which interest may be awarded. Weaver v. First Nat'l Bank, 138 Colo. 83, 330 P.2d 142 (1958).

This section allows interest on money which is due and owing, regardless of whether the money was wrongfully withheld. In re Tri Sys. Consulting & Design, Inc., 115 B.R. 279 (Bankr. D. Colo. 1990).

The right to recover interest is purely a legal one, and in no sense an equitable right. Denver, S. P. & P. R. R. v. Conway, 8 Colo. 1, 5 P. 142 (1884); DeRemer v. Parker, 19 Colo. 242, 34 P. 980 (1893); Pettit v. Thalheimer, 3 Colo. App. 355, 33 P. 277 (1893); Patten v. Am. Nat'l Bank, 15 Colo. App. 479, 63 P. 424 (1900).

1979 amendment applicable to judgments entered after effective date. Subsection (1)(a), which became effective July 1, 1979, applies to any judgments entered after that date, even where the withholding of the property in question was prior to the effective date of the amendment. Great W. Sugar Co. v. N. Natural Gas Co., 661 P.2d 684 (Colo. App. 1982), aff'd sub nom. KN Energy, Inc. v. Great W. Sugar, Co., 698 P.2d 769 (Colo. 1985).

The intent of subsection (1)(a) was to correct the situation in which a wrongdoer would stall settlement or judgment in order to reap the benefit of having use of money or property which was producing more profit for him than the statutory interest rate he would eventually have to pay. Any benefit resulting from the wrongful withholding was intended to be enjoyed not by the wrongdoer, but by the injured party. Great W. Sugar Co. v. KN Energy, Inc., 778 P.2d 272 (Colo. App. 1989).

A subsection (1)(a) award of interest above the statutory rate is allowed only to the extent of the defendant's actual gain or benefit realized on the wrongfully withheld money. Patterson v. BP Am. Prod. Co., 2015 COA 28, 360 P.3d 211.

Section requires an award of prejudgment interest in a rescission action, regardless of whether the issue was raised at trial or evidence was presented on the issue. Kennedy v. Gillam Dev. Corp., 80 P.3d 927 (Colo. App. 2003).

Prejudgment and postjudgment interest should have been awarded in homeowner's successful action against tenants for past-due rent and damage to premises. Butler v. Lembeck, 182 P.3d 1185 (Colo. App. 2007).

A wrongful withholding need not involve actual fraud or be tortious in nature. Section 38-10-117 provides that any conveyance made with the intent to hinder, delay, or defraud creditors is fraudulent. Stansbury v. Comm'r of Internal Rev., 102 F.3d 1088 (10th Cir. 1996).

Corporate executive of insolvent company liable as a transferee of assets for unpaid income taxes and the interest that accrued since the taxes became due. Transferee liable under § 38-10-117 (1) because conveyance was made with the intent to hinder, delay, or defraud creditors, in this case, the internal revenue service. While structuring the sale of the assets of the insolvent company, corporate executive (transferee) obtained multiple opinions on the foreseeable tax consequences. Informed by those opinions and his corporate acumen, executive knowingly chose to take a calculated risk. Scott v. Comm'r of Internal Rev., 236 F.3d 1239 (10th Cir. 2001).

A wrongful withholding only requires the failure to pay or deliver money or property when there is an obligation to do so. Therefore an insurer's failure to pay uninsured motorist benefits need not be tortious or in bad faith to be a wrongful withholding for purposes of this section. Peterman v. State Farm Mut. Auto. Ins. Co., 8 P.3d 549 (Colo. App. 2000).

There are judicially created exceptions to the general rule that the allowance of interest is a creature of statute. Davis Cattle

Co. v. Great W. Sugar Co., 544 F.2d 436 (10th Cir. 1976).

A plaintiff is not entitled to prejudgment interest on all compensatory damages flowing from a wrongful withholding of property. Rather, a proper award of prejudgment interest applies only to that part of the compensatory damages awarded for money or property wrongfully withheld. Dillen v. HealthOne, L.L.C., 108 P.3d 297 (Colo. App. 2004).

Prejudgment interest under subsection (1) is recoverable in an insurer's equitable contribution action under former § 10-4-707 (3) of the Colorado no-fault insurance act. Safeco Ins. Co. v. Westport Ins. Corp., 214 P.3d 1078 (Colo. App. 2009).

Moratory interest. As a matter of state law, Colorado recognizes moratory interest or the allowance of interest as damages. Moratory interest has been allowed in Colorado for more than 100 years. Davis Cattle Co. v. Great W. Sugar Co., 393 F. Supp. 1165 (D. Colo. 1975), aff'd, 544 F.2d 436 (10th Cir. 1976).

Under Colorado law statutory interest cannot be awarded on an unliquidated claim but such does not preclude the awarding of moratory interest, i.e., interest by way of damages and not as a creature of statute. Davis Cattle Co. v. Great W. Sugar Co., 544 F.2d 436 (10th Cir. 1976).

In allowing prejudgment interest, it is recognized that just compensation for the victim is a fundamental principle of damages, and that where money has been wrongfully withheld, it is only fair that the victim receive interest on the money thus withheld. Davis Cattle Co. v. Great W. Sugar Co., 544 F.2d 436 (10th Cir. 1976); Robb v. Universal Constructors, Inc., 665 F.2d 998 (10th Cir. 1981).

A judgment awarding interest on damages when entered falls under this section, and as to the statutory rate. The rate of statutory interest, as distinguished from the rate of moratory interest, is fixed and mandatory. Davis Cattle Co. v. Great W. Sugar Co., 393 F. Supp. 1165 (D. Colo. 1975), aff'd, 544 F.2d 436 (10th Cir. 1976).

In the absence of any proof as to the guilty party's gain, the statutory rate of interest for transactions entered into at that time should be awarded as damages. Alfred Brown Co. v. Johnson-Gibbons & Reed, 695 P.2d 746 (Colo. App. 1984).

The court does not err when it awards interest on a wrongfully withheld sum even though the exact amount is unliquidated until the date of judgment. Jasken v. Sheehy Constr. Co., 642 P.2d 58 (Colo. App. 1982).

Interest award on spouse's elective share of augmented estate and exempt property allowance is one of moratory interest which may run from date court finds elective share and allowance rather than from date of death of spouse. Matter of Estate of Smith, 718 P.2d 1069 (Colo. App. 1986).

For discussion of moratory interest award, see E.B. Jones Constr. Co. v. Denver, 717 P.2d 1009 (Colo. App. 1986).

Buyer entitled to interest where bank failed to deliver to the buyers a warranty deed as required by the contract, and trial court properly found that the bank

wrongfully withheld the property. Cooper v. Peoples Bank & Trust Co., 725 P.2d 78 (Colo. App. 1986).

Trial court acted properly in finding that the defendants had wrongfully withheld funds from plaintiffs and in awarding such plaintiffs pre-judgment interest. Colo. Performance v. Mariposa Assoc., 754 P.2d 401 (Colo. App. 1987).

A claim for damages for lost market value stemming from stock not being registered together with interest measured by a percentage of that loss would have been one for prejudgment interest subject to the limitations of Colorado law. United Telecomms., Inc. v. Am. Television & Commc'ns Corp., 536 F.2d 1310 (10th Cir. 1976).

The Colorado interest statute does not deal with interest charges which arise from an independent debt owed by the plaintiff to a third party. United Telecomms., Inc. v. Am. Television & Commc'ns Corp., 536 F.2d 1310 (10th Cir. 1976).

Interest which appellant was obligated to pay on money which it was required to borrow as a result of appellee's unwarranted delays and manipulations is not regulated by this section. United Telecomms., Inc. v. Am. Television & Commc'ns Corp., 536 F.2d 1310 (10th Cir. 1976).

Brokerage commission due under oral contract falls within this section and interest is due on the commission from the date that it was due and payable. Hayes v. N. Table Mt. Corp., 43 Colo. App. 467, 608 P.2d 830 (1979).

Broker's commission became due as a matter of law when the broker produced a buyer ready, willing, and able to purchase the property, and interest at the statutory rate began to accrue at that time. Mack v. McKanna, 687 P.2d 1326 (Colo. App. 1984).

Interest from date of filing of complaint. Where all of the transactions involving the secret profit made by the real estate agent in sale of building in violation of agent's fiduciary duty were completed on December 18, 1972, the principal would have been entitled to interest at the legal rate on the judgment from that date. However, since in the complaint the principal asked for interest only from the date of filing the complaint, interest from that period shall be part of the judgment. Lestoque v. M.R. Mansfield Realty, Inc., 36 Colo. App. 32, 536 P.2d 1146 (1975).

A debtor cannot avoid the payment of interest by disputing an account, and when the account or any portion thereof is found due, the creditor is entitled to interest on the amount due. Quad Constr., Inc. v. Wm. A. Smith Contracting Co., 534 F.2d 1391 (10th Cir. 1976).

Award of prejudgment interest appropriate where money was wrongfully withheld pursuant to a statute which conflicted with the constitutional provision of article XXI, section 4. Passarelli v. Schoettler, 742 P.2d 867 (Colo. 1987).

An award of prejudgment interest in a judgment against the state is not prohibited even though the general assembly did not expressly provide for an award nor is governmental immunity a bar to such an

award. Passarelli v. Schoettler, 742 P.2d 867 (Colo. 1987).

Prejudgment interest may be awarded in property damage cases, as the legislative history clearly indicates that all cases are to be treated equally regarding the time that interest begins to accrue. Isbill Assocs. v. City & County of Denver, 666 P.2d 1117 (Colo. App. 1983); La Fond v. Basham, 683 P.2d 367 (Colo. App. 1984); Mesa Sand & Gravel v. Landfill, Inc., 776 P.2d 362 (Colo. 1989); Lowell Staats Min. Co. v. Pioneer Uravan, Inc., 878 F.2d 1259 (10th Cir. 1989); Teilhaber Mfg. v. Unarco Materials, 791 P.2d 1164 (Colo. App. 1989).

Prejudgment interest may be awarded in breach of construction contract case even if amount is unliquidated at time of wrongful withholding. Hott v. Tillotson-Lewis Const. Co., 682 P.2d 1220 (Colo. App. 1983); Teilhaber Mfg. v. Unarco Materials, 791 P.2d 1164 (Colo. App. 1989).

Prejudgment interest may be awarded in intentional interference with contract case, as subsection (1)(b) is to be given a broad liberal construction to effectuate the general assembly's purpose of compensating parties for the loss of money or property to which they are entitled. Westfield Dev. v. Rifle Inv. Assoc., 786 P.2d 1112 (Colo. 1990).

Prejudgment interest is permitted on the amount of compensatory damages that an insured would have received under the insurance contract from the time of the insurer's wrongful withholding. Herod v. Colo. Farm Bureau Mut. Ins., 928 P.2d 834 (Colo. App. 1996).

Prejudgment interest is permitted on the amount of wages for "comp time" employee earned while working for employer. Because employee was not paid those wages when he or she left the company, employer's withholding was wrongful. Thus, employee is entitled to an award of prejudgment interest calculated on his or her award from the effective date of resignation to the date of final judgment. Remote Switch Sys. v. Delangis, 126 P.3d 269 (Colo. App. 2005).

Nothing in the statute requires that a judgment creditor establish tortious conduct by a debtor to support award of prejudgment interest. Benham v. Mfrs. Wholesalers Indem. Exch., 685 P.2d 249 (Colo. App. 1984); Cooper v. Peoples Bank & Trust Co., 725 P.2d 78 (Colo. App. 1986).

Being the more specific statute, the plain terms of § 8-41-203 control over this section and, therefore, insurer is limited pursuant to subrogation agreement for workers' compensation to recover only the amount which it paid to the injured employee and cannot collect any interest on amount. Husson v. Meeker, 812 P.2d 731 (Colo. App. 1991).

This section contains no requirement that town request statutory interest in its pleadings for court to award interest pursuant to C.R.C.P. 54(c). Town of Breckenridge v. Golforce, Inc., 851 P.2d 214 (Colo. App. 1992).

But, plaintiff not entitled to prejudgment interest in case of award of damages for emotional distress. Purpose of prejudgment interest is to discourage a

person responsible for payment of a claim from delaying payment until judgment or settlement. Award of emotional distress damages are not intended to compensate for wrongful delay in obtaining money or property. Allabashi v. Lincoln Nat'l Sales Corp., 824 P.2d 1 (Colo. App. 1990).

Injuries properly determined as "personal" and not "property" in case where toxic contamination to property caused homeowners inconvenience and loss of peace of mind based on their fear that contaminants could be present in portions of their homes and the perceived stigma attached to homes in the neighborhood. Therefore, the trial court was correct in awarding prejudgment interest on damages at the rate allowed for cases involving "personal injuries". Antolovich v. Brown Group Retail, Inc., 183 P.3d 582 (Colo. App. 2007).

Trial court erred in awarding post-judgment interest to accrue at 8% per annum when promissory note provided for interest to accrue at 13% per annum until paid in full. Dikeou v. Dikeou, 916 P.2d 601 (Colo. App. 1995), rev'd on other grounds, 928 P.2d 1286 (Colo. 1996).

Trial court erred in denying plaintiff an award of prejudgment interest on disputed portion of settlement funds that had been placed in a money market account pending the outcome of the trial. Fasing v. LaFond, 944 P.2d 608 (Colo. App. 1997).

Trial court erred in setting off the settlement payment before statutory prejudgment interest accrued on the jury verdict. Marso v. Homeowners Realty, 2018 COA 15M, 418 P.3d 542.

Creditor defendant entitled to post-judgment interest during its appeal under subsection (4). Post-judgment interest continues to accrue until the judgment is satisfied. Indian Mtn. v. J.P. Campbell & Assocs., 921 P.2d 65 (Colo. App. 1996).

The inquiry under this section is whether the money or property was wrongfully withheld from the nonbreaching party, and not whether the nature of the conduct of the breaching party brings him or her within the ambit of the statute. Rodgers v. Colo. Dept. of Human Servs., 39 P.3d 1232 (Colo. App. 2001).

Where one party withholds money from another party in reliance on an administrative order that is subsequently reversed, the party withholding the money was not entitled to the money; therefore, the party that was deprived of the use of the money is entitled to an award of interest on the amount of money that was wrongfully withheld. Rodgers v. Colo. Dept. of Human Servs., 39 P.3d 1232 (Colo. App. 2001).

B. Bonds.

Interest upon the penalty of a bond is allowed, and the penalty in a bond is the amount which the obligors agree to pay, if the whole penalty be needed to satisfy the damages sustained by the obligee by a breach of the bond, and is due as soon as the breach occurs. Mass. Bonding & Ins. Co. v. State ex rel. Mallin, 141 Colo. 259, 347 P.2d 507 (1959).

An amount becomes due on a performance bond when the bills for costs are submitted to the surety. A dispute as to the amount due does not remove the claim from this section. Asphalt Paving Co. v. United States Fid. & Guar. Co., 671 P.2d 1013 (Colo. App. 1983).

The fact that the amount of the judgment, together with interest, exceeds the penalty of a bond does not preclude the collection of principal and interest. Mass. Bonding & Ins. Co. v. State ex rel. Mallin, 141 Colo. 259, 347 P.2d 507 (1959).

The fact that a judgment was not satisfied, in due course, and that, as a consequence, the amount of that judgment together with accrued interest now exceeds the penalty of a bond does not preclude the collection of principal and interest. Key Sav. & Loan Ass'n v. Travelers Indem. Co., 32 Colo. App. 358, 513 P.2d 737 (1973).

C. Promissory Notes.

Note may provide for payment of interest. Under this section a promissory note which provides that upon failure to pay the principal when due interest shall be payable from date of note is a good contract, and the interest is recoverable. McKay's Estate v. Belknap Sav. Bank, 27 Colo. 50, 59 P. 745 (1899).

Upon a guaranty indorsed on a promissory note, both the principal and the interest specified in the note may be recovered. Martin v. Hazzard Powder Co., 2 Colo. 596 (1875).

Only statutory rate of interest allowed. Where judgment is procured upon a note, only statutory interest as allowed by this section can be recovered, notwithstanding the note provides for higher interest on amounts not paid when due. Hiller v. Matheny, 81 Colo. 459, 256 P. 10 (1927).

In an action to recover the amount paid for notes where the purchase is rescinded for fraud, the basis of recovery is the benefit to the defendant, and where there is an absence of proof as to the interest rate which would produce an amount equal to such benefit the statutory legal rate should be adopted. Bankers Trust Co. v. Int'l Trust Co., 108 Colo. 15, 113 P.2d 656 (1941).

Where the rate of interest is left blank on a promissory note, the legal rate, as provided by this section, is six percent, and the insertion of a higher rate of interest by the holder constitutes a material alteration which renders the note invalid. Farmers State Bank v. Klein, 159 Colo. 165, 410 P.2d 632 (1966).

If the person executing a preprinted form note which provides a blank for interest does not want to be bound to such, then the provision should be stricken or the word "none" should be inserted in the blank; otherwise interest at the statutory rate is due. Fin. Mgmt. Task Force, Inc. v. Altberger, 807 P.2d 1230 (Colo. App. 1990).

D. Other Instruments of Writing.

The "other instrument of writing" as used in this section is one based on contractual relations, an instrument importing mutuality, one which implies an obligation to pay for a consideration rendered. Cobb v. Stratton's Estate, 56 Colo. 278, 138 P. 35 (1914).

A will is not such an instrument. Cobb v. Stratton's Estate, 56 Colo. 278, 138 P. 35 (1914).

Interest in a legacy is not allowable. Cobb v. Stratton's Estate, 56 Colo. 278, 138 P. 35 (1914).

The term "instrument of writing" has a definite legal meaning which excludes a verdict as something essentially different. Hawley v. Barker, 5 Colo. 118 (1879); Cobb v. Stratton's Estate, 56 Colo. 278, 138 P. 35 (1914).

An instrument of writing implies an agreement or contract which it contains and of which it is the memorial. Hawley v. Barker, 5 Colo. 118 (1879); Cobb v. Stratton's Estate, 56 Colo. 278, 138 P. 35 (1914).

This definition is in effect a declaration that such "other instrument of writing" must be one having the characteristics of a bond, bill, or promissory note and may not be something essentially different. Cobb v. Stratton's Estate, 56 Colo. 278, 138 P. 35 (1914).

A policy of insurance is a contract and is within the meaning of "other instrument of writing". Bloom v. Wolfe, 37 Colo. App. 407, 547 P.2d 934 (1976).

Coupons from municipal bonds, being issued by the municipality in its business, rather than its governmental function, are "promissory notes" or "other instruments of writing" within the meaning of this section and bear interest from their maturity as therein provided. Bd. of Comm'rs v. Geer, 108 F. 478 (8th Cir. 1901).

Where leased property is thrown into the hands of a receiver and the landlord directs the tenant to pay no rent to anyone, on which direction he so acts, this does not, under this section, relieve him from liability for interest on payments so withheld. Lamar Cold Storage Co. v. Union Ice & Storage Co., 77 Colo. 556, 238 P. 42 (1925).

E. Judgments.

A judgment creditor who has a claim which falls within the clearly expressed wording of this section is entitled to interest on such claim from the date and at the rate specified in the statute. Stone v. Currigan, 138 Colo. 442, 334 P.2d 740 (1959).

This section authorizes interest at the legal rate on the amount of a judgment from and after entry thereof. Denver-Albuquerque Motor Transp., Inc. v. Galligan, 145 Colo. 71, 358 P.2d 28 (1960).

Interest on a judgment is specifically authorized by this section. Sec. Ins. Co. v. Houser, 191 Colo. 189, 552 P.2d 308 (1976).

Pursuant to this section, interest is recoverable from the date the amount becomes due. Flight Sys. v. Elgood-Mayo Corp., 660 P.2d 909 (Colo. App. 1982).

Where the insurance contract does not specify a rate of interest, the general statutory rate of eight percent governs the recovery of postjudgment interest. Church v. Am. Standard Ins. Co., 764 P.2d 405 (Colo. App. 1988); Loza v. State Farm Mut. Auto. Ins. Co., 971 P.2d 251 (Colo. App. 1998).

Although an underinsured motorist policy is a contract and therefore would fall under this section, which dictates interest to accrue at eight percent, the claim under that policy may be premised upon a tort claim for bodily injury and therefore accrue interest at the higher rate dictated by § 13-21-101. Here, plaintiff's underinsured motorist claim was for damages resulting from the tort of another person, even though it also involved the contract with his insurer; therefore, he was entitled to the higher interest rate of § 13-21-101. Parker v. USAA, 216 P.3d 7 (Colo. App. 2007), aff'd, 200 P.3d 350 (Colo. 2009).

The postjudgment interest rate authorized by this section serves as the interest rate for judgments involving personal injury protection benefits. If the interest rate under § 10-4-708 were to serve as the prejudgment and the postjudgment interest rate, an inconsistency would exist between this section and § 10-4-708, which establishes the prejudgment interest rate in personal injury protection benefit cases. Loza v. State Farm Mut. Auto. Ins. Co., 971 P.2d 251 (Colo. App. 1998).

A trial court errs in awarding interest from the date of filing the complaint. Denver-Albuquerque Motor Transp., Inc. v. Galligan, 145 Colo. 71, 358 P.2d 28 (1960).

Allowing interest from date of arbitration award is not error. Columbine Valley Constr. Co. v. Bd. of Dirs., 626 P.2d 686 (Colo. 1981).

Interest accrues from the date of the wrong, not from the date of the judgment. Isbill Assocs., Inc. v. Denver, 666 P.2d 1117 (Colo. App. 1983); Bassett v. Eagle Telecomms., 750 P.2d 73 (Colo. App. 1987); Colo. Performance Corp. v. Mariposa Assocs., 754 P.2d 401 (Colo. App. 1987).

Interest on property damage award accrues from the time the cause of action accrued, that is, from the date on which the injured party was wronged. Federal Ins. Co. v. Ferrellgas, Inc., 961 P.2d 511 (Colo. App. 1997).

Interest on damage award in an ADA claim accrues from the date of judgment and not from the date of the jury verdict. Fail v. Cmty. Hosp., 946 P.2d 573 (Colo. App. 1997).

When attorney fees are awarded, not as damages but to shift the burden of litigation, interest on the award runs from the date of the final order quantifying the amount of fees and not from any earlier judgment or order that might have established a party's right to recover damages or fees without specifying an amount. Kennedy v. King Soopers Inc., 148 P.3d 385 (Colo. App. 2006).

Under this section fixing the rate of interest at six percent, a judgment fixing the rate of interest in such case higher is erroneous. Bd. of County Comm'rs v. Bd. of County Comm'rs, 15 Colo. 320, 25 P. 508 (1890).

After judgment is entered, this section is applicable in regard to collection of interest on judgment. Schoenfeld v. Neher, 453 F.2d 896 (10th Cir. 1972).

Insurer cannot owe postjudgment interest in absence of an enforceable judgment. Old Republic Ins. Co. v. Ross, 180 P.3d 427 (Colo. 2008).

A plaintiff on the entry of a judgment becomes a creditor as contemplated by this section; he becomes a judgment creditor and clearly comes within the statutory purview of those entitled to recover interest. Stone v. Currigan, 138 Colo. 442, 334 P.2d 740 (1959).

Where a judgment is entered "nunc pro tunc", plaintiff should have interest on the amount to be found due as of the date it is considered reduced to judgment since, except as to the rights of third persons, a judgment "nunc pro tunc" is retrospective and has the same force and effect, to all intents and purposes, as though it had been entered at the time when the judgment was originally rendered. Stone v. Currigan, 138 Colo. 442, 334 P.2d 740 (1959).

Similarly, where the court orders claims to be restored "with legal interest", such claims duly allowed are of like significance, and bear the same interest as entered judgments under this section. Myers v. Colo. Pulp & Paper Co., 95 Colo. 328, 35 P.2d 1020 (1934).

A verdict for the full amount due under a contract of sale is tantamount to a determination that plaintiffs substantially complied with the terms of the contract, and that the sums provided therein became due and payable according to its tenor; this being so, they are entitled to statutory interest after maturity. Baer Bros. Land & Cattle Co. v. Reed, 197 F.2d 569 (10th Cir. 1952).

Where a motion for a new trial is overruled and thereafter a trial court computes interest on the verdict and orders judgment in the amount of the verdict and interest, this concludes the trial court's action relative to the judgment, and it becomes the final judgment. Green v. Jones, 134 Colo. 208, 304 P.2d 901 (1956).

In a suit on a foreign judgment, it is proper to allow interest on the original judgment and make the sum of principal and interest the principal amount of the judgment, which will also draw interest. Bruckman v. Taussig, 7 Colo. 561, 5 P. 152 (1884).

Judgment awarding prejudgment interest is not final until the amount of such interest is reduced to a sum certain. Grand County Custom Homebuilding, LLC v. Bell, 148 P.3d 398 (Colo. App. 2006).

Garnishor is entitled to postjudgment interest on a garnishment amount based on the garnishee's unreasonable delay in paying the sums due. There is no basis to treat a garnishee against whom a judgment is entered differently from a defendant against whom another judgment is entered. Thompson v. Catlin Ins. Co. (UK) Ltd., 2018 CO 95, 431 P.3d 224.

F. Accounts and Money Due on Account.

This section provides that interest shall be allowed upon all moneys after they become due. Peterson v. Shaffer, 143 Colo. 138, 352 P.2d 281 (1960).

Any creditor who can bring himself within the terms of this section is entitled to interest from his debtor. Stone v.

Currigan, 138 Colo. 442, 334 P.2d 740 (1959); Mass. Bonding & Ins. Co. v. State ex rel. Mallin, 141 Colo. 259, 347 P.2d 507 (1959).

While this section does not say who shall pay interest, it necessarily follows that if a creditor is entitled to receive interest, his debtor must be charged with the payment thereof; if a judgment creditor is entitled to recover interest then the judgment debtor must be the one to pay it, since this section does not expressly or by implication exclude or except any judgment creditor or judgment debtor. Stone v. Currigan, 138 Colo. 442, 334 P.2d 740 (1959).

This section is clear and concise with reference to judgment creditors. Stone v. Currigan, 138 Colo. 442, 334 P.2d 740 (1959).

This section, because it imposes upon the debtor an additional burden in the way of damages for the withholding of money after it becomes due on account, should be strictly construed. Patten v. Am. Nat'l Bank, 15 Colo. App. 479, 63 P. 424 (1900); Smith-McCord-Townsend Co. v. Camenga, 104 Colo. 7, 87 P.2d 751 (1939); Hunter v. Wilson, 147 Colo. 36, 362 P.2d 553 (1961).

Meaning of word "account". The word "account", when used alone, as in this section, without words of limitation, extension, qualification, or explanation is sometimes equivalent to the word "claim" or "demand" when referring to an indebtedness arising out of contract or some fiduciary relation. Donley v. Bailey, 48 Colo. 373, 110 P. 65 (1910).

"Money due on account" includes fixed commission. As this section does not limit or qualify the meaning of the word "account", the phrase "money due on account", must include the claim of one who by procuring a lease of lands for another earns a fixed sum as a commission, and he is entitled to interest from the time the claim became due, it being liquidated. Donley v. Bailey, 48 Colo. 373, 110 P. 65 (1910); Harvey v. Denver & R. G. R. R., 56 Colo. 570, 139 P. 1098 (1914).

The award of interest on commissions from the dates of the deeds, based on the reasonable determination that the commissions are due at such times, is proper. Manufacturer's Nat'l Bank v. Hartmeister, 411 F.2d 173 (10th Cir. 1969).

Interest may be recovered on a liquidated sum admitted to be due and payable on a day certain. Higgins v. Armstrong, 9 Colo. 38, 10 P. 232 (1886); Harvey v. Denver & R. G. R. R., 56 Colo. 570, 139 P. 1098 (1914).

This section in its present form has been carried over into the law of Colorado from early time, and the Colorado courts have traditionally required the allowance of interest on liquidated claims. N. Drive-In Theatre Corp. v. Park-In Theatres, Inc., 248 F.2d 232 (10th Cir. 1957).

The federal courts have given the statute a like construction. N. Drive-In Theatre Corp. v. Park-In Theatres, Inc., 248 F.2d 232 (10th Cir. 1957).

So where the amount payable under a contract is a liquidated amount, it falls

within the definitions contained in the statute. York Plumbing & Heating Co. v. Groussman Inv. Co., 166 Colo. 382, 443 P.2d 986 (1968).

A liability fixed by law is a liquidated liability. T. & M. Transp. Co. v. Shattuck Chem. Co., 158 F.2d 909 (10th Cir. 1947).

For interest recovered by carrier under interstate commerce act, see T. & M. Transp. Co. v. Shattuck Chem. Co., 158 F.2d 909 (10th Cir. 1947).

State entitled to interest on taxes not paid to treasurer by state auditor. Where the state auditor keeps an account of the money received by him for taxes, which is due within 30 days after he receives it — that is, the statute requires him to pay it into the treasury within the 30 days — on each payment of taxes not paid over to the treasurer the state is entitled to interest under this section from the expiration of 30 days after its receipt by the auditor. Am. Bonding Co. v. People, 53 Colo. 512, 127 P. 941 (1912).

As towns and cities in business transactions are liable for interest, in the absence of statute, the same as private corporations or individuals, despite the conclusion reached by this court in Bd. of Comm'rs v. Wheeler, 39 Colo. 207, 89 P. 50 (1907), which was but dicta in that case. City of Golden v. W. Lumber & Pole Co., 60 Colo. 382, 154 P. 95 (1916).

In entering into a contract for services, a city lays aside its attributes of sovereignty and becomes liable just as an individual would be liable, including for interest. City & County of Denver v. Thomas, 176 Colo. 483, 491 P.2d 573 (1971).

A city which refuses or neglects payment of a just demand is liable for interest thereon. City of Golden v. W. Lumber & Pole Co., 60 Colo. 382, 154 P. 95 (1916).

Additionally, interest is allowable on mechanics' lien claims as an incident to the debt against the property. Buerger Inv. Co. v. Salzer Lumber Co., 77 Colo. 401, 237 P. 162 (1925).

Interest is allowed upon a balance due for work performed. Donley v. Bailey, 48 Colo. 373, 110 P. 65 (1910); Idaho Gold Coin Mining & Milling Co. v. Colo. Iron Works Co., 49 Colo. 66, 111 P. 553 (1910); Wells v. Crawford, 23 Colo. App. 103, 127 P. 914 (1912).

An unliquidated claim does not come within the statute as to allowance of interest. Hunter v. Wilson, 147 Colo. 36, 362 P.2d 553 (1961).

Where a claim for damages has never been settled, it is unliquidated, and therefore this section is not applicable. Credit Inv. & Loan Co. v. Guar. Bank & Trust Co., 166 Colo. 471, 444 P.2d 633 (1968).

Where the claim for damages for breach of warranty is unliquidated, such does not fall within the types of debts enumerated by the statute. York Plumbing & Heating Co. v. Groussman Inv. Co., 166 Colo. 382, 443 P.2d 986 (1968).

The mere fact that claims are in dispute does not preclude the recovery of interest

thereon. N. Drive-In Theatre Corp. v. Park-In Theatres, Inc., 248 F.2d 232 (10th Cir. 1957).

The mere fact that one disputes the amount due on a bill does not render an account unliquidated; hence, one is therefore entitled to interest from the date he rendered his bill, at which time the account became due and payable. W. Oil Fields, Inc. v. Coit, 29 Colo. App. 567, 487 P.2d 562 (1971).

There is no requirement that the arbitration award be a monetary judgment before interest is awarded. Subsection (3) provides that interest shall be allowed even if the amount is unliquidated at the time of the wrongful withholding. Wilson v. Estate of Lawrence, 910 P.2d 67 (Colo. App. 1995).

A debtor cannot avoid the payment of interest by disputing the account, and when at the trial the account or any portion of it is established, the creditor is entitled to interest upon the amount found to be due. Florence & Cripple Creek R. R. v. Tennant, 32 Colo. 71, 75 P. 410 (1904); York Plumbing & Heating Co. v. Groussman Inv. Co., 166 Colo. 382, 443 P.2d 986 (1968).

Claiming unliquidated setoff against whole debt. A debtor cannot defeat the running of interest against him for the part of a debt which he admits that he owes, and which would otherwise draw interest, by simply making a claim of an unliquidated setoff against the whole debt. York Plumbing & Heating Co. v. Groussman Inv. Co., 166 Colo. 382, 443 P.2d 986 (1968).

Interest allowed only on balance due. Where a claim under an agreement is certain and liquidated, but is reduced because of the allowance of an unliquidated setoff or counterclaim, interest may be allowed only on the balance due. York Plumbing & Heating Co. v. Groussman Inv. Co., 166 Colo. 382, 443 P.2d 986 (1968).

Setoff should be at time due. The claim of the debtor not bearing interest should be set off against that of the creditor drawing interest as of the date of the time it became due and owing. York Plumbing & Heating Co. v. Groussman Inv. Co., 166 Colo. 382, 443 P.2d 986 (1968).

For the interest on "money due on settlement of an account from the day of the last just entry made on account" under earlier provision, see Bergundthal v. Bailey, 15 Colo. 257, 25 P. 86 (1890).

G. Money Fraudulently Converted.

Interest for tortious taking or detention of money or property. By distinguishing between interest as such and interest as damages the equivalent of interest in the way of damages for the tortious taking and detention of money or property is allowed, even when interest is not recoverable under the statute. Where interest is allowed as damages and there is an absence of proof as to the rate which would produce the amount the statutory legal rate should be adopted. Bankers Trust Co. v. Int'l Trust Co., 108 Colo. 15, 113 P.2d 656 (1941).

Where record does not disclose that amounts charged against a fiduciary were levied because of a fraudulent taking, there is no reversible abuse of discretion by

the trial court in refusing interest on such amounts. Latta v. Henry, 28 Colo. App. 220, 472 P.2d 690 (1970).

III. NONALLOWANCE OF INTEREST.

There is no provision for interest upon damages resulting from the wrongful taking of property, and without statutory authority, it is not recoverable. Greeley, S. L. & Pac. Ry. v. Yount, 7 Colo. App. 189, 42 P. 1023 (1895); Banker's Trust Co. v. Int'l Trust Co., 108 Colo. 15, 113 P.2d 656 (1941).

Damages to property arising from the wrong or negligence of a defendant is not one of the enumerated cases. Denver, S. P. & P. R. R. v. Conway, 8 Colo. 1, 5 P. 142, 54 Am. R. 537 (1884).

An action in damage for a breach of warranty is not one of the enumerated cases. Weaver v. First Nat'l Bank, 138 Colo. 83, 330 P.2d 142 (1958).

Also, interest is not recoverable upon an unliquidated demand, for under all the authorities, even where interest is recoverable upon an unliquidated claim, it does not begin to run until the date of the demand, and the beginning of a suit is deemed equivalent to a demand. Denver, S. P. & P. R. R. v. Moynahan, 8 Colo. 56, 5 P. 811 (1884); Dexter v. Collins, 21 Colo. 455, 42 P. 664 (1895); T. & M. Transp. Co. v. Shattuck Chem. Co., 158 F.2d 909 (10th Cir. 1947); Schlottman v. Pressey, 195 F.2d 343 (10th Cir. 1952).

Interest cannot be allowed on unliquidated claims. Yeager Garden Acres, Inc. v. Summit Constr. Co., 32 Colo. App. 242, 513 P.2d 458 (1973); I.M.A., Inc. v. Rocky Mtn. Airways, Inc., 713 P.2d 882 (Colo. 1986) (decided under former law).

In Colorado statutory interest cannot be awarded under this section on an unliquidated claim, but this does not end the matter. Statutory interest is one thing, but there is another kind of interest — moratory interest or interest by way of damages. Davis Cattle Co. v. Great W. Sugar Co., 393 F. Supp. 1165 (D. Colo. 1975), aff'd, 544 F.2d 436 (10th Cir. 1976).

Interest is not allowable upon a balance due for work. Hurlburt v. Dusenbery, 26 Colo. 240, 57 P. 860 (1899).

Nothing contained in this section can be construed to authorize the recovery of interest in an action for damages for fraud and deceit. Clark v. Giacomini, 85 Colo. 530, 277 P. 306 (1929).

Interest is not recoverable on the amount of a verdict, although a substantial period of time (e.g., two years) has elapsed from the date of its rendition up to the time of the entry of judgment thereon. Hawley v. Barker, 5 Colo. 118 (1879).

County acting in governmental purpose not within this section. A county, being essentially an agency of the state for general governmental purposes, is not within the purview of this section regulating the rate and payment of interest upon money due or to become due from it. Roberts v. Bd. of County Comm'rs, 94 Colo. 149, 28 P.2d 813 (1934).

It was not the intention of the general assembly to allow interest upon claims against counties by virtue of this section,

because § 5-12-104 provides that county orders and warrants and other like evidences or certificates of indebtedness shall bear interest at the rate of six percent. If it was intended that obligations of the county other than those mentioned in § 5-12-104 should draw interest, as provided in this section, the enactment of this section would have been idle, because it provides for the allowance of interest "on any bond, bill, promissory note or other instrument of writing", which expressions are broad enough to include county orders and warrants and other like evidences of municipal indebtedness. The rule being that counties may not have liabilities imposed upon them in the absence of a statute, and the fact that the general assembly provided that county orders, warrants and other like evidences of municipal indebtedness shall bear interest, it must have intended to exclude all obligations other than those mentioned, expressio unius est exclusio alterius. Bd. of County Comm'rs v. Wheeler, 39 Colo. 207, 89 P. 50 (1907); City of Golden v. W. Lumber & Pole Co., 60 Colo. 382, 154 P. 95 (1916).

Interest is not recoverable against a municipal corporation on claims arising out of its actions in a governmental capacity. Police Pension & Relief Bd. v. Behnke, 143 Colo. 365, 353 P.2d 370 (1960).

Where the rights and duties of the parties are adjudicated and determined, then where plaintiffs have a money judgment, they are entitled to statutory interest thereon. Police Pension & Relief Bd. v. Behnke, 143 Colo. 365, 353 P.2d 370 (1960).

This section does not authorize the awarding of interest on overdue interest. It may be true that interest, when it has become payable, is "money become due", but a fair construction of this section will allow the language to cover only interest upon the principal, within the legislative intent, especially in view of the provision of § 5-12-103 allowing any rate to be agreed upon. So, this statute does not authorize the awarding of interest on overdue interest. Denver Brick, etc., Co. v. McAllister, 6 Colo. 261 (1882); Bd. of County Comm'rs v. Linn, 29 Colo. 446, 68 P. 839 (1902).

Where interest is claimed as damages and principal is accepted without interest right to interest is extinguished. Where interest is claimed as damages by virtue of the nonpayment of a debt when due, and for that reason is allowed by law, it is then considered not an integral part of a debt, but merely as an incident to the debt, and in such cases when the principal is paid and accepted without interest, the right to interest is extinguished. Bassick Gold Mine Co. v. Beardsley, 49 Colo. 275, 112 P. 770 (1911).

A protest for the nonpayment of the interest does not change this rule. Bassick Gold Mine Co. v. Beardsley, 49 Colo. 275, 112 P. 770 (1911).

Similarly, a receipt "in payment of above account" is a complete settlement, barring fraud or mistake, and precludes a subsequent claim of interest on the grounds that the amount was not paid promptly at its maturity. Bassick Gold Mine Co. v. Beardsley, 49 Colo. 275, 112 P. 770 (1911).

Section not applicable to judgment determining rights to funds paid into court. This statute, which allows judgment creditors to receive interest, does not apply to a judgment determining the right to funds paid into court, especially in an interpleader action, where the judgment is against the fund, not against the other parties. Ritter v. Wysowatcky, 32 Colo. App. 410, 514 P.2d 333 (1973).

Prejudgment interest cannot apply to punitive damage awards. Coale v. Dow Chem. Co., 701 P.2d 885 (Colo. App. 1985).

If there is a specific agreement for interest, but the right to interest has been waived, this section is not applicable. Ebrahimi v. E.F. Hutton & Co., Inc., 794 P.2d 1015 (Colo. App. 1989).

Where demand for payment under a performance bond was not made before suit was filed, interest on the judgment should be awarded to plaintiff only from the date the complaint was filed. Riva Ridge Apts. v. Robert G. Fisher Co., 745 P.2d 1034 (Colo. App. 1987).

Subsection (1) affords plaintiff no basis for recovery when the plaintiff's claim for interest arises from a personal injury and not as a creditor or a party to a contract. Subsection (1) generally pertains to post-judgment interest that applies to debt, contract, and property damage cases. Schnacker v. State Farm Mut. Auto. Ins. Co., 843 P.2d 102 (Colo. App. 1992).

Future wages and benefits are not "due" within meaning of this section. Therefore, prejudgment interest should not have been awarded on the portion of a judgment representing lost future wages and benefits. Shannon v. Colo. Sch. of Mines, 847 P.2d 210 (Colo. App. 1992); Dillen v. HealthOne, L.L.C., 108 P.3d 297 (Colo. App. 2004).

Prejudgment interest may not be awarded for future damages. Life Care Ctrs. v. E. Hampden Assoc., 903 P.2d 1180 (Colo. App. 1995).

Prejudgment interest, under a theory of wrongful withholding, is not available on an award for attorney fees to compensate plaintiffs for the loss of use of their money. Roget v. Grand Pontiac, Inc., 5 P.3d 341 (Colo. App. 1999).

Consequential damages resulting from a wrongful withholding are not subject to prejudgment interest. Only the amounts actually withheld may draw interest under this section. S. Park Aggregates, Inc. v. Nw. Nat. Ins. Co., 847 P.2d 218 (Colo. App. 1992).

Section is inapplicable when another party absconded with the plaintiff's money. Defendant was not the party wrongfully withholding the money and did not realize a gain or benefit by retaining it. Messler v. Phillips, 867 P.2d 128 (Colo. App. 1993).

Prejudgment interest may not be awarded by trial court upon confirmation of arbitration award where such interest was not requested during the arbitration. Duncan v. Nat'l Home Ins. Co., 36 P.3d 191 (Colo. App. 2001).

Where an award of attorneys fees was properly characterized as analogous to

costs rather than damages, the court abused its discretion by awarding moratory interest on the fees. Farmers Reservoir & Irrigation Co. v. City of Golden, 113 P.3d 119 (Colo. 2005).

An award of postjudgment interest is not proper when the award of wages to employee is used to set off the greater amount that employee owes employer for the special master's fee. Remote Switch Sys. v. Delangis, 126 P.3d 269 (Colo. App. 2005).

In the absence of any Colorado authority applying subsection (1) to an insurer's recoupment claim, and in light of the parties' plausible conflicting arguments about the statute's applicability, federal court of appeals was unable to conclude that insurers met their burden of establishing that Colorado law requires an award of prejudgment interest under the circumstances. Valley Forge Ins. Co. v. Health Care Mgmt. Partners, Ltd., 616 F.3d 1086 (10th Cir. 2010).

IV. NOTICE OR DEMAND.

Some kind of notice must be given debtor before creditor can recover interest. The only reasonable construction of this section is that even though a debtor may be unable to pay, and a demand therefor be excusable to that extent, still there must be some notice to him of some kind, either by the institution of a suit, or otherwise, of the creditor's intention to terminate the relation of debtor and creditor by declaring the maturity of a debt, or some act of the creditor evidencing such desire and intention, before he can be allowed to recover interest. Patten v. Am. Nat'l Bank, 15 Colo. App. 479, 63 P. 424 (1900).

The relation between a bank and its depositor is that of debtor and creditor, the debt becoming due and payable on demand, and even though a bank may be unable to pay, and a demand therefore be excusable to that extent, still there must be some notice by the depositor of his intention of terminating the relation of debtor and creditor by declaring the maturity of the debt before he can recover interest on his deposit under this section. Patten v. Am. Nat'l Bank, 15 Colo. App. 479, 63 P. 424 (1900).

Hence, no interest on bank account until demand is made. In cases of general deposits in a bank, unless there be some agreement or usage to the contrary, the undertaking of the bank is only to repay upon demand. Such an account, therefore, does not become due under this section until demand is made for it, and the bank is not in default, or liable to respond in damages, until such demand and refusal. Hence, under this general rule, a plaintiff is not entitled to receive interest on his deposit, unless the circumstances were such as to legally excuse him from making a demand prior to the time when he did make it. Patten v. Am. Nat'l Bank, 15 Colo. App. 479, 63 P. 424 (1900).

The fact that a bank is temporarily suspended and its assets are temporarily in the hands of a receiver appointed by the government does not excuse a depositor from making demand so as to render the account due and cause it to draw interest without demand. Patten v. Am. Nat'l Bank, 15 Colo. App. 479, 63 P. 424 (1900).

Interest, whether as damages or under this section, must be given from the date of the demand of payment for labor performed and materials furnished. In an action at law on a contract for work done and materials furnished, this section, respecting the allowance of interest, is mandatory. It leaves no discretion in the court to take into consideration, as in equity cases, the laches of the demandant in bringing the suit. City of Denver v. Barber Asphalt Paving Co., 141 F. 69 (8th Cir. 1905).

Absent any agreement by the parties on interest, interest becomes due after payment at the statutory rate on the unpaid balance of the principal from the date that demand for payment is made. Knisley v. Parsons, 172 Colo. 533, 474 P.2d 599 (1970).

Where money is to be paid if third party does not, it is unnecessary to make a demand. Where a contract provides that the parties of the first part will pay the party of the second part a certain sum of money if the sum is not paid by a third party within a specified time, and such third party fails to do so, then it is not necessary to either make a demand upon such third party for payment or to notify the parties of the first part of such failure in order to mature the obligation so as to draw interest in accordance with this section, as the money becomes due upon the failure to pay at the expiration of the specified time and the allowance of interest from the date of the commencement of the suit does not constitute prejudicial error. Doyle v. Nesting, 37 Colo. 522, 88 P. 862 (1907), distinguishing Dexter v. Collins, 21 Colo. 455, 42 P. 664 (1895).

In the context of determining when payment of debt is wrongfully withheld, either formal demand or circumstances demonstrating a reasonable expectation of payment renders nonpayment wrongful. A letter from an accounting firm satisfied the need for a formal demand for payment, under the theory of wrongful withholding. The parties had retained the firm to examine their mutual accounts and determine their respective obligations. The firm determined the amount of each party's debt and communicated the amounts in a letter to each party. The letter established a present expectation of payment of which both parties were aware. Thus the letter satisfied the need for a formal demand for payment. Karg v. Mitchek, 983 P.2d 21 (Colo. App. 1998).

V. COMPUTATION.

Interest should start to run from the date of the entry of a judgment. Weaver v. First Nat'l Bank, 138 Colo. 83, 330 P.2d 142 (1958).

At six percent. Under this section, upon execution or satisfaction of judgments, interest should be collected at six percent per annum from the date of each judgment. Davies v. Craig, 70 Colo. 473, 203 P. 267 (1921).

Prejudgment interest award must be based on the final judgment of the court and not the amount of damages initially awarded by the jury, which the court subsequently reduced. Top Rail Ranch Estates, LLC v. Walker, 2014 COA 9, 327 P.3d 321.

Interest should begin accruing on the date the defendant began wrongfully withholding the joint venture funds. The defendant had a reasonable time in which to wind up the joint venture. The trial court found that he willfully failed to do so, and accordingly, pursuant to the statute, interest should have been awarded from date the willful delay began. Wilson v. Estate of Lawrence, 910 P.2d 67 (Colo. App. 1995).

One who is damaged by a breach of duty may recover prejudgment interest from the date of the breach, since it is the breach itself that makes the conduct wrongful. Porter Constr. Servs. v. Ehrhardt, Keefe, Steiner, & Hottman, P.C., 131 P.3d 1115 (Colo. App. 2005).

Thus, a judgment against a local government bears interest from the date of its entry. Stone v. Currigan, 138 Colo. 442, 334 P.2d 740 (1959).

Interest allowed from date of filing complaint. This section concerning interest on damage claims is mandatory to the end that a trial judge shall compute and enter interest on any verdict or judgment calculated from the date of the filing of the complaint. Green v. Jones, 134 Colo. 208, 304 P.2d 901 (1956); Denver-Albuquerque Motor Transp., Inc. v. Galligan, 145 Colo. 71, 358 P.2d 28 (1960).

A trustee in bankruptcy who sues for the value of stock issued by an insolvent corporation is entitled to interest from the date of commencing his action. Feiring v. Gano, 114 Colo. 567, 168 P.2d 901 (1946).

Interest computed from date of performance on plaintiff's part. Where there was a balance due plaintiffs under a written contract which had on plaintiff's part been fully performed prior to a certain date, this date is the date from which interest should be computed, if allowed, and the amount being due on a written instrument, plaintiffs are entitled to interest under this section, unless there had been a tender made by defendant. And a deposit of the amount due in court "payable to the plaintiff on demand" is not a tender. Harvey v. Denver & R. G. R. R., 56 Colo. 570, 139 P. 1098 (1914).

Money not turned over by treasurer to successor draws interest from date latter assumed office. Money in the hands of a county treasurer belonging to a county and not turned over to his successor at the time the latter assumed the duties of the office would draw interest under this section at the legal rate from that date, and the sureties on his official bond are liable to the county for such money with interest. Gartley v. People ex rel. Pueblo County, 28 Colo. 227, 64 P. 208 (1901).

Agent who converts principal's money is liable for interest from date of transaction. An agent, who being employed to lend the money of his principal converts it to his own use is liable either in assumpsit or in an action ex delicto for the interest upon the money under this section, from the date of the transaction. Boyle v. Poor, 62 Colo. 337, 163 P. 967 (1916).

Interest allowed on account when due. Where in an action containing three counts, the first upon a stated account, the second upon an open book account, and the third for money had and received, plaintiff is entitled

to interest on the first count from the date the account was stated, and on the second count from the date the account became due and payable, but disallowed interest on the third. Mine & Smelter Supply Co. v. Parke & Lacy Co., 107 F. 881 (8th Cir. 1901).

Under this section, a party furnishing supplies to a corporation pursuant to a written contract providing that the amount furnished in each calendar month shall be paid for on a day certain in the succeeding month is to be allowed interest on each monthly amount from the day it matures until payment made. Florence Oil & Ref. Co. v. McRae, 40 Colo. 303, 90 P. 507 (1907); Bassick Gold Mine Co. v. Beardsley, 49 Colo. 275, 112 P. 770 (1911).

Similarly, interest from due date of rent is allowed. In an action for money due for rent by virtue of a written lease, the claim sued on is clearly included in this section, and the plaintiff is entitled to interest from the due date of the installments of rent to the date of judgment. Wells v. Crawford, 23 Colo. App. 103, 127 P. 914 (1912); Lamar Cold Storage Co. v. Union Ice & Storage Co., 77 Colo. 556, 238 P. 42 (1925); Macaluso v. Easely, 81 Colo. 50, 253 P. 397 (1927).

The fact that the court does not at the time of the entry of judgment compute the amount of the interest accrued to that date is not material; the computation can be made at any time. Mass. Bonding & Ins. Co. v. State ex rel. Mallin, 141 Colo. 259, 347 P.2d 507 (1959).

When no authority for interest from date of executor's sale. Where an executor contends that the trial court erred in awarding interest on the amount received from the property from the date of sale, rather than only from the date of judgment, then, where there has been no showing and no finding on the part of the trial court that the money received was held without the owner's consent, there is no authority for the award of interest from the date of sale. In re Estate of Granberry, 30 Colo. App. 590, 498 P.2d 960 (1972).

Where a partnership is dissolved by one partner selling to his co-partners his interest at a fixed cash sum, an unpaid balance of the purchase price under this section will draw interest at the legal rate from the date of the transaction. Cobb v. Benedict, 27 Colo. 342, 62 P. 222 (1900).

In an action for an accounting where a joint venturer seeks to recover his share of the profits, he is entitled to the legal rate of interest from the date of demand to the date of filing of the master's report. Pepper v. Hyman, 117 Colo. 365, 189 P.2d 155 (1947).

The offset of an unliquidated claim against a liquidated claim before the computation of interest is permitted, at least in situations in which the two claims arise out of the same general transaction. York Plumbing & Heating Co. v. Groussman Inv. Co., 166 Colo. 382, 443 P.2d 986 (1968).

Where the claims do not arise out of the same general transaction, the offset of an unliquidated claim against a liquidated claim before computation of interest is not

permitted. Karg v. Mitchek, 983 P.2d 21 (Colo. App. 1998).

Under the terms of an agreement with a bank, the amount which an armored motor service was obligated to pay the bank as a result of a robbery from their truck became due the day the bank's money disappeared from the truck. Accordingly, the bank was entitled to interest on that obligation, arising under the instrument of writing, from and after that date. Jefferson County Bank v. Armored Motors Serv., 148 Colo. 343, 366 P.2d 134 (1961).

Where a note is made payable "with interest", without specifying the rate, or the time from which the interest is to be computed, the general rule is that the note carries interest from the date of its execution at the legal rate fixed by law. Salazar v. Taylor, 18 Colo. 538, 33 P. 369 (1893).

Where the stated rate on a note is unintelligible, this rule likewise applies, and the legal rate fixed by this section would govern. Salazar v. Taylor, 18 Colo. 538, 33 P. 369 (1893).

Compound interest may not be recovered. Denver Brick & Mfg. Co. v. McAllister, 6 Colo. 261 (1882).

This rule does not apply to unpaid coupons of municipal bonds. The rule that compound interest may not be recovered does not apply to unpaid coupons belonging to or cut from municipal bonds; interest may be recovered on overdue coupons on county bonds. Bd. of Comm'rs v. Linn, 29 Colo. 446, 68 P. 839 (1902).

Such coupons draw interest after maturity. City of Cripple Creek v. Adams, 36 Colo. 320, 85 P. 184 (1906).

Mode of determining property value for services and consumption. Where the property is domestic animals, valuable for service only, the value of the use of the animal is the measure of compensation, and where the article is intended for consumption, interest upon the value of it would seem to be the true compensation. Thus, if the owner of goods should ask to obtain the like quantity, he must purchase in the market at current rates, and he would be deprived of the use of the money thus invested, the best estimate of a loss that can be made is interest upon the amount of money which he would for that purpose be compelled to pay out. Ark. Valley Land & Cattle Co. v. Mann, 130 U.S. 69 (1899).

Interest upon the cost of a silver mill might be taken by a jury as its fair rental value, in the absence of other evidence concerning that value. N.Y. & Colo. Mining Syndicate & Co. v. Fraser, 130 U.S. 611 (1889).

Interest on damages for injuries to property or torts commences on date of judgment. The Colorado statute dealing with interest on damages provides that in personal injury cases interest commences as of the date of the filing of the complaint. No mention is made of property injuries or torts. Inasmuch as these are unliquidated, the general rule is that the interest commences to run as of the date of judgment. Westric Battery Co. v. Standard Elec. Co., 482 F.2d 1307 (10th Cir. 1973).

Interest allowed from date defective product was installed, since product was defective at the time of installation. Loughridge v. Goodyear Tire & Rubber Co., 281 F. Supp. 2d 1252 (D. Colo. 2003), aff'd, 431 F.3d 1268 (10th Cir. 2005).

Interest awarded on breach of contract judgment from time money due. The court concluded there was a binding contract between the parties; thus the judgment was based upon breach of contract rather than quantum meruit and interest was properly awarded from the time the money was due. Warde v. Davis, 494 F.2d 655 (10th Cir. 1974); Danburg v. Realties, Inc., 677 P.2d 439 (Colo. App. 1984).

Interest from date of filing of counterclaim. Subsections (1)(b) and (3) provide that interest shall be from the time moneys were wrongfully withheld or became due and where there is no evidence of any wrongful withholding or demand or expectation of payment by claimant prior to the filing of the counterclaim, trial court was correct in awarding prejudgment interest from such date. W.H. Woolley & Co. v. Bear Creek Manors, 735 P.2d 910 (Colo. App. 1986).

Plaintiff is entitled to interest from the time his action accrues. Action for rescission arose when plaintiff amended his complaint and first requested rescission. Prior to that demand, there was no wrongful withholding of the money paid for the house. Wall v. Foster Petroleum Corp., 791 P.2d 1148 (Colo. App. 1989).

No exception for mandamus action. Under this section, the trial court is required to assess interest at the rate of eight percent on any judgment rendered to run from the date of the judgment, and no exception is made for a mandamus action. Denver Ass'n for Retarded Children v. Sch. Dist. No. 1, 188 Colo. 310, 535 P.2d 200 (1975).

Where judgment in favor of plaintiff was affirmed on appeal but case was remanded for a new trial on the issue of damages, and trial court on remand determined damages and entered judgment thereupon, plaintiff was entitled to interest on that amount only from the date the later judgment was entered. Yeager Garden Acres, Inc. v. Summit Const. Co., 32 Colo. App. 242, 513 P.2d 458 (1973).

Prejudgment interest awarded from date of judgment quieting title to disputed property. Prejudgment interest on royalties from oil and gas extraction from disputed property awarded only from the date plaintiff won judgment quieting title in the property and not from earlier date on which plaintiff asserted an ownership claim to the property. Royalty payments could not be considered to be wrongfully withheld until plaintiff's ownership of the property was no longer in dispute. Beaver Creek Ranch v. Gordman Leverich Ltd., 226 P.3d 1155 (Colo. App. 2009).

Insurer paid interest from date judgment entered to date liability was paid. An insurer was obligated to pay all interest accruing on a judgment from the date of its entry to the date on which it paid the amount of its liability under the policy. Houser v. Eckhardt, 35 Colo. App. 155, 532 P.2d 54 (1974), aff'd, 191 Colo. 189, 552 P.2d 308 (1976).

To award a buyer the additional cost of cover as well as the entire benefit realized by the seller would be duplicative in the calculation of moratory interest in the case of a seller's wrongful withholding of property by breaching a sales contract. Great W. Sugar Co. v. KN Energy, Inc., 778 P.2d 272 (Colo. App. 1989).

Section requires that prejudgment interest be awarded where money is wrongfully withheld. Because rescission is an equitable remedy, the court has discretion is determining the appropriate relief for the parties and such an award of prejudgment interest must be incorporated in the court's assessment of the equities. Wall v. Foster Petroleum Corp., 791 P.2d 1148 (Colo. App. 1989).

Interest should be awarded when money is wrongfully withheld. Only the portion of the fees in dispute are required to be kept in a separate account until the dispute is resolved. If a larger amount is withheld, interest should be awarded. Scott R. Larson, P.C. v. Grinnan, 2017 COA 85, 488 P.3d 202.

Fact that amount due is disputed or unclear does not render a claim unliquidated for purposes of awarding interest under subsection (4). Montgomery Ward & Co. v. State, Dept. of Rev., 675 P.2d 318 (Colo. App. 1983).

Interest awarded on judgment against natural gas pipeline company for refusal to honor contract to sell natural gas to buyer at a reduced, industrial rate may properly be calculated using "gas husbanding model", the equation being seller's return on rate base, plus seller's excess profits, minus seller's operating profit credit. Great W. Sugar Co. v. KN Energy, Inc., 778 P.2d 272 (Colo. App. 1989).

To the extent that an award made under the statute provides double compensation for the same wrong, it cannot stand. The wording and legislative history of subsection (1)(a) and the commitment to fairness underlying the doctrine of moratory interest leads to the conclusion that the statute may not be used to impose double or other punitive damages. Great W. Sugar Co. v. KN Energy, Inc., 778 P.2d 272 (Colo. App. 1989).

Interest from the time the action accrues is proper in a case where demand for payment is not an element of the plaintiff's case. Deacon v. Am. Plant Food Corp., 782 P.2d 861 (Colo. App. 1989), rev'd on other grounds sub nom. Stone's Farm Supply, Inc. v. Deacon, 805 P.2d 1109 (Colo. 1991).

Wife is entitled to statutory interest from date of closing on her share of proceeds from home sale ordered as part of property division in a marital dissolution action. Such interest is proper to enforce the judgment. In re Schutte, 721 P.2d 160 (Colo. App. 1986); In re Connell, 831 P.2d 913 (Colo. App. 1992).

Without proof of defendant's gain, the statutory rate of interest applies. Ballow v. PHICO Ins. Co., 878 P.2d 672 (Colo. 1994).

Standard applied in Atl. Richfield Co. v. Farm Credit Bank of Wichita, 226 F.3d 1138 (10th Cir. 2000).

When jury's award does not distinguish between past and future wages, it still may be possible to apportion award based on a number of available formulas. Shannon v. Colo. Sch. of Mines, 847 P.2d 210 (Colo. App. 1992).

Date when a claim accrues for statute of limitations purposes is independent from the date of the wrongful withholding for the purpose of awarding interest. Eads v. Dearing, 874 P.2d 474 (Colo. App. 1993; Loughridge v. Goodyear Tire & Rubber Co., 281 F. Supp. 2d 1252 (D. Colo. 2003), aff'd, 431 F.3d 1268 (10th Cir. 2005).

Where trial court found that wrongful withholding occurred in 1980, even though plaintiff did not discover the wrongful withholding until 1989, court correctly awarded interest from 1980. Eads v. Dearing, 874 P.2d 474 (Colo. App. 1993).

District court erred in awarding prejudgment interest from the time of the initial breach of express warranty since there were consequential damages that had not yet been incurred. Court should calculate prejudgment interest on each portion of the damages from the time each element of consequential damages was incurred. Pegasus Helicopters, Inc. v. United Techs. Corp., 35 F.3d 507 (10th Cir. 1994).

Prejudgment interest awarded from date of breach of fiduciary duty, not date royalties would have been received. Vento v. Colo. Nat'l Bank-Pueblo, 907 P.2d 642 (Colo. App. 1995).

Prejudgement interest awarded from date embezzlement occurred, not the date employees discovered the financial problems caused by the embezzlement or date of discovery of negligence. Porter Constr. Servs. v. Ehrhardt, Keefe, Steiner, and Hottman, P.C., 131 P.3d 1115 (Colo. App. 2005).

Prejudgment interest awarded from the date the money is wrongfully withheld or becomes due. In determining when payment is wrongfully withheld, formal demand or circumstances demonstrating a reasonable expectation of payment render the nonpayment wrongful. Paratransit Risk Retention Group Ins. Co. v. Kamins, 160 P.3d 307 (Colo. App. 2007).

Under subsection (1)(b), wrongful withholding of replacement cost damages occurs when plaintiff actually undertakes replacement expenditures. Prejudgment interest therefore begins to accrue on that date and not on the earlier date when the wrong subsequently remedied by the replacement expenditures actually occurred. Goodyear Tire & Rubber Co. v. Holmes, 193 P.3d 821 (Colo. 2008); Ferrellgas, Inc. v. Yeiser, 247 P.3d 1022 (Colo. 2011).

Interest payable for fraudulently obtained food stamps accrues from the time the state reimburses the federal government for the fraudulently obtained food stamps. Interest should accrue only from the time of the actual injury and the state suffers actual loss only when it reimburses the federal government. Valenzuela v. People, 893 P.2d 97 (Colo. 1995).

In breach of contract cases, action accrues when breach and damages occur, and prejudgment interest accrues from

the time of the breach, not from the entry of judgment. Bd. of County Comm'rs of Adams County v. City & County of Denver, 40 P.3d 25 (Colo. App. 2001).

Appeals court will review de novo the calculation of prejudgment interest under this section. Top Rail Ranch Estates, LLC v. Walker, 2014 COA 9, 327 P.3d 321.

5-12-103. Greater rate may be stipulated.

(1) The parties to any bond, bill, promissory note, or other instrument of writing may stipulate therein for the payment of a greater or higher rate of interest than eight percent per annum, but not exceeding forty-five percent per annum, and any such stipulation may be enforced in any court of competent jurisdiction in the state, except as otherwise provided in articles 1 to 6 of this title. The rate of interest shall be deemed to be excessive of the limit under this section only if it could have been determined at the time of the stipulation by mathematical computation that such rate would exceed an annual rate of forty-five percent when the rate of interest was calculated on the unpaid balances of the debt on the assumption that the debt is to be paid according to its terms and will not be paid before the end of the agreed term.

(2) The term "interest" as used in this section means the sum of all charges payable directly or indirectly by a debtor and imposed directly or indirectly by a lender as an incident to or as a condition of the extension of credit to the debtor, whether paid or payable by the debtor, the lender, or any other person on behalf of the debtor to the lender or to a third party.

(3) The public policy of this state does not limit or prohibit contracting, agreeing, or stipulating in advance for the payment of interest on interest or compound interest.

(4) No law or public policy of this state limiting interest on interest, the adding of deferred interest to principal, or the compounding of interest shall apply to any promissory note secured by any mortgage or deed of trust or to one secured by a mortgage or deed of trust where periodic disbursement of part of the loan proceeds is made by a lender over a period of time as established by the mortgage or deed of trust, or over an expressed period of time, or ending with the death of the debtor, including, but not limited to, promissory notes secured by mortgages or deeds of trust having provisions for adding deferred interest to principal or otherwise providing for the charging of interest on interest.

(5) This section shall not apply to a commercial credit plan as defined in section 5-12-107 (8) and extensions of credit made pursuant thereto, unless the bond, bill, promissory note, instrument, or other written agreement evidencing the plan expressly states that it is subject to this section.

Source: L. 71: R&RE, p. 852, § 1. **C.R.S. 1963:** § 73-12-103. **L. 72:** p. 292, § 6. **L. 75:** (1) amended, p. 257, § 3, effective July 1. **L. 79:** (2) amended and (3) and (4) added, p. 317, § 1,

effective July 1. **L. 81:** (4) amended, p. 396, § 33, effective June 8. **L. 96:** (5) added, p. 407, § 12, effective July 1.

COLORADO COMMENT

This section was amended to correspond to the usury limitations of Section 18-15-104 of the Colorado Criminal Code. This section now provides for a ceiling on interest of forty-five percent.

ANNOTATION

Law reviews. For note, "Colorado Interest Law", see 34 Dicta 398 (1957). For article, "The Revolution in Consumer Credit Legislation", see 45 Den. L.J. 679 (1968). For article, "Colorado Usury", see 11 Colo. Law. 2557 (1982). For article, "Collecting Pre- and Post-Judgment Interest in Colorado: A Primer", see 15 Colo. Law. 753 (1986). For article, "An Update of Appendices from Collecting Pre- and Post-Judgment Interest in Colorado", see 15 Colo. Law. 990 (1986). For article, "Colorado Usury: The Sequel - Parts I and II", see 23 Colo. Law. 565 and 829 (1994).

Annotator's note. Since § 5-12-103 is similar to repealed § 73-1-3, C.R.S. 1963, § 73-1-3, CRS 53, CSA, C. 88, § 3, and laws antecedent to CSA, C. 88, § 3, relevant cases construing those provisions have been included in the annotations to this section.

There is no question regarding the authority of the general assembly to make the provision in this section that a rate of interest is a matter of contract which parties may evidence in writing. Wigton v. Elliott, 49 Colo. 115, 111 P. 713 (1910).

This section does not operate to preclude the general assembly from subsequently restricting interest rates by legislation. Waddell v. Traylor, 99 Colo. 576, 64 P.2d 1273 (1937).

Parties are at liberty under this section to stipulate for such rate of interest as they may see fit. McKay's Estate v. Belknap Sav. Bank, 27 Colo. 50, 59 P. 745 (1899).

National banks in Colorado have equal rights with others to collect interest upon loans at any agreed rate. Rockwell v. Farmers' Nat'l Bank, 4 Colo. App. 562, 36 P. 905 (1894).

National banks may make the rate dependent upon the happening of a contingency, if they so elect. McKay's Estate v. Belknap Sav. Bank, 27 Colo. 50, 59 P. 745 (1899).

Contingent amounts of interest cannot be considered when determining whether a contractual rate of interest is usurious. Beeler v. H & R Block of Colo., Inc., 487 P.2d 569 (1971); Uniwest Mortg. Co. v. Dadecor Condos., Inc., 877 F.2d 431 (5th Cir. 1989).

Nonpayment of principal or interest when due. It is competent for the parties to agree upon an increased rate contingent upon nonpayment of either principal or interest when due. McKay's Estate v. Belknap Sav. Bank, 27 Colo. 50, 59 P. 745 (1899); In Re Wood Family Interests, Ltd., 135 B.R. 407 (Bankr. D. Colo. 1989).

Usurious interest rate enforceable at maximum allowable rate. If a note has a higher interest rate than is allowed by this section, it will be invalid to the extent that the interest rate is usurious, but it will still be enforced at the maximum allowable rate. Becker v. Mktg. & Research Consultants, Inc., 526 F. Supp. 166 (D. Colo. 1981); Brown v. Fenner, 757 P.2d 184 (Colo. App. 1988); Concord Realty v. Cont'l Funding, 776 P.2d 1114 (Colo. 1989).

Parties to contract are free to set rate of interest by mutual agreement. Martinez v. Cont'l Entrs., 730 P.2d 308 (Colo. 1986).

The parties to a note unquestionably have the right to stipulate that a larger rate should be paid upon the failure to pay a smaller one when due; such stipulation may be enforced in any court of competent jurisdiction. McKay's Estate v. Belknap Sav. Bank, 27 Colo. 50, 59 P. 745 (1899); In Re Wood Family Interests, Ltd., 135 B.R. 407 (Bankr. D. Colo. 1989).

Stipulation in a promissory note of an increased rate of interest after maturity is not a penalty. Godsmark v. Bennett's Estate, 52 Colo. 198, 120 P. 151 (1912).

Rather, a stipulation for interest after maturity of a note is regarded as damages for breach of contract. Browne v. Steck, 2 Colo. 70 (1873).

The parties may stipulate that a larger rate be paid so long as the rate bears a reasonable relation to the current rate of interest. Browne v. Steck, 2 Colo. 70 (1873).

The rate of interest agreed upon in writing must be allowed according to the terms of an agreement until the entry of judgment. McKay's Estate v. Belknap Sav. Bank, 27 Colo. 50, 59 P. 745 (1899).

When, at the place of contract, the rate of interest differs from that of the place of payment, the parties may stipulate for either rate, and the contract will govern, the parties having the right of election as to the law of which place their contract is to be governed. McKay's Estate v. Belknap Sav. Bank, 27 Colo. 50, 59 P. 745 (1899).

Where no evidence is introduced of the current rate of interest, the party's stipulation may be accepted. Browne v. Steck, 2 Colo. 70 (1873).

If rate specified greatly exceeds the real value of money it will be disallowed as a penalty. Under this section the parties may determine the value of the use of money before it falls due, and their estimate of its value, after it falls due, is the true measure of damages, until it is shown to be incorrect. Since the law seeks to indemnify the plaintiff for the loss he has suffered by the breach of contract, the rate fixed by the parties affords a just rule of indemnity. If, however, the rate of interest specified in the contract greatly exceeds the real value of the money, it is a penalty for the nonpayment of the principal sum, rather than a just

recompense for detaining it, and will not be allowed. Browne v. Steck, 2 Colo. 70 (1873).

Such a provision is waived by the acceptance of interest at the original rate after maturity. Godsmark v. Bennett's Estate, 52 Colo. 198, 120 P. 151 (1912).

Furthermore, when interest becomes due it represents an indebtedness which the interested parties may then make the subject of a new contract by stipulating in writing when and how it shall be paid and what rate of interest it shall bear until paid, inasmuch as after interest becomes due, it may, by agreement, be turned into principal and bear interest. Hochmark v. Richler, 16 Colo. 263, 26 P. 818 (1891); Wigton v. Elliott, 49 Colo. 115, 111 P. 713 (1910), distinguishing Denver Brick & Mfg. Co. v. McAllister, 6 Colo. 261 (1882).

Such an arrangement is not compounding interest. Wigton v. Elliott, 49 Colo. 115, 111 P. 713 (1910).

Compound interest contracted for in advance is, in general, not recoverable. Hochmark v. Richler, 16 Colo. 263, 26 P. 818 (1891).

Such a contract is per se unlawful. Hochmark v. Richler, 16 Colo. 263, 26 P. 818 (1891).

The fact that compound interest is provided for does not, however, render the entire contract usurious and void; rather upon grounds of public policy, simply decline to enforce payment of the interest upon interest. Hochmark v. Richler, 16 Colo. 263, 26 P. 818 (1891).

A promise for such made after interest has accrued is legal. A promise to pay compound interest made after instead of before the interest to be compounded has accrued is legal and enforceable. Hochmark v. Richler, 16 Colo. 263, 26 P. 818 (1891).

Though compound interest is allowable only when there is a definite agreement for such. Tarabino Real Estate Co. v. Tarabino, 109 Colo. 425, 126 P.2d 859 (1942).

Moreover, "instrument of writing" must express mutuality of contract. This section clearly implies that the "instrument of writing" referred to must be one expressing mutuality of contract. Cobb v. Stratton's Estate, 56 Colo. 278, 138 P. 35 (1914).

A will is not within section. A will does not rest on contract relations, and is therefore not an instrument into which a stipulation between the parties for interest, as contemplated by this section, could be injected. Cobb v. Stratton's Estate, 56 Colo. 278, 138 P. 35 (1914).

Hence, no interest is allowed on legacies. Since there is nothing in this section, either express or implied, providing for interest on legacies, none is allowable. Cobb v. Stratton's Estate, 56 Colo. 278, 138 P. 35 (1914).

To compute the effective interest rate for the purpose of this section, the rate must be calculated by determining the total per annum rate of interest that a borrower is subjected to during a given extension of credit. A forbearance must be totaled then annualized using only that time frame as the

annualization period. Such includable interest must then be combined with any interest that continued to accrue pursuant to the original loan terms to determine the effective rate of interest subject to the 45 percent ceiling. Blooming Terrace No. 1, LLC v. KH Blake St., 2019 CO 58, 444 P.3d 749.

5-12-104. Warrants to bear six percent.

County orders and warrants, town and city and school orders and warrants, and other like evidences or certificates of municipal indebtedness, shall bear interest at the rate of six percent per annum from the date of the presentation thereof for payment at the treasury where the same may be payable, until there is money in the treasury for the payment thereof, except when otherwise specially provided by law. Every county treasurer, town treasurer, and city treasurer to whom any such county, town, city, or school order or warrant is presented for payment, and who shall not have on hand the funds to pay the same, shall endorse thereon the rate of interest said order or warrant will draw, and the date of such presentation, and subscribe such endorsement with his official signature; however, all such orders and warrants may be made to bear a lower rate of interest than above specified, by special agreement between such counties, towns, and cities issuing the same, and the person to whom such orders or warrants are issued.

Source: L. 71: R&RE, p. 852, § 1. **C.R.S. 1963:** § 73-12-104.

ANNOTATION

Annotator's note. Since § 5-12-104 is similar to repealed laws antecedent to CSA, C. 88, § 4, relevant cases construing those provisions have been included in the annotations to this section.

The evident intent of this section is first, to place a uniform rate of interest upon a specific class of obligations, and second, to make it impossible for county, town, city, or school district officials to agree, as otherwise under § 5-12-103 they might do, to pay a higher rate of interest upon such securities than that fixed by statute. That it was the intention of the general assembly to preclude the recovery of interest, except by express agreement, on all other county, city, town, or school district indebtedness is clear. City of Golden v. W. Lumber & Pole Co., 60 Colo. 382, 154 P. 95 (1916).

This section in no manner limits, qualifies, or changes the effect and purpose of § 5-12-102, except as to a particular class of securities; by that section creditors are entitled to interest on claims therein mentioned at the rate of six percent per annum from all debtors. The conclusion reached in Bd. of Comm'rs v. Wheeler, 39 Colo. 207, 89 P. 50 (1907), which appears to be contra, therefore, has no bearing upon the question of the liability of towns and cities

for interest. Any other holding would have the effect to exempt cities and towns from the payment of interest on judgments against them. Section 5-12-104 plainly applies to cities and towns, and gives a creditor the right to recover interest upon claims growing out of business transactions with them, whenever, under like circumstances, he might lawfully do so from a private corporation or individual. City of Golden v. W. Lumber & Pole Co., 60 Colo. 382, 154 P. 95 (1916).

Thus, towns and cities in business transactions are liable for interest the same as private corporations or individuals. City of Golden v. Western Lumber & Pole Co., 60 Colo. 382, 154 P. 95 (1916), distinguishing Bd. of Comm'rs v. Wheeler, 39 Colo. 207, 89 P. 50 (1907) (applied to a county as an involuntary organization).

So counties are liable for interest on interest coupons the same as individuals. Since the evident purpose of this section is to place counties practically upon the same plane as individuals with respect to the payment of interest upon their written evidences of indebtedness, with a limitation as to rate, counties are liable for interest on interest coupons the same as individuals. Bd. of Comm'rs v. Linn, 29 Colo. 446, 68 P. 839 (1902).

Municipal corporation not liable for interest for services rendered. Under this section municipal corporations cannot in any manner be made liable for or legally pay interest upon an account for services rendered. City of Colo. Springs v. Coray, 25 Colo. App. 460, 139 P. 1031 (1913).

5-12-105. Interest upon foreclosure.

In all cases where real estate shall be sold under execution or by virtue of the foreclosure of any mortgage, deed of trust, or other lien, the indebtedness and costs for which any certificate of purchase may issue shall bear interest at the rate specified in the original instrument.

Source: L. 71: R&RE, p. 852, § 1. **C.R.S. 1963:** § 73-12-105.

ANNOTATION

Law reviews. For article, "Forms Committee Presents Additional Standard Pleading Samples for Use in Foreclosures Through Public Trustee", see 29 Dicta 1 (1952).

5-12-106. Rate of interest on judgments which are appealed.

(1) Except as provided in section 13-21-101, C.R.S., where there is no written agreement as to the rate of interest, creditors shall receive interest as follows:

(a) If a judgment for money in a civil case is appealed by a judgment debtor and the judgment is affirmed, interest, as set out in subsections (2) and (3) of this section, shall be payable from the date of entry of judgment in the trial court until satisfaction of the judgment and shall include compounding of interest annually.

(b) If a judgment for money in a civil case is appealed by a judgment debtor and the judgment is modified or reversed with a direction that a judgment for money be entered in the trial court, interest, as set out in subsections (2) and (3) of this section, shall be payable from the date a judgment was first entered in the trial court until the judgment is satisfied and shall include compounding of interest annually. This interest shall be payable on the amount of the final judgment.

(2) (a) The rate of interest shall be certified on each January 1 by the secretary of state to be two percentage points above the discount rate, which discount rate shall be the rate of interest a commercial bank pays to the federal reserve bank of Kansas City using a government bond or other eligible paper as security, and shall be rounded to the nearest full percent. Such annual rate of interest shall be so established as of December 31, 1982, to become effective January 1, 1983. Thereafter, as of December 31 of each year, the annual rate of interest shall be established in the same manner, to become effective on January 1 of the following year.

(b) Notwithstanding any other provision of this subsection (2), the rate of interest shall be no lower than the percentage authorized in section 5-12-102 (4)(b).

(3) The rate at which interest shall accrue during each year shall be the rate which the secretary of state has certified as the annual interest rate under subsection (2) of this section.

Source: L. 82: Entire section added, p. 226, § 1, effective January 1, 1983. **L. 84:** (1) and (2) amended, p. 287, § 1, effective July 1.

ANNOTATION

Law reviews. For article, "Rates of Interest on State and Federal Court Judgments: An Update", see 12 Colo. Law. 446 (1983). For article, "Collecting Pre- and Post-Judgment Interest in Colorado: A Primer", see 15 Colo. Law. 753 (1986). For article, "An Update of Appendices from Collecting Pre- and Post-Judgment Interest in Colorado", see 15 Colo. Law. 990 (1986). For article, "Recovery of Interest: Parts I and II", see 18 Colo. Law. 1063 and 1307 (1989).

The right to interest, absent an agreement to pay it, is purely statutory, and is limited to those circumstances set forth in the statute. Indian Mtn. Metro. Recreation & Park Dist. v. J.P. Campbell & Assoc., 921 P.2d 65 (Colo. App. 1996); Bd. of County Comm'rs of Dolores County v. Shell W. E & P, Inc., 12 P.3d 1219 (Colo. App. 2000).

Where there is no "judgment" entered in a "trial court" to which subsection (1) could apply, a claim for post-judgment interest pursuant to subsection (1) is properly rejected. Bd. of County Comm'rs of Dolores County v. Shell W. E & P, Inc., 12 P.3d 1219 (Colo. App. 2000).

Claim for postjudgment interest on attorney fees was properly rejected where the attorney fees were paid voluntarily and accepted before a judgment or court order could be entered because there was no judgment upon which interest could accrue. Sinclair Transp. Co. v. Sandberg, 2014 COA 75M, 350 P.3d 915.

Court cannot divide a single unsatisfied judgment into two or more parts for the purpose of computing interest. Bassett v. Eagle Telecomms., 750 P.2d 73 (Colo. App. 1987).

Interest is payable upon that portion of the judgment that is ultimately affirmed by the appellate court. Bassett v. Eagle Telecomms., 750 P.2d 73 (Colo. App. 1987); In re Gutfreund, 148 P.3d 136 (Colo. 2006).

A judgment confirming an arbitration award is enforceable in the same manner as any other judgment. Therefore, the district court did not err in ordering post-judgment interest on the unpaid portion of the judgment. Barrett v. Inv. Mgmt. Consultants, 190 P.3d 800 (Colo. App. 2008).

An appealing judgment debtor must pay post-judgment interest when the appeal is affirmed and the funds are inaccessible to the creditor; further, there is no requirement that interest must be specifically requested. This section makes no exception for attorney fees; post-judgment interest on attorney fees is required when the judgment is affirmed on appeal. Furthermore, it is of no import whether the judgment award for attorney fees is made directly to the attorney or to the party. In re Gutfreund, 148 P.3d 136 (Colo. 2006).

While the statute does not define "satisfaction", a party satisfies a debt when the creditor has been paid and the debtor is no longer obligated to pay that portion of the amount due. Thus, if debtor deposits the funds in a court registry, the judgment is not satisfied until the funds are accessible to the creditor, and only at that point does the obligation to pay interest terminate. In re Gutfreund, 148 P.3d 136 (Colo. 2006).

Appeal of judgment debtor is considered a single unsuccessful appeal for purposes of this section where judgment debtor insurer prevailed on appeal at the court of appeals but trial court's judgment was subsequently reinstated by the supreme court on appeal by the insured. Accordingly, insurer was required to pay post-judgment interest from the date of the original judgment in the trial court.

Peterman v. State Farm Mut. Auto. Ins. Co., 8 P.3d 549 (Colo. App. 2000).

Because the trial court's failure to include an award of post-judgment interest was due to an oversight, it could amend the judgment at any time to add the award. Jennings v. Ibarra, 921 P.2d 62 (Colo. App. 1996).

An order entered by the public utilities commission is equivalent to a judgment by a trial court, and the interest on the award accrues from the date of entry of the commission order not the judgment of the district court. Lake Durango Water Co. v. Pub. Utils. Comm'n, 67 P.3d 12 (Colo. 2003).

This section does not apply to a situation covered by the prompt payment statute. To the extent there is a conflict, the more specific prompt payment statute prevails over this section. New Design Constr. Co. v. Hamon Contractors, Inc., 215 P.3d 1172 (Colo. App. 2008).

Applied in Weston v. Mincomp Corp., 698 P.2d 274 (Colo. App. 1985).

5-12-107. Commercial credit plans - definitions.

(1) Any creditor may offer and extend credit to the debtor under a commercial credit plan. Without limitation, credit may be extended under a commercial credit plan by the creditor's acquisition of obligations including, without limitation, obligations arising out of the honoring by a seller or another person of a credit device made available to the debtor under a commercial credit plan. A creditor may take such security in connection with a commercial credit plan as may be acceptable to the creditor and may, if the agreement governing the commercial credit plan allows, establish separate accounts for different types of purchases or loans, or both, and impose different terms for credit extended with respect to each account.

(2) (a) A creditor may charge and collect periodic interest under a commercial credit plan on the outstanding unpaid indebtedness at a periodic percentage rate or rates not exceeding forty-five percent per annum. If the applicable periodic percentage rate under the agreement governing the plan is other than daily, periodic interest may be calculated on an amount not in excess of the average outstanding unpaid indebtedness for the applicable billing period. If the applicable periodic percentage rate under the agreement governing the plan is daily, periodic interest may be calculated for each day in the billing period on an amount not in excess of either:

(I) The outstanding unpaid indebtedness on that day; or

(II) The average outstanding unpaid indebtedness for the applicable billing period. If the applicable periodic percentage rate under the agreement governing the plan is monthly, a billing period shall be deemed to be a month or monthly if the last day of each billing period is on the same day of each month or does not vary by more than four days therefrom.

(b) The rate limitation established by this subsection (2) for periodic interest shall not apply to the additional interest charges authorized by subsection (3) of this section regardless of whether such additional interest charges are imposed in addition to or in lieu of periodic interest.

(3) (a) In addition to or in lieu of interest at a periodic rate or rates, a creditor may, if the agreement governing the commercial credit plan so provides, either initially or pursuant to a change in the terms of the agreement made in the manner prescribed by subsection (5) of this section, charge and collect, in such manner, form, percentages, or amounts as the agreement governing the plan may provide, one or more of the following fees or charges:

(I) A fee for participation in the commercial credit plan, whether assessed on an annual or other periodic basis;

(II) A transaction charge for each separate purchase or loan under the plan;

(III) An automated teller machine charge or similar electronic or interchange fee or charge;

(IV) A minimum charge for each scheduled billing period under the commercial credit plan during any portion of which there is an outstanding unpaid indebtedness;

(V) A late payment charge for each required payment not made on or before its scheduled due date;

(VI) Fees for services rendered or for reimbursement of expenses incurred by the creditor or other persons in connection with the commercial credit plan, or other fees incidental to the application, opening, administration, maintenance, or termination of a commercial credit plan;

(VII) Returned payment charges;

(VIII) Documentary evidence charges including without limitation charges for furnishing copies of sales slips, invoices, monthly statements, or other documents; and

(IX) Any similar fees or charges provided for in the agreement governing the commercial credit plan, whether initially or pursuant to a change in the terms of the agreement made in the manner prescribed by subsection (5) of this section; except that in no event shall this authorization to charge and collect any similar fees or charges be construed to authorize the imposition of periodic interest on the outstanding unpaid indebtedness in addition to the periodic interest authorized by subsection (2) of this section.

(b) Notwithstanding the fact that they are not subject to the rate limitation established by subsection (2) of this section for periodic interest, all of the fees and charges permitted by this subsection (3) are interest.

(4) The agreement governing a commercial credit plan may provide for the payment by the debtor of reasonable attorney's fees of the creditor if the account of the debtor is referred for collection to an attorney not a salaried employee of the creditor. The agreement also may provide

for the payment by the debtor of all court and other collection costs actually incurred by the debtor.

(5) (a) Upon written notice furnished at least fifteen days prior to the effective date of the change, a creditor may change the terms of the agreement governing the commercial credit plan including, without limitation, periodic interest and additional interest charges so long as the debtor does not, prior to the effective date of the change set forth in the notice, furnish written notice to the creditor that the debtor does not agree to abide by the change. The change may be made effective with respect to existing balances if so provided in the written notice.

(b) Upon receipt by the creditor of a timely written notice stating that the debtor does not agree to abide by the change, the debtor shall have the remainder of the time under the existing terms in which to pay all sums owed to the creditor as of the effective date of the change set forth in the notice. If there is an authorized charge to the account on or after the effective date of the change set forth in the notice, the debtor shall be deemed to have accepted the new terms even if the debtor previously submitted to the creditor a timely written notice stating that the debtor does not agree to abide by the change.

(6) All terms, conditions, and other provisions of and relating to a commercial credit plan as contained in this section or in the agreement governing such plan, other than those fees and charges that are interest under this section, shall be and hereby are deemed to be material to the determination of interest applicable to a commercial credit plan under Colorado law, under the most favored lender doctrine, and under the "National Bank Act", 12 U.S.C. sec. 85 or section 521, 522, or 523 of the "Depository Institutions Deregulation and Monetary Control Act of 1980", 12 U.S.C. secs. 1463 (g), 1785 (g), and 1831d.

(7) A commercial credit plan established by a creditor and the extensions of credit made pursuant thereto shall be governed by Colorado law. Unless the agreement governing the commercial credit plan expressly states that it is subject to another law of this state, a commercial credit plan shall be governed exclusively by this section and shall not be subject to any other law of this state that otherwise would apply to the commercial credit plan including, but not limited to, laws limiting the amount or duration of credit or the rate or amount of interest or other charges that may be charged, taken, collected, received, or reserved.

(8) As used in this section:

(a) "Average outstanding unpaid indebtedness" means the amount determined by dividing the total of the amounts of the outstanding unpaid indebtedness for each day in the applicable billing period by the number of days in the billing period.

(b) "Commercial credit plan" or "plan" means a plan contemplating the extension of credit pursuant to an account governed by an agreement between a creditor and a debtor, whether or not providing for a security interest, pursuant to which:

(I) A creditor permits the debtor and, if allowed by a creditor, persons acting on behalf of or with authorization from the debtor, from time to time to make purchases on credit or obtain loans, or both, whether or not by use of a credit device;

(II) The purchases on credit are made or the loans are obtained primarily for business, commercial, investment, or agricultural purposes;

(III) The indebtedness of the debtor arising from such purchases or loans, or both, and other charges provided for in this section are debited to the account; and

(IV) (A) The debtor undertakes an obligation to pay the outstanding unpaid indebtedness at one time; or

(B) The debtor has the privilege of paying the outstanding unpaid indebtedness in one or more installments.

(c) "Credit" means the right granted by a creditor to the debtor to defer payment of debt or to incur debt and defer its payment.

(d) "Credit device" means any card, check, identification code, account number, or other means of identification contemplated by the agreement governing the plan.

(e) "Creditor" means any seller or any lender located or maintaining a place of business in this state that enters into a commercial credit plan agreement with a debtor wherever located, including, without limitation, sellers of goods or services, small loan companies, licensed lenders, commercial banks and trust companies, savings and loan associations, and savings banks. The term "creditor" includes any transferee, whether such transferee acquires its interest by assignment or otherwise.

(f) "Debtor" means any natural person or individual or any corporation, partnership, cooperative, association, government or governmental subdivision or agency, trust, estate, or other entity.

(g) "Interest" includes both periodic interest authorized by subsection (2) of this section and additional interest charges authorized by subsection (3) of this section.

(h) "Loans" means cash advances or loans to be paid to or for the account of the debtor.

(i) "Outstanding unpaid indebtedness" means on any day an amount not in excess of the total amount of purchases, loans, and other debits charged to the debtor's account under the plan that is outstanding and unpaid at the end of the day, after adding the aggregate amount of any new purchases, loans, and other debits charged to the account as of that day, including, without limitation, the amount of any periodic interest, additional interest charges, and other charges permitted by this section that have accrued, or been charged, to the account as of that day, and deducting the aggregate amount of any payments and other credits applied to that indebtedness as of that day.

(j) "Purchases" means payment obligations for property of whatever nature, real or personal, tangible or intangible, and payment obligations for services including, without limitation, insurance, licenses, taxes, official fees, fines, private or governmental obligations, or any other thing of value.

Source: L. 96: Entire section added, p. 407, § 13, effective July 1. **L. 2013:** (8)(e) amended, (SB 13-154), ch. 282, p. 1468, § 21, effective July 1.

ANNOTATION

Under federal law, a late payment fee is a form of "interest". Copeland v. MBNA Am. Bank, N.A., 907 P.2d 87 (Colo. 1995); Richardson v. Citibank (S.D.), N.A., 908 P.2d 532 (Colo. 1995); Smiley v. Citibank (S.D.), 517 U.S. 735 (1996).

ARTICLE 13

Federal Preemption of Usury Laws - State Override

5-13-101. Mortgages.
5-13-102. Business and agricultural loans.
5-13-103. Small business loans.
5-13-104. Other loans. (Repealed)
5-13-105. General override. (Repealed)
5-13-106. Other loans - legislative declaration.

5-13-101. Mortgages.

In accordance with section 501 (b)(2) of Public Law 96-221, it is declared that the state of Colorado does not want the provisions of subsection 501 (a)(1) of Public Law 96-221 removing the limits on the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved with respect to loans, mortgages, credit sales, and advances made to apply in this state. The rates established in articles 1 to 9 of this title shall control consumer credit transactions in the state of Colorado.

Source: L. 81: Entire article added, p. 399, § 1, effective July 1.

5-13-102. Business and agricultural loans.

In accordance with section 512 of Public Law 96-221, it is declared that the state of Colorado does not want the provisions of section 511 of Public Law 96-221 setting interest rates and preempting state interest rates on business and agricultural loans to apply in this state. The rates established in articles 1 to 9 of this title shall control consumer credit transactions in the state of Colorado.

Source: L. 81: Entire article added, p. 399, § 1, effective July 1.

5-13-103. Small business loans.

In accordance with section 524 of Public Law 96-221, it is declared that the state of Colorado does not want the amendments to the "Small Business Investment Act" made by section 524 of Public Law 96-221 prescribing interest rates for small business loans to apply in this state. The rates established in articles 1 to 9 of this title shall control consumer credit transactions in the state of Colorado.

Source: L. 81: Entire article added, p. 399, § 1, effective July 1.

5-13-104. Other loans. (Repealed)

Source: L. 81: Entire article added, p. 400, § 1, effective July 1. **L. 94:** Entire section repealed, p. 1612, § 12, effective July 1.

5-13-105. General override. (Repealed)

Source: L. 81: Entire article added, p. 400, § 1, effective July 1. **L. 94:** Entire section repealed, p. 1613, § 13, effective July 1.

5-13-106. Other loans - legislative declaration.

In accordance with section 525 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, the general assembly declares that the state of Colorado does not want the amendments to the "Federal Deposit Insurance Act", 12 U.S.C. sec. 1811 et seq.; the federal "National Housing Act", 12 U.S.C. sec. 1701 et seq.; and the "Federal Credit Union Act", 12 U.S.C. sec. 1757, made by sections 521 to 523 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, prescribing interest rates and preempting state interest rates to apply to consumer credit transactions in this state. The rates established in articles 1 to 9 of this title 5 control consumer credit transactions in this state.

Source: L. 2023: Entire section added, (HB 23-1229), ch. 375, p. 2245, § 3, effective July 1, 2024.

ANNOTATION

"[L]oans made in such State" in 12 U.S.C. § 1831d note refers to loans in which either the lender or the borrower is located in an opt-out state. Nat'l Ass'n of Indus. Bankers v. Weiser, 159 F.4th 694 (10th Cir. 2025).

In the context of § 1831d's opt-out provision, "loan" refers to a "lending", meaning a delivery by one party to and receipt by another party of a sum of money upon agreement, express or implied, to repay it with or without interest. And "made" refers to "executed". Reading the phrase together, "made in such State" functions as a participial adjective phrase to describe the completed state of the loan -- an executed loan. So "loans made in such State" refers to loans executed in the opt-out state, and an executed loan necessarily requires at least two parties -- a lender and a borrower. The plain language of the statute therefore shows that a state's decision to opt out of § 1831d for "loans made in such State" encompasses loans in which either the lender or the borrower is located in the opt-out state. Nat'l Ass'n of Indus. Bankers v. Weiser, 159 F.4th 694 (10th Cir. 2025).

Therefore, because the state has opted out of § 1831d, that section does not preempt the state's interest-rate caps for loans from out-of-state banks to state borrowers. Nat'l Ass'n of Indus. Bankers v. Weiser, 159 F.4th 694 (10th Cir. 2025).

DEBT MANAGEMENT

ARTICLE 16

Colorado Fair Debt Collection Practices Act

5-16-101. Short title.
5-16-102. Scope of article.
5-16-103. Definitions.
5-16-104. Location information - acquisition.
5-16-105. Communication in connection with debt collection - definition - repeal.
5-16-106. Harassment or abuse.
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5-16-108. Unfair practices.
5-16-109. Validation of debts.
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5-16-110. Multiple debts.
5-16-111. Legal actions by collection agencies.
5-16-111.5. Fees, costs, and costs of collection - limitation.
5-16-112. Deceptive forms.
5-16-113. Civil liability.
5-16-114. Administrative enforcement - rules.
5-16-115. License - registration - unlawful acts.
5-16-116. Collection agency board - created. (Repealed)
5-16-117. Powers and duties of the administrator.
5-16-118. Collection agency license - required.
5-16-119. Collection agency license - requirements - application - fee - expiration - definition.
5-16-120. License - issuance - grounds for denial - appeal - contents.
5-16-121. Collection agency license - renewals.
5-16-122. Collection agency license - notification of change and reapplication requirements.
5-16-123. Duties of collection agencies.
5-16-124. Bond - definition.
5-16-125. Unlawful acts.
5-16-125.5. Statute of limitations - actions by administrator.
5-16-126. Criminal penalties.
5-16-127. Complaint - investigations - powers of administrator - sanctions.
5-16-128. Debt collectors for the department of personnel - complaint - disciplinary procedures.
5-16-129. Records.
5-16-130. Jurisdiction of courts.
5-16-131. Duty of district attorney.

5-16-132. Remedies.

5-16-133. Injunction - receiver.

5-16-134. Disposition of fees and fines - definition.

5-16-134.5. Debts sold or resold after January 1, 2018.

5-16-134.7. Advisory council for debt collection - created - membership - duties - subject to review - repeal.

5-16-135. Repeal of article.

5-16-101. Short title.

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

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

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

5-16-102. Scope of article.

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

(a) Within this state;

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

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

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

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

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

ANNOTATION

For purposes of the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 to 1692o, if an attorney fits the definition of debt collectors found in the first sentence of § 1692a(6), they are debt collectors and therefore subject to the regulations contained in the federal act. Shapiro & Meinhold v. Zartman, 823 P.2d 120 (Colo. 1992) (decided under former law).

5-16-103. Definitions.

As used in this article 16, unless the context otherwise requires:

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

(2) Repealed.

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

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

(II) Person who:

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

(B) Takes assignment of debts for collection purposes;

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

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

(b) "Collection agency" does not include:

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

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

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

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

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

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

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

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

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

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

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

(VIII) A limited gaming or racing licensee acting pursuant to article 33 of title 44.

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

(d) For the purposes of section 5-16-108 (1)(f), "collection agency" includes any person engaged in any business the principal purpose of which is the enforcement of security interests. For purposes of sections 5-16-104, 5-16-105, 5-16-106, 5-16-107, 5-16-108, and 5-16-109 only, "collection agency" includes a debt collector for the department of personnel.

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

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

(II) Is a person located outside this state whose collection activities are limited to collecting debts not incurred in this state from consumers located in this state and whose collection activities are conducted by means of interstate communications, including telephone, mail, or facsimile transmission, and who is located in another state that regulates and licenses collection agencies but does not require Colorado collection agencies to obtain a license to collect debts in their state if the agencies' collection activities are limited in the same manner.

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

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

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

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

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

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

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

(a.5) "Debt" includes the recoverable expense of educating and training a worker pursuant to section 8-2-113 (3)(a).

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

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

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

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

(10.5) "Medical debt" means debt arising from health-care services, as defined in section 10-16-102 (33), or health-care goods, including products, devices, durable medical equipment, and prescription drugs. "Medical debt" does not include debt charged to a credit card.

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

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

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

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

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1080, § 1, effective August 9; IP amended, (2) repealed, and (8.5) added, (SB 17-216), ch. 285, p. 1578, § 3, effective January 1, 2018. **L. 2018:** (3)(b)(VIII) amended, (HB 18-1375), ch. 274, p. 1725, § 91, effective October 1. **L. 2023:** (10.5) added, (SB 23-093), ch. 152, p. 643, § 2, effective May 4. **L. 2024:** (8)(a.5) added, (HB 24-1324), ch. 316, p. 2119, § 2, effective August 7.

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

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

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

ANNOTATION

Annotator's note. Since § 5-16-103 is similar to former § 12-14-103 and laws antecedent to that section, relevant cases construing those provisions have been included in the annotations to this section.

Entity which originally extends credit to a debtor is not subject to the provisions of this Act but a collection agency which takes a complete assignment of such a debt which is in default is subject to the provisions of this act even though the entity which made such assignment retains no further rights. Debt is still "owed or due another" for purposes of this act. Commercial Serv. v. Fitzgerald, 856 P.2d 58 (Colo. App. 1993).

When an obligation arises outside the scope of a consumer transaction, the obligation is not a "debt" under this article. The regulation of metered parking is an exercise of a city's police power not a rendering of a service to consumers. Rector v. City & County of Denver, 122 P.3d 1010 (Colo. App. 2005).

A subrogation claim arising from tortious conduct is not "debt" under this article because it does not arise from a transaction. Ybarra v. Greenberg & Sada, P.C., 2016 COA 116, 488 P.3d 109, aff'd, 2018 CO 81, 429 P.3d 839.

"Debt collector" includes a person who is regularly engaged to solicit information from a debtor to aid a debt collector. Defendant mailed the debtor a telegram notification that invited the debtor to call a number. Upon making such call, the debtor's phone number was electronically captured and sold to a debt collector. This practice was sufficient to qualify as a "debt collector" under the Colorado Fair Debt Collection Practices Act. Udis v. Universal Commc'ns Co., 56 P.3d 1177 (Colo. App. 2002).

A person who collects a debt that is not in default is not a "collection agency". Therefore, a person who purchases a debt before it is in default is not acting as a collection agency when attempting to collect the debt. PurCo Fleet Servs., Inc. v. Koenig, 240 P.3d 435 (Colo. App. 2010), aff'd on other grounds, 2012 CO 56, 285 P.3d 979.

Applied in B.C. Inv. Co. v. Throm, 650 P.2d 1333 (Colo. App. 1982) (decided under former § 12-14-101).

5-16-104. Location information - acquisition.

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

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

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

(c) Not communicate with any person more than once unless requested to do so by the person or unless the debt collector or collection agency reasonably believes that the person's

earlier response is erroneous or incomplete and that the person now has correct or complete location information;

(d) Not communicate by postcard;

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

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

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

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

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

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

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

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

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

(2) Except as provided in section 5-16-104, without the prior consent of the consumer given directly to the debt collector or collection agency or the express permission of a court of competent jurisdiction or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector or collection agency shall not communicate, in connection with the collection of any debt, with any person other than the consumer, his or her attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the collection agency.

(3) (a) If a consumer notifies a debt collector or collection agency in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector or collection agency to cease further communication with the consumer, the debt collector or collection agency shall not communicate further with the consumer with respect to the debt, except to:

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

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

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

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

(c) In its initial written communication to a consumer, a collection agency shall include the following statement: "FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE HTTPS://COAG.GOV/OFFICE-SECTIONS/CONSUMER-PROTECTION/CONSUMER-CREDIT-UNIT/COLLECTION-AGENCY-REGULATION/." If the website address is changed, the notification shall be corrected to contain the correct address. If the notification is placed on the back of the written communication, there shall be a statement on the front notifying the consumer of such fact.

(d) In its initial written communication to a consumer, a collection agency shall include the following statement: "A consumer has the right to request in writing that a debt collector or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt." If the notification is placed on the back of the written communication, there shall be a statement on the front notifying the consumer of such fact.

(e) (I) In its initial written communication to a consumer, a debt collector or collection agency shall include the following statement: "Colorado law prohibits credit bureaus from reporting medical debt or factoring medical debt into a credit score unless the consumer report is to be used in connection with a credit transaction that involves, or that may reasonably be expected to involve, a principal amount that exceeds the national conforming loan limit value for a one-unit property as determined by the federal housing finance authority".

(II) This subsection (3)(e) is repealed, effective July 1, 2028.

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

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

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1083, § 1, effective August 9. **L. 2020:** (3)(c) amended, (HB 20-1402), ch. 216, p. 1040, § 2, effective June 30. **L. 2023:** (3)(e) added, (HB 23-1126), ch. 374, p. 2241, § 4, effective August 7.

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

ANNOTATION

Use of automated mailing service not prohibited as third party communication. The intention of the prohibition against communicating with a third party is to protect a consumer's reputation and privacy. The highly automated mailing system did not threaten to coerce or embarrass the consumer. Flood v. Mercantile Adjustment Bureau, LLC, 176 P.3d 769 (Colo. 2008) (decided under former law).

5-16-106. Harassment or abuse.

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

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

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

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

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

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

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

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

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

5-16-107. False or misleading representations - repeal.

(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 the following conduct:

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

(b) The false representation of:

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) Except as otherwise provided for communications to acquire location information under section 5-16-104, the failure to disclose clearly, in the initial written communication made to collect a debt or obtain information about a consumer and also, if the initial communication with the consumer is oral, in the initial oral communication, that the debt collector or collection agency is attempting to collect a debt and that any information obtained will be used for that purpose, and, in subsequent communications, that the communication is from a debt collector or collection agency; except that this subsection (1)(l) shall not apply to a formal pleading made in connection with a legal action;

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

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

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

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

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

(r) (I) When attempting to collect debt that the debt collector or collection agency knows is medical debt, as defined in section 5-18-103 (11.5), or to obtain information about a consumer in relation to an attempt to collect medical debt, make a false, deceptive, or misleading representation that the medical debt will be included in a consumer report, as defined in section 5-18-103 (3), or factored into a consumer's credit score, as defined in section 5-18-107 (4), unless the consumer report is to be used in connection with a credit transaction that involves, or that may reasonably be expected to involve, a principal amount that exceeds the national conforming loan limit value for a one-unit property as determined by the federal housing finance authority.

(II) This subsection (1)(r) is repealed, effective July 1, 2028.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1085, § 1, effective August 9. **L. 2023:** IP(1) amended and (1)(r) added, (HB 23-1126), ch. 374, p. 2240, § 3, effective August 7.

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

5-16-108. Unfair practices.

(1) A debt collector or collection agency shall not use unfair or unconscionable means to collect or attempt to collect any debt, including, but not limited to, the following conduct:

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) An attempt to collect an amount in excess of the amounts permitted under section 13-54-102 or 13-54-104;

(l) An attempt to collect a debt that violates the provisions of section 6-20-203 (1), (2), (3)(b), (4)(a), (4)(b)(I), (4)(d), (4)(e), or (5)(a) to (5)(c).

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1087, § 1, effective August 9. **L. 2020:** (1)(k) added, (SB 20-211), ch. 140, p. 611, § 4, effective June 29. **L. 2021:** (1)(l) added, (HB 21-1198), ch. 435, p. 2881, § 2, effective September 7.

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

Cross references: For the legislative declaration in SB 20-211, see section 1 of chapter 140, Session Laws of Colorado 2020.

5-16-109. Validation of debts.

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

(a) The amount of the debt;

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

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

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

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

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

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

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

(5) Upon written request by the consumer and without fee to the consumer, a debt collector or collection agency collecting on a medical debt shall cease collection until it can provide an itemized statement to the consumer after the request is received. The itemized statement must include:

(a) The name and address of the medical creditor;

(b) The date or dates of service;

(c) The date or dates the medical debt was incurred;

(d) A detailed list of the specific health-care services and medical products or devices, if any, provided to the consumer;

(e) The name of the facility where health-care services were provided or the name of the merchant where the consumer purchased medical products, devices, or durable medical goods;

(f) The amount of the principal for any medical debt incurred;

(g) An itemization of the current amount of the debt due at the time the itemized statement is generated, reflecting interest, fees, payments, and credits since the dates described in subsections (5)(b) and (5)(c) of this section, and including negotiated insurance rates, financial assistance applied, or other discounts;

(h) For medical debt from a health-care facility, as defined in section 25.5-3-501 (1), whether the consumer was screened for financial assistance; and

(i) For medical debt from a health-care facility, as defined in section 25.5-3-501 (1), whether the consumer was found eligible for financial assistance and, if so, the amount due after all financial assistance is applied to the itemized statement.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1088, § 1, effective August 9. **L. 2023:** (1)(c) amended and (5) added, (SB 23-093), ch. 152, p. 643, § 3, effective May 4.

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

ANNOTATION

The sufficiencies of the notice are judged under the least sophisticated consumer standard. Flood v. Mercantile Adjustment Bureau, LLC, 176 P.3d 769 (Colo. 2008) (decided under former law).

Notice insufficient because statement on the front of the letter appeared to conflict with the required notice. Flood v. Mercantile Adjustment Bureau, LLC, 176 P.3d 769 (Colo. 2008) (decided under former law).

Whether a validation notice is contradicted or overshadowed under the least sophisticated consumer standard is a question of law. Garrett v. Credit Bureau, 2018 COA 150, 431 P.3d 698.

Notice of validation was contradicted or overshadowed when the debt collector sent a second notice with the statement "we cannot help you unless you call" in capitalized and bolded font that was larger than the rest of the notice. Because this statement was capable of being reasonably interpreted by the least sophisticated consumer as changing the manner in which the consumer was required by law to dispute the debt or its amount, it was, as a matter of law, deceptive or misleading. Garrett v. Credit Bureau, 2018 COA 150, 431 P.3d 698.

5-16-109.5. Medical debt - requirements related to payment plans - collection prohibited during health insurance appeals - definition.

(1) (a) A debt collector or collection agency collecting on a medical debt that agrees to a payment plan with a consumer for the medical debt that is payable in four or more installments shall provide a written copy of the payment plan to the consumer within seven days after entering into the payment plan. The payment plan must prominently disclose the rate or rates of interest and the date by which the account will be paid in full if payments set by the schedule in the payment plan are made without interruption or that the plan is a temporary arrangement that will not pay off the debt in full.

(b) Before accelerating or declaring the payment plan no longer operative, if the consumer has not invoked the right to cease communication, the debt collector or collection agency collecting on a medical debt shall:

(I) Make at least two reasonable attempts to contact the consumer; and

(II) Provide notice to the consumer in writing that the payment plan may be accelerated or become inoperative.

(c) For purposes of this section, the notice to the consumer pursuant to subsection (1)(b)(II) of this section must be to the last-known address of the consumer.

(2) (a) A debt collector or collection agency collecting on a medical debt that knows or reasonably should know about an internal review, external review, or other appeal proceeding of

a health insurance decision that is pending or was pending within the previous sixty-three days shall not:

(I) Provide information relating to a consumer's unpaid charges for health-care services to a consumer reporting agency;

(II) Communicate with the consumer regarding the unpaid charges for health-care services in an attempt to collect on the charges, unless requested by the consumer;

(III) Initiate a civil action or arbitration proceeding against the consumer to collect or attempt to collect the unpaid charges for health-care services; or

(IV) Sell the medical debt to a debt buyer.

(b) If a medical debt has already been reported to a consumer reporting agency or a legal action or arbitration proceeding has already been initiated, and the debt collector or collection agency collecting on the medical debt that reported the information learns that an internal review, external review, or other appeal proceeding of a health insurance decision is pending or was pending within the previous sixty-three days, that person shall instruct the consumer reporting agency to delete the information about the medical debt.

(c) As used in this section, "health-care services" means health-care services or medical products or devices.

Source: L. 2023: Entire section added, (SB 23-093), ch. 152, p. 644, § 4, effective May 4.

5-16-110. Multiple debts.

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

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

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

5-16-111. Legal actions by collection agencies.

(1) Any debt collector or collection agency who brings any legal action on a debt against any consumer shall:

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

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

(I) The consumer signed the contract sued upon;

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

(III) The action may be brought pursuant to article 13 or 13.5 of title 26, section 14-14-104, or article 4 or 6 of title 19, if the action is by a private collection agency acting on behalf of a delegate child support enforcement unit.

(1.5) A debt collector or collection agency that is not a creditor or debt buyer shall not be the named plaintiff in a legal action or take any legal action on a debt against a consumer unless the debt collector or collection agency:

(a) Ensures that the name of the original creditor or assignor and the name of the debt collector or collection agency are included in the case caption of the complaint, in that order; and

(b) Has a complete and effective assignment, including complete settlement authority and authority to resolve the litigation.

(2) A debt collector or collection agency who brings a legal action on a debt owned by a debt buyer shall attach the following materials to the complaint or form:

(a) (I) A copy of the contract, account-holder agreement, or other writing from the original creditor or the consumer evidencing the consumer's agreement to the original debt;

(II) In the case of a medical debt, a copy of a redacted itemization of charges incurred;

(III) If a signed writing evidencing the original debt does not exist, a copy of the document provided to the consumer while the account was active, demonstrating that the debt was incurred by the consumer; or, for a credit card debt, the most recent monthly statement recording a purchase transaction, payment, or balance transfer; or

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

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

(3) Prior to entry of a default judgment against a consumer in a legal action on a debt owned by a debt buyer, the plaintiff shall file with the court evidence that satisfies the requirements of rules 803(6) and 902(11) of the Colorado rules of evidence or is otherwise authorized by law or rule that establishes the amount and nature of the debt and include:

(a) The original account number at charge-off;

(b) The original creditor at charge-off;

(c) The amount due at charge-off or, if the balance has not been charged off, an itemization of the amount claimed to be owed, including the principal, interest, fees, and other charges or reductions from payment made or other credits;

(d) An itemization of post charge-off additions, if any;

(e) (I) The date of the last payment, if applicable; or

(II) The date of the last transaction; and

(f) If the account is not a revolving credit account, the date the debt was incurred.

(4) In the absence of evidence required by subsections (2)(a) or (2)(b) and (3) of this section, an affidavit does not satisfy the requirements of these subsections.

(5) A creditor, or a debt collector or collection agency operating on behalf of the creditor, that brings a legal action on a medical debt shall attach to the complaint or applicable form a copy of a redacted itemization of the charges that are the basis for the medical debt.

(6) (a) Prior to entry of a default judgment against a consumer in a legal action on a medical debt, the plaintiff shall file with the court evidence that satisfies the requirements of rules 803 (6) and 902 (11) of the Colorado rules of evidence or that otherwise, as authorized by law or rule, establishes the amount and nature of the medical debt and includes:

(I) The original account number at charge-off;

(II) The original creditor at charge-off;

(III) The amount due at charge-off or, if the balance has not been charged off, an itemization of the amount claimed to be owed, including the principal, interest, fees, and other charges or reductions from payment made or other credits;

(IV) An itemization of post charge-off additions, if any;

(V) The date of the last payment, if applicable, or the date of the last transaction; and

(VI) The date the debt was incurred.

(b) If an affidavit does not include the evidence required in subsection (5) of this section and this subsection (6), the affidavit does not satisfy the requirements of said subsections.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1089, § 1, effective August 9; (2), (3), and (4) added, (SB 17-216), ch. 285, p. 1578, § 4, effective January 1, 2018. **L. 2023:** (5) and (6) added, (SB 23-093), ch. 152, p. 646, § 5, effective May 4. **L. 2024:** (1.5) added, (HB 24-1380), ch. 463, p. 3220, § 1, effective August 7.

Editor's note: (1) This section is similar to former § 12-14-111 as it existed prior to 2017.

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

5-16-111.5. Fees, costs, and costs of collection - limitation.

(1) Except as described in subsection (2) of this section, a private collection agency or privately retained attorney collecting on any debt arising from past-due orders, obligations, fines, or fees due to the state, or due to any political subdivision within the state, may add to the amount due that has been placed for collection all fees, costs, and costs of collection, including designated contractual attorney fees and costs that are awarded by a court of competent jurisdiction. Exclusive of the accrual of interest and court costs, any fees, costs, and costs of collection may not exceed eighteen percent in the aggregate unless additional reasonable attorney fees are awarded by a court of competent jurisdiction.

(2) Subsection (1) of this section does not apply if the state or political subdivision of the state has sold the debt to a third party.

(3) Notwithstanding section 24-1-136 (11)(a)(I), on or before January 1, 2023, and on or before January 1 every five years thereafter, the state auditor shall review the rate described in subsection (1) of this section and the fee described in section 24-30-202.4 (8)(a) and report the results of his or her review to the finance committees of the senate and the house of representatives or any successor committees. The report may include any recommendations of the state auditor regarding raising or lowering the rate or the fee.

Source: L. 2018: Entire section added, (HB 18-1057), ch. 314, p. 1895, § 1, effective July 1, 2019. **L. 2021:** (3) amended, (SB 21-055), ch. 12, p. 75, § 3, effective March 21.

5-16-112. Deceptive forms.

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

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

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

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

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

5-16-113. Civil liability.

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

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

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

(II) In the case of a class action, the amount for each named plaintiff as could be recovered under subsection (1)(b)(I) of this section and the amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed five hundred

thousand dollars or one percent of the net worth of the debt collector or collection agency, whichever is the lesser; and

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

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

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

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

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

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

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

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

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

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

(9) It shall be an affirmative defense to any action based upon failure of a debt collector, private child support collector, as defined in section 5-17-102 (9), or collection agency to comply with this section that the debt collector or collection agency believed, in good faith, that the debtor was other than a natural person.

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

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

(b) Repealed.

Source: L. 2017: (4) and (5) amended, (SB 17-216), ch. 285, p. 1579, § 5, effective June 1; entire article added with relocations, (HB 17-1238), ch. 260, p. 1090, § 1, effective August 9. **L. 2021:** (11)(b) repealed, (SB 21-055), ch. 12, p. 75, § 4, effective March 21.

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

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

ANNOTATION

Exemplary damages may be awarded under this section where the underlying claim is one that existed at common law. Pursuant to former § 12-14-134, the general assembly expressly permits parties to pursue pre-existing common law remedies under this statutory scheme. Virdanco, Inc. v. MTS Int'l, 820 P.2d 352 (Colo. App. 1991) (decided under former law).

5-16-114. Administrative enforcement - rules.

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

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

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

5-16-115. License - registration - unlawful acts.

(1) It is unlawful for any person to:

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

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

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

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

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

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

ANNOTATION

Unlicensed collection agency is not lawfully entitled to bring suit against the maker of a note. B.C. Inv. Co. v. Throm, 650 P.2d 1333 (Colo. App. 1982) (decided under former law).

A person who collects a debt that is not in default is not a "collection agency". Therefore, a person who purchases a debt before it is in default is not required to be licensed under the Colorado Fair Debt Collection Practices Act to attempt to collect the debt or bring suit to collect a debt. PurCo Fleet Servs., Inc. v. Koenig, 240 P.3d 435 (Colo. App. 2010), aff'd on other grounds, 2012 CO 56, 285 P.3d 979 (decided under former § 12-14-115).

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

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

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

5-16-117. Powers and duties of the administrator.

(1) Repealed.

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

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

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

(5) to (8) Repealed.

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

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

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

5-16-118. Collection agency license - required.

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

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

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

ANNOTATION

Corporation that is in the business of debt collection that takes a complete assignment of a debt owed to an entity located in Colorado is subject to the licensure provisions of this section even though the corporation is located outside of Colorado and the assignor of the debt retains no further rights in such debt. Commercial Serv. v. Fitzgerald, 856 P.2d 58 (Colo. App. 1993) (decided under former law).

5-16-119. Collection agency license - requirements - application - fee - expiration - definition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The administrator shall establish procedures for the maintenance of license lists and the establishment of initial and renewal license fees and schedules. The administrator may change

the renewal date of any license issued pursuant to this article 16 to the end that approximately the same number of licenses are scheduled for renewal in each month of the year. Where any renewal date is changed, the fee for the license shall be proportionately increased or decreased, as the case may be. Every licensee shall pay the administrator a license fee to be determined and collected pursuant to section 5-16-121 and subsection (4) of this section, and shall obtain a license certificate for the current license period. Notwithstanding any other provision of this section, a licensee, at any time, may voluntarily surrender the license to the administrator to be canceled, but such surrender shall not affect the licensee's liability for violations of this article 16 that occurred prior to the date of surrender.

(6) (a) 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.

(b) Subject to rules adopted by the administrator, nothing in subsection (6)(a) of this section prohibits a licensee from permitting its employees to work from a remote location so long as the licensee:

(I) Ensures that no in-person customer interactions are conducted at the remote location and does not designate the remote location to consumers as a business location;

(II) Maintains appropriate safeguards for licensee and consumer data, information, and records, including the use of secure virtual private networks, also known as "VPNs", where appropriate;

(III) Employs appropriate risk-based monitoring and oversight processes of work performed from a remote location and maintains records of the monitoring and oversight processes;

(IV) Ensures consumer information and records are not maintained at a remote location;

(V) Ensures consumer and licensee information and records remain accessible and available for regulatory oversight and examination; and

(VI) Provides appropriate employee training to ensure employees working from a remote location keep all conversations about and with consumers that are conducted from the remote location confidential, as if conducted from a commercial location, and to ensure that employees working at a remote location work in an environment that is conducive and appropriate to ensuring privacy and confidential conversations.

(c) As used in this subsection (6), "remote location" means a private residence of an employee of a licensee or another location selected by the employee and approved by the licensee.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1093, § 1, effective August 9. **L. 2023:** (6) amended, (SB 23-248), ch. 360, p. 2151, § 9, effective August 7.

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

5-16-120. License - issuance - grounds for denial - appeal - contents.

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

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

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

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

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

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

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

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

5-16-121. Collection agency license - renewals.

Each licensee shall make an application to renew its license in the form and manner prescribed by the administrator. The application shall be accompanied by a nonrefundable renewal fee in an amount determined by the administrator.

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

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

5-16-122. Collection agency license - notification of change and reapplication requirements.

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

(I) Change of business name or address;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5-16-123. Duties of collection agencies.

(1) A licensee shall:

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

(b) (I) (A) Maintain, at all times, an office within this state that is open to the public during normal business hours, is staffed by at least one full-time employee, keeps a record of all money

collected and remitted by the agency for residents of Colorado, and accepts payments physically made at the office for any debt the agency is attempting to collect.

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

(II) Maintain, at all times, a toll-free telephone number that shall be available to any consumer who needs to make a toll call to reach the licensee in connection with a debt.

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

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

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

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

(2) (a) No collection agency shall employ any collections manager, debt collector, or solicitor who has been convicted of or who has entered a plea of guilty or nolo contendere to any crime specified in part 4 of article 4, in part 1, 2, 3, 5, 7, or 9 of article 5, or in article 5.5 of title 18, or any similar crime under the jurisdiction of any federal court or court of another state.

(b) No collection agency shall be owned or operated by the following persons who have been convicted of or who have entered a plea of guilty or nolo contendere to any crime specified in part 4 of article 4, in part 1, 2, 3, 5, 7, or 9 of article 5, or in article 5.5 of title 18, or any similar crime under the jurisdiction of any federal court or court of another state:

(I) The owner of a sole proprietorship;

(II) A partner of a partnership;

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

(IV) An officer or director of a corporation.

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

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

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

5-16-124. Bond - definition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANNOTATION

Annotator's note. Since § 5-16-124 is similar to former § 12-14-124, and laws antecedent to that section, relevant cases construing those provisions have been included in the annotations to this section.

Parties who pay money to a collection agency to be applied upon debts owing by them cannot recover on the bond of such agency given under the provisions of this section, on the ground that such money was not turned over to their creditors. Young v. Cox, 96 Colo. 205, 40 P.2d 621 (1935).

The bond given by a collection agency under the provisions of this section does not cover failure of the agency to pay over to an assignee funds owing by the agency to the assignor on a deposit or money made by the assignor with the agency. Young v. Cox, 96 Colo. 205, 40 P.2d 621 (1935).

Board's refusal to take any further action was tantamount to a denial and constituted a final order subject to judicial review. United Fin. Credit v. Colo. Collection Agency Bd., 892 P.2d 446 (Colo. App. 1995).

5-16-125. Unlawful acts.

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

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

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

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

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

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

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

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

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

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

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

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

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

5-16-125.5. Statute of limitations - actions by administrator.

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

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

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

5-16-126. Criminal penalties.

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

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

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

5-16-127. Complaint - investigations - powers of administrator - sanctions.

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

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

(3) If any licensee or one of its principals or collections managers is convicted of or enters a plea of guilty or nolo contendere to any crime specified in part 4 of article 4, in part 1, 2, 3, 5, 7, or 9 of article 5, or in article 5.5 of title 18, or any similar crime under the jurisdiction of any federal court or court of another state, the conviction or plea shall constitute grounds for disciplinary action under this section.

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

(5) For reasonable cause, the administrator or the administrator's designee has the right, during normal business hours without resort to subpoena, to examine the books, records, and files of any licensee. If the books, records, and files are located outside Colorado, the licensee shall bear all expenses in making them available.

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

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

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

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

(9) If the administrator finds cause to believe a licensee or collections manager has violated this article 16, the rules adopted pursuant to this article 16, or any lawful order of the administrator, the administrator shall notify the licensee or collections manager and hold a hearing. Any proceedings conducted pursuant to this section shall be in accordance with article 4 of title 24.

(10) (a) If the administrator or the administrative law judge finds that the licensee or collections manager has violated this article 16, the rules adopted pursuant to this article 16, or any lawful order of the administrator, or if the licensee fraudulently obtained a license, the administrator may issue letters of admonition; deny, revoke, or suspend the license of the licensee or approval of the collections manager; place the licensee or collections manager on probation; or impose administrative fines in an amount up to one thousand five hundred dollars per violation on the licensee or collections manager.

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

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

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

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

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

(13) The administrator shall not make public the name or identity of a person whose acts or conduct the administrator investigates pursuant to this section or the facts disclosed in the investigation. This subsection (13) does not apply to disclosures by the administrator in actions or administrative enforcement proceedings pursuant to this article 16.

Source: L. 2017: (12) amended, (SB 17-216), ch. 285, p. 1581, § 10, effective June 1; entire article added with relocations, (HB 17-1238), ch. 260, p. 1101, § 1, effective August 9. **L. 2023:** (13) added, (SB 23-248), ch. 360, p. 2152, § 11, effective August 7.

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

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

ANNOTATION

Board's refusal to take any further action was tantamount to a denial and constituted a final order subject to judicial review. United Fin. Credit v. Colo. Collection Agency Bd., 892 P.2d 446 (Colo. App. 1995) (decided under former § 12-14-130).

Applied in B.C. Inv. Co. v. Throm, 650 P.2d 1333 (Colo. App. 1982) (decided under former law).

5-16-128. Debt collectors for the department of personnel - complaint - disciplinary procedures.

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

(a) This article 16 or a rule promulgated pursuant to this article 16;

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

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

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

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

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

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

5-16-129. Records.

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

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

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

5-16-130. Jurisdiction of courts.

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

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

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

5-16-131. Duty of district attorney.

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

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

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

5-16-132. Remedies.

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

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

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

ANNOTATION

Because it apparently was not the general assembly's intention to abrogate pre-existing common law duties and remedies by the enactment of this statutory scheme, plaintiff suing a collection agency under former § 12-14-113 may recover exemplary damages in addition to damages provided under the statute. Virdanco, Inc. v. MTS Int'l, 820 P.2d 352 (Colo. App. 1991) (decided under former § 12-14-134).

5-16-133. Injunction - receiver.

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

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

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

ANNOTATION

Attorney fees award not dischargeable under the federal bankruptcy code. The award is sufficiently penal to constitute a "fine, penalty, or forfeiture". State v. Robert J. Hopp & Assocs., 2018 COA 71, 422 P.3d 617.

5-16-134. Disposition of fees and fines - definition.

(1) Repealed.

(1.5) On and after July 1, 2024, the state treasurer shall credit all fees collected under this article 16 to the consumer credit unit cash fund created in section 5-2-302 (11).

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

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1104, § 1, effective August 9. **L. 2023:** (1) amended and (1.5) added, (SB 23-248), ch. 360, p. 2152, § 10, effective August 7.

Editor's note: (1) This section is similar to former § 12-14-136 as it existed prior to 2017.

(2) Subsection (1)(c) provided for the repeal of subsection (1), effective July 1, 2026. (See L. 2023, p. 2152.)

5-16-134.5. Debts sold or resold after January 1, 2018.

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

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

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

5-16-134.7. Advisory council for debt collection - created - membership - duties - subject to review - repeal.

(1) The advisory council for debt collection, referred to in this section as the "advisory council", is created in the department of law. The advisory council consists of three members appointed by the attorney general as follows:

(a) One member representing a debt collection agency or a statewide organization representing debt collectors;

(b) One member representing a consumer advocacy organization related to debt collection or lending; and

(c) One member of the public.

(2) The members of the advisory council shall elect a chair and vice-chair from among the advisory council members appointed pursuant to subsection (1) of this section, which presiding officers shall serve terms of two years. Advisory council members may reelect a presiding officer.

(3) (a) Each member of the advisory council serves at the pleasure of the attorney general for a term of three years; except that:

(I) The initial member appointed pursuant to subsection (1)(a) of this section shall serve a term of one year; and

(II) The initial member appointed pursuant to subsection (1)(b) of this section shall serve a term of two years.

(b) The attorney general may reappoint a member to serve no more than three terms.

(c) Members of the advisory council may be reimbursed by the department of law for actual and necessary expenses incurred in the conduct of official business.

(4) The advisory council shall meet at least two times each year to discuss current issues in debt collection and any issues assigned to the advisory council by the attorney general for discussion.

(5) This section is repealed, effective September 1, 2032. Before the repeal, the advisory council is scheduled for review in accordance with section 2-3-1203.

Source: L. 2026: Entire section added, (HB 26-1426), ch. 334, p. 1983, § 6, effective August 12.

5-16-135. Repeal of article.

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

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

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

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

ARTICLE 17

Colorado Child Support Collection - Consumer Protection Act

5-17-101. Legislative declaration.
5-17-102. Definitions.
5-17-103. Application of the "Colorado Fair Debt Collection Practices Act".
5-17-104. Prohibited practices.
5-17-105. Fees.
5-17-106. Requirements relating to private child support enforcement service contracts.
5-17-107. Accounting for collections.
5-17-108. Verification of account information.
5-17-109. Cancellation or termination of private child support

enforcement service contract.

5-17-110. Civil liability.

5-17-111. Administrative enforcement.

5-17-112. Statute of limitations.

5-17-113. Notice - rules.

5-17-101. Legislative declaration.

The general assembly finds and determines that, to ensure that families receive the maximum amount of child support established by court or administrative order, additional consumer protections are needed for parents entitled to receive child support who contract with private collection agencies for the collection of child support.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1105, § 2, effective August 9.

Editor's note: This section is similar to former § 12-14.1-101 as it existed prior to 2017.

5-17-102. Definitions.

As used in this article 17, unless the context otherwise requires:

(1) "Arrears" or "arrearages" shall have the same meaning as provided in section 26-13.5-102 (2).

(2) "Child support" means any amount required to be paid pursuant to a judicial or administrative child support order.

(3) "Child support debt" shall have the same meaning as provided in section 26-13.5-102 (3).

(4) "Child support enforcement service" means a service, including related financial accounting services, performed directly or indirectly for the purpose of causing a payment required, or allegedly required, by a child support order to be made to the obligee to whom the payment is owed or to an agent of that individual.

(5) "Child support order" means any judgment, decree, order, or administrative order of support in favor of an obligee, whether temporary, permanent, final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered, requiring the payment of current child support, child support arrears, child support debt, retroactive support, or medical support, whether or not the order is combined with an order for maintenance.

(6) "Current child support" means the ongoing periodic support obligation that an obligor is required to pay pursuant to a child support order.

(7) "Obligee" means an individual who is owed child support under a child support order and who has entered or may enter into a contract with a collector.

(8) "Obligor" means any person owing or alleged to owe a duty of child support or against whom a proceeding for the establishment or enforcement of a duty to pay child support is commenced.

(9) (a) "Private child support collector" or "collector", except as provided in subsection (9)(b) of this section, means a person or entity who performs, or offers to perform, a child support enforcement service for an obligee under one or more of the following conditions:

(I) The obligee lives in Colorado at the time the contract is signed;

(II) The collector has a place of business or is licensed to conduct business in Colorado; or

(III) The collector contacts more than twenty-five obligors per year who live in Colorado.

(b) The term "private child support collector" does not include:

(I) A person or entity described in section 5-16-103 (3)(b);

(II) A nonprofit organization that is exempt from taxation under section 501(c)(3) of the federal "Internal Revenue Code of 1986" and charges no more than a nominal fee for providing assistance to any obligee with regard to the collection of child support;

(III) An attorney licensed to practice law in the state of Colorado;

(IV) An entity operating as an independent contractor with a county government agency that contracts to provide services that a delegate child support enforcement unit is required by law to provide; or

(V) A delegate child support enforcement unit acting pursuant to article 13.5 of title 26.

(10) "Private child support enforcement service contract" or "contract" means a contract or agreement, as described in section 5-17-106, pursuant to which a collector agrees to perform a child support enforcement service for an obligee for a fee.

(11) "State agency" means a government agency or its contractual agent administering a state plan approved under Title IV-D of the federal "Social Security Act", as amended.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1105, § 2, effective August 9.

Editor's note: This section is similar to former § 12-14.1-102 as it existed prior to 2017.

5-17-103. Application of the "Colorado Fair Debt Collection Practices Act".

(1) Except as otherwise provided by the particular provisions of this article 17, this article 17 supplements the requirements of the "Colorado Fair Debt Collection Practices Act", article 16 of this title 5, including but not limited to prohibited practices, licensing, and administrative and legal enforcement as it is applied to private child support collectors.

(2) Article 16 of this title 5 also applies to private child support collectors.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1107, § 2, effective August 9.

Editor's note: This section is similar to former § 12-14.1-103 as it existed prior to 2017.

5-17-104. Prohibited practices.

(1) A collector may not engage in any fraudulent, unfair, deceptive, or misleading act or practice in soliciting an obligee to enter into a contract for the provision of child support enforcement services or in offering or performing a service pursuant to such a contract, including but not limited to the following:

(a) Imposing a fee or charge, including costs, for any payment collected through the efforts of or as a result of actions taken by a federal, state, or county agency, including but not limited to support collected from federal or state income tax refunds, unemployment benefits, or social security benefits. If the collector discovers, or is notified by the obligee or the federal, state, or county agency, that a payment was collected through the efforts of a federal, state, or county agency, the collector shall not assess fees on the payment. Any fees improperly retained shall be refunded to the obligee within seven business days.

(b) Designating a current child support payment as arrears, interest, or other amount owed;

(c) Intercepting or redirecting from the obligor, the obligor's employer, or on the behalf of the obligor to the collector any child support paid to the obligee if payment is ordered to be made through a central payment registry;

(d) Intercepting, redirecting, or collecting any amounts owed to a government agency under an assignment of rights resulting from the payment of public assistance to the obligee or owed to a state agency;

(e) When a child support order directs that payment be made through a central payment registry, suggesting or instructing that the obligor or the obligor's employer send the payment to the collector;

(f) Making a misleading representation or omitting a material disclosure that, as a result, is misleading with respect to the identity of any entity that has performed or may perform a child support enforcement service for any obligee;

(g) Requiring an obligee to sign a private child support enforcement contract that does not conform to the provisions of section 5-17-106;

(h) Sending an income-withholding order to an entity, unless the collector is authorized by state law to send the income-withholding order;

(i) Accepting a settlement offer made by an obligor before:

(I) The collector has reviewed all settlement offers with the obligee; and

(II) The obligee has expressly authorized the collector to accept the settlement offer;

(j) Requesting or requiring an obligee to waive the right of the obligee to accept a settlement offer; or

(k) Collecting or attempting to collect child support after the obligor notifies the collector pursuant to the procedure provided in section 5-17-108 (1)(a)(III) and (1)(a)(IV) that the obligor disputes the existence or amount of the child support obligation and the collector has not obtained written verification of the existence or amount of the obligation or a copy of the judgment against the obligor and mailed the obligor a copy of the verification of judgment.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1107, § 2, effective August 9.

Editor's note: This section is similar to former § 12-14.1-104 as it existed prior to 2017.

5-17-105. Fees.

(1) A private child support collector may not charge an obligee a fee unless:

(a) Before the obligee authorizes the fee, the amount of the fee, including the basis upon which the amount of the fee is calculated, is described accurately to the obligee in simple, easy-to-understand language; and

(b) Before the obligee incurs the fee, the obligee has authorized the fee in writing.

(2) A collector's contract with an obligee shall be for a specific dollar amount of child support to be collected. The contract shall explain in easy-to-understand language how the amount is to be calculated and may include any statutory interest to which the obligee is entitled and other amounts ordered by the court.

(3) A collector may charge a contingency fee for the collection of child support that is based on a percentage of the total child support collected.

(4) The maximum fee that may be charged by a collector as specified in subsection (3) of this section shall not exceed thirty-five percent of any amount collected.

(5) No other fees, charges, or costs may be assessed against the obligee, including an application fee.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1108, § 2, effective August 9.

Editor's note: This section is similar to former § 12-14.1-105 as it existed prior to 2017.

5-17-106. Requirements relating to private child support enforcement service contracts.

(1) In order to perform a child support enforcement service for an obligee, a collector shall enter into a written private child support enforcement service contract that:

(a) Meets the requirements of this section;

(b) Has been delivered to the obligee in a form that the obligee may keep;

(c) Is dated and signed by the obligee and an authorized representative of the collector;

(d) Fully discloses each term of the contract, any fees that may be imposed pursuant to the contract, and any amount that the obligee would be required to pay to the collector for services performed under section 5-17-109 if the contract were to be canceled or terminated by the obligee; and

(e) Includes a copy of any other document the collector requires the obligee to sign.

(2) Before a collector offers or proposes to perform a child support enforcement service for an obligee, the collector shall deliver to the obligee the notice developed pursuant to the rule-making described in section 5-17-113 and shall obtain signed verification from the obligee that the obligee received the notice described in section 5-17-113.

(3) A private child support enforcement service contract shall contain the following:

(a) A clear and accurate explanation of the amount of child support that will be collected;

(b) A clear description of the child support enforcement services that may be provided pursuant to the contract;

(c) A clear and accurate explanation of the fees that will be deducted and an example of how they are deducted;

(d) A good-faith estimate of the total amount of fees that will be charged pursuant to the contract;

(e) The full legal name, principal business address, and telephone number of the collector and any agents who assist the collector in providing a child support enforcement service and any separate name, address, and telephone number that the obligee may need for communication about the case;

(f) A complete and accurate copy of each disclosure and notice required by this article 17 to be provided to the obligee before the obligee signs the contract;

(g) A conspicuous statement in bold-faced type, in immediate proximity to and on the same page as the space reserved for the signature of the obligee, which shall read as follows:

> You may cancel this contract at any time within thirty days of signing the contract or after any twelve consecutive months in which the collector fails to make a collection.

(h) An explanation that the contract may be in effect for an extended period of time because of the difficulty in estimating how long it will take to collect the full amount of child support due under the contract; and

(i) A statement that a collector may not assess fees on collections attributable to a federal, state, or county agency. Fees improperly retained shall be refunded within seven business days.

(4) A private child support enforcement service contract shall not include:

(a) A mandatory arbitration clause that limits the rights of a person to seek judicial relief for a claim arising under the contract or this article 17;

(b) A clause that requires the obligee to change the payee or redirect child support payments that would otherwise be payable to the obligee, a state agency administering a state plan approved under Title IV-D of the federal "Social Security Act", as amended, or a central payment registry, if payment is ordered to be made through a central payment registry;

(c) A clause that requires the obligee to close, or not open, a child support case with a county delegate child support enforcement unit or state agency administering a state plan approved under Title IV-D of the federal "Social Security Act", as amended; and

(d) A clause that requires the obligee to waive his or her rights to review and consent to any modification of a contract entered into by the obligee.

(5) A private child support enforcement contract may not be modified by subsequent agreement unless the obligee has signed the subsequent agreement after receiving a written copy of the modifications.

(6) A private child support enforcement service contract shall be accompanied by a form, in duplicate, that has the heading "notice of cancellation" and contains a description of, in easy-to-understand language, the cancellation and termination provisions contained in section 5-17-109, the cancellation rights of the consumer obligee contained in section 5-17-109, and the principal business address of the collector.

(7) A collector who enters into a contract with an obligee shall retain a copy of the signed contract and the statement signed by the obligee acknowledging receipt of the preliminary notice required by subsection (2) of this section for a period of five years after the completion or settlement of the collection efforts by the collector or termination of the contract, whichever event occurs first.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1109, § 2, effective August 9.

Editor's note: This section is similar to former § 12-14.1-106 as it existed prior to 2017.

5-17-107. Accounting for collections.

(1) A collector shall, on a monthly basis, provide to the obligee an accurate and up-to-date accounting that meets the requirements of rules promulgated by the administrator under section 5-17-113. The accounting shall be provided to the obligee by mail, telephone, or secure internet connection. The obligee shall request in writing the preferred method that the collector should use to provide the accounting to the obligee.

(2) In addition to the monthly accounting required pursuant to subsection (1) of this section, on request of the obligee at any time, the collector shall provide the obligee with any information pertaining to the case of the obligee, including the information described in this section, not more than five business days after the date the collector receives the request.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1111, § 2, effective August 9.

Editor's note: This section is similar to former § 12-14.1-107 as it existed prior to 2017.

5-17-108. Verification of account information.

(1) In lieu of section 5-16-109, the following verification provisions shall apply to the collection of child support by a collector:

(a) Not later than five days after a collector initially communicates with an obligor on behalf of an obligee with respect to the collection of child support due, unless the obligor has paid the child support, the collector shall send the obligor a written notice containing the following:

(I) The name of the obligee;

(II) A statement of the amount of the child support arrears, including any associated interest, late payment fee, or other charge authorized by law, and of the amount of the current child support owed by the obligor to the obligee;

(III) A statement that the collector assumes that the obligor owes child support to the obligee and that the amounts owed as described in the statement pursuant to subsection (1)(a)(II) of this section are correct, unless the obligor disputes the existence or amount of the child support obligation within thirty days after receipt of the notice;

(IV) A statement that if, within the thirty-day period described in subsection (1)(a)(III) of this section, the obligor notifies the collector in writing that the obligor disputes the existence or amount of the child support obligation, the collector will cease efforts to collect the child support, subject to subsection (1)(b) of this section, until the collector:

(A) Obtains written verification of the existence or amount of the obligation or a copy of the judgment against the obligor; and

(B) Mails to the obligor a copy of the verification or judgment; and

(V) A statement that the arrears balance reflected does not include any amounts owed to a county delegate child support enforcement unit or state agency administering a state plan approved under Title IV-D of the federal "Social Security Act", as amended.

(b) A statement made by a collector pursuant to subsection (1)(a)(IV) of this section shall not affect the enforceability of a valid income-withholding order or assignment issued by an appropriate authority under state law for child support collection purposes.

(c) The failure of an obligor to dispute the amount or existence of child support pursuant to subsection (1)(a)(IV) of this section shall not be construed as an admission of liability by the obligor.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1111, § 2, effective August 9.

Editor's note: This section is similar to former § 12-14.1-108 as it existed prior to 2017.

5-17-109. Cancellation or termination of private child support enforcement service contract.

(1) An obligee may cancel a private child support enforcement service contract with a collector at any time within thirty days of signing the contract or after any twelve consecutive months in which the collector fails to make a collection. The notification of cancellation shall be in writing and shall be effective upon receipt of the notice by the collector. If the notification of cancellation is received by the collector subsequent to the thirty-day time period following the signing of the contract, the notification shall be valid if post-marked within the thirty-day time period.

(2) Subject to the provisions of subsection (3) of this section, a private child support enforcement service contract may provide that, notwithstanding the cancellation of the contract by the obligee, the collector shall have the right to receive a fee for arrears collected under the contract if, as a result of the efforts of the collector, the obligee subsequently receives child support arrears or interest subject to collection pursuant to the contract. No other fees or costs shall be assessed for the cancellation of the contract.

(3) An obligee shall have no obligation pursuant to the private child support enforcement service contract if:

(a) The obligee cancels the contract:

(I) At any time before midnight of the thirtieth business day after signing the contract; or

(II) After any twelve consecutive months in which the private child support collector fails to make a collection; or

(b) The collector violates this article 17 with respect to the contract.

(4) A contract shall terminate without action by either party when the contract amount has been collected.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1112, § 2, effective August 9.

Editor's note: This section is similar to former § 12-14.1-109 as it existed prior to 2017.

5-17-110. Civil liability.

The provisions of section 5-16-113, with the exception of the statute of limitations set forth in section 5-16-113 (5), shall apply to any violation of this article 17 and are in addition to and not exclusive of any other remedies provided by law.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1112, § 2, effective August 9.

Editor's note: This section is similar to former § 12-14.1-110 as it existed prior to 2017.

5-17-111. Administrative enforcement.

This article 17 shall be enforced by the administrator, as defined in section 5-16-103 (1), and may be enforced as provided in article 16 of this title 5. Except as otherwise provided in or limited by this article 17, all rules adopted pursuant to section 5-16-114 shall apply to this article 17.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1113, § 2, effective August 9.

Editor's note: This section is similar to former § 12-14.1-111 as it existed prior to 2017.

5-17-112. Statute of limitations.

(1) An action to enforce any liability under this article 17 may be brought before the later of:

(a) The end of the five-year period beginning on the date of the occurrence of the violation involved; or

(b) In a case in which a collector willfully misrepresents any information that the collector is required by any provision of this article 17 to disclose to an obligee and the misrepresentation is material to the establishment of the liability of the collector to the obligee under this article 17, five years after the date the obligee discovers the misrepresentation.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1113, § 2, effective August 9.

Editor's note: This section is similar to former § 12-14.1-112 as it existed prior to 2017.

5-17-113. Notice - rules.

(1) The administrator shall promulgate rules related to the notice required to be provided to the obligee in section 5-17-106 (2) and the accounting required to be provided in section 5-17-107.

(2) The notice required by section 5-17-106 (2) shall, at a minimum, address the following:

(a) The option that child support collection services are offered at minimal or no cost through government child support collection services in every county in Colorado and in every state;

(b) A statement that the collector cannot require a government child support collection service to send payments to any person but the obligee;

(c) A statement that the collector will not provide legal advice or act as legal counsel for the obligee;

(d) A statement related to the rights the obligee has pursuant to this article 17; and

(e) A statement that the obligee may have the private child support enforcement service contract reviewed by an attorney.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1113, § 2, effective August 9.

Editor's note: This section is similar to former § 12-14.1-113 as it existed prior to 2017.

ARTICLE 18

Colorado Consumer Credit Reporting Act

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5-18-113.5. Notice of rights regarding protected consumers.
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5-18-101. Short title.

The short title of this article 18 is the "Colorado Consumer Credit Reporting Act".

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1114, § 3, effective August 9.

Editor's note: This section is similar to former § 12-14.3-101 as it existed prior to 2017.

ANNOTATION

Law reviews. For article, "New Limitations and Requirements in Reviewing Applicants' and Employees' Credit Records", see 27 Colo. Law. 95 (July 1998).

5-18-102. Legislative declaration.

The general assembly finds and declares that the use of consumer reporting agencies is increasing rapidly as consumer credit transactions become the rule rather than the exception in every-day consumer purchasing. Consumer credit reports by consumer reporting agencies may report on a consumer's credit worthiness, credit standing, credit capacity, debts, character, general reputation, personal characteristics, or mode of living as factors to establish a consumer's eligibility for credit insurance or employment. When a consumer reporting agency undertakes a business that has the potential to profoundly affect an individual consumer's life, whether for good or ill, it is incumbent upon such agencies to ensure that the information they are providing is accurate. Inaccurate consumer credit reports directly impair the efficiency of the banking system and unfair credit reporting methods undermine the public confidence in the banking system. There is a need to ensure that consumer reporting agencies exercise their responsibilities with fairness, impartiality, and respect for the consumer's rights. The general assembly further finds and declares that, in the event the information provided by a consumer reporting agency in a consumer credit report is inaccurate, the consumer has the right to have that information corrected in a swift and uncomplicated way.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1114, § 3, effective August 9.

Editor's note: This section is similar to former § 12-14.3-101.5 as it existed prior to 2017.

5-18-103. Definitions.

As used in this article 18, unless the context otherwise requires:

(1) "Adverse action" includes:

(a) The denial of, increase in any charge for, or reduction in the amount of insurance for personal, family, or household purposes;

(b) The denial of employment or any other decision for employment purposes that adversely affects a current or prospective employee; and

(c) An action or determination with respect to a consumer's application for credit under a credit arrangement that is adverse to the consumer's interests.

(2) "Consumer" means a natural person residing in the state of Colorado.

(3) (a) "Consumer report" means any written, oral, or other communication or any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, debts, character, general reputation, personal characteristics, or mode of living, that is used or expected to be used or collected, in whole or in part, as a factor to establish a consumer's eligibility for credit or insurance to be used for personal, family, or household purposes, employment purposes, or any other purpose authorized pursuant to applicable provisions of the federal "Fair Credit Reporting Act", 15 U.S.C. secs. 1681a and 1681b, as amended.

(b) "Consumer report" does not include:

(I) Any report containing information solely as to a transaction between the consumer and the person making the report;

(II) Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(III) Any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys a decision with respect to the request, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures that must be made to the consumer pursuant to the provisions of the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681m, as amended, in the event of adverse action.

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

(5) "Credit scoring" means the practice of quantifying the credit risk a person presents using the person's history, characteristics, or attributes in a formula designed to objectively rate credit risk or insurance risk of loss.

(6) "Creditworthiness" means any entry in a consumer's credit file that impacts the ability of a consumer to obtain and retain credit, employment, business or professional licenses, investment opportunities, or insurance. Entries contained in a consumer file or in a consumer

report that affect creditworthiness shall include, but not be limited to, payment information, defaults, judgments, liens, bankruptcies, collections, records of arrest and indictments, and multiple-credit inquiries.

(7) "Dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes any individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence.

(8) "Employment purposes", when used in connection with a consumer report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

(9) "File" means all of the information on the consumer that is recorded and retained by a consumer reporting agency regardless of how the information is stored.

(10) "Investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer, reported on or with others with whom the consumer is acquainted or who may have knowledge concerning any of the items of information. The term does not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when the information was obtained directly from a creditor of the consumer or from the consumer.

(11) "Key factors" means all relevant elements or reasons adversely affecting a specific credit score assigned to a consumer, listed in the order of importance, based on the respective effects on the credit score.

(11.5) "Medical debt" means debt arising from health-care services, as defined in section 10-16-102 (33), or health-care goods, including products, devices, durable medical equipment, and prescription drugs. "Medical debt" does not include debt charged to a credit card unless the credit card is issued under an open-end or closed-end credit plan offered specifically for the payment of health-care services or health-care goods.

(12) "Person" means any natural person, firm, corporation, or partnership.

(13) "Proper identification" means information generally deemed sufficient to identify a person. If the consumer is unable to reasonably identify himself or herself with the information described above, a consumer reporting agency may require additional information concerning the consumer's employment and personal or family history in order to verify his or her identity.

(13.5) "Protected consumer" means a consumer who, at the time a security freeze request is made, is:

(a) Under sixteen years of age; or

(b) Represented by a representative.

(13.7) "Record" means a compilation of information that:

(a) Identifies a protected consumer;

(b) Is created by a consumer reporting agency solely for the purpose of complying with section 5-18-112.5; and

(c) Is not created or used to consider the protected consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or eligibility for other financial services.

(13.9) "Representative" means a:

(a) Parent of an individual who is under sixteen years of age; or

(b) Legal guardian who, pursuant to a testamentary or other trusteeship, power of attorney, or court appointment, is qualified to make decisions regarding the support, care, education, health, or welfare of an individual.

(14) "Reviewing the account" means activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(15) (a) "Security freeze" or "freeze" means a notice placed in a consumer report or record, at the request of a consumer or a protected consumer's representative and subject to certain exemptions, that prohibits the consumer reporting agency from releasing the consumer report or record or any information from it without the express authorization of the consumer or of the protected consumer's representative.

(b) "Security freeze" includes a notice:

(I) Placed on a record created under section 5-18-112.5 for a protected consumer for whom the consumer reporting agency does not have a consumer report; and

(II) That prohibits the consumer reporting agency from releasing the protected consumer's record except as provided in section 5-18-112.5.

(16) (a) "Sufficient proof of authority" means documentation demonstrating that a representative has authority to act on behalf of a protected consumer.

(b) "Sufficient proof of authority" includes:

(I) A court order, a copy of a valid power of attorney, a valid trust document, or another legal document that clearly establishes the authority of the representative to act on behalf of the protected consumer; or

(II) In the case of a representative who is a parent of the protected consumer, a certified or official copy of the protected consumer's birth certificate.

(17) (a) "Sufficient proof of identification" means documentation identifying a protected consumer or a representative.

(b) "Sufficient proof of identification" includes a copy of a social security card, a certified or official copy of a birth certificate, a copy of a valid driver's license, or a copy of a government-issued photo identification document.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1114, § 3, effective August 9. **L. 2018:** (13.5), (13.7), (13.9), (16), and (17) added and (15) amended, (HB 18-1233), ch. 75, p. 650, § 1, effective January 1, 2019. **L. 2023:** (11.5) added, (HB 23-1126), ch. 374, p. 2239, § 1, effective August 7.

Editor's note: This section is similar to former § 12-14.3-102 as it existed prior to 2017.

5-18-104. Permissible purposes - prohibition.

(1) A consumer reporting agency may furnish a consumer report only under the following circumstances:

(a) In response to an order of a court having jurisdiction to issue such an order;

(b) In accordance with the written instructions of the consumer to whom it relates; and

(c) To a person which the consumer reporting agency has reason to believe:

(I) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving an extension of credit to, or review or collection of an account of, the consumer and if the consumer chooses to provide his or her social security number to the user, the user shall include the social security number with, or as a supplement to, a request for a consumer report, and include the social security number when transmitting subsequent credit information to a consumer reporting agency; or

(II) Intends to use the information for employment purposes only if an applicant or employee is first informed that a credit report may be requested in connection with his or her application for employment and the consumer consents in writing to the same; or

(III) Intends to use credit scoring information in connection with the underwriting or rating of insurance involving the consumer and the person establishes that the consumer has received written notification, or notification in the same medium as the application for insurance, that a

credit report may be requested in connection with his or her application for insurance, and that credit scoring information may be used to determine either the consumer's eligibility for insurance or the premium to be charged to the consumer; or

(IV) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(V) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer; or

(VI) Intends to use the information for any purpose allowed under the federal "Fair Credit Reporting Act" and rules promulgated pursuant to that act.

(2) A consumer reporting agency may not, by contract or otherwise, prohibit a user of any consumer report or investigative consumer report from, upon request of the consumer, disclosing and explaining the contents of the report or providing a copy of the report to the consumer to whom it relates if adverse action against the consumer has been taken or is contemplated by the user of the consumer report or investigative consumer report, based in whole or in part on the report. No user or consumer reporting agency shall be held liable or otherwise responsible for a disclosed or copied report when acting pursuant to this subsection (2) nor shall disclosure or provision of a copy of the report, by themselves, make the user a consumer reporting agency.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1116, § 3, effective August 9.

Editor's note: This section is similar to former § 12-14.3-103 as it existed prior to 2017.

5-18-105. Consumer reports - accuracy of information.

Whenever a consumer reporting agency prepares a consumer report, including reports that include criminal justice records, the agency shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the consumer about whom the report relates, including the use of the consumer's social security number if, in accordance with section 5-18-104 (1)(c)(I), the consumer's social security number is provided to the consumer reporting agency by a person intending to use the information contained in a consumer report in connection with a credit transaction involving the consumer and the social security number was initially provided to the user by the consumer in connection with that transaction. A consumer reporting agency shall exclude sealed and expunged records from a consumer report, unless the

user of the report demonstrates that the user is otherwise required to consider the information pursuant to state or federal statute, rule, or regulation.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1117, § 3, effective August 9. **L. 2022:** Entire section amended, (SB 22-099), ch. 276, p. 1980, § 1, effective August 10.

Editor's note: This section is similar to former § 12-14.3-103.5 as it existed prior to 2017.

ANNOTATION

Applied in Wright v. Experian Info. Solutions, Inc., 805 F.3d 1232 (10th Cir. 2015) (decided under former § 12-14.5-103.5).

5-18-106. Disclosures to consumers.

(1) A consumer reporting agency shall, upon written or verbal request and proper identification of any consumer, clearly, accurately, and in a manner that is understandable to the consumer, disclose to the consumer, in writing, all information in its files at the time of the request pertaining to the consumer, including but not limited to:

(a) The names of all persons requesting credit information pertaining to the consumer during the prior twelve-month period and the date of each request;

(b) A set of instructions, presented in a manner that is understandable to the consumer, describing how information is presented on its written disclosure of the file; and

(c) A toll-free number for use in resolving the dispute if the consumer submitted a written dispute to the consumer reporting agency, which operates on a nationwide basis.

(2) (a) A consumer reporting agency shall notify a consumer, by letter sent by first-class mail, that the consumer reporting agency will provide the consumer with a disclosure copy of his or her consumer file at no charge and a toll-free telephone number to call to provide the consumer reporting agency with the information necessary to request a copy, when one of the following events occurs within a twelve-month period:

(I) The consumer reporting agency has received eight credit inquiries pertaining to the consumer; or

(II) The consumer reporting agency has received a report that would add negative information to a consumer's file.

(b) A consumer reporting agency need only send one letter to a consumer per twelve-month period pursuant to subsection (2)(a) of this section even if more than one event occurs in that period.

(c) Any letter mailed to a consumer pursuant to subsection (2)(a) of this section shall not contain any identifying information particular to that consumer including, but not limited to, social security number, place of employment, date of birth, or mother's maiden name.

(d) Any letter mailed to a consumer pursuant to subsection (2)(a) of this section may be a form letter; except that each letter shall advise the consumer of the number and type of events that occurred relating to the consumer that initiated the letter. The letter shall also include a notice or separate form the consumer may complete and return to the consumer reporting agency to request a free copy of the consumer's credit report.

(e) Each consumer reporting agency shall, upon request of a consumer, provide the consumer with one disclosure copy of his or her file per year at no charge whether or not the consumer has made the request in response to the notification required in subsection (2)(a) of this section. If the consumer requests more than one disclosure copy of his or her file per year pursuant to this subsection (2)(e), the consumer reporting agency may charge the consumer up to eight dollars for each additional disclosure copy.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1117, § 3, effective August 9.

Editor's note: This section is similar to former § 12-14.3-104 as it existed prior to 2017.

5-18-107. Credit scoring related to the extension of credit secured by a dwelling - definition.

(1) In connection with an application for an extension of credit for a consumer purpose that is to be secured by a dwelling, the consumer reporting agency shall, upon the written request of the consumer, contained either in the application for an extension of credit or in a separate document, disclose to the consumer the following:

(a) The consumer's current credit score or the most recent credit score of the consumer that was previously calculated by the consumer reporting agency;

(b) The range of possible credit scores under the model used;

(c) The key factors, if any, not to exceed four, that adversely affected the credit score of the consumer in the model used;

(d) The date on which the credit score was created; and

(e) The name of the person or entity that provided the credit score or the credit file on the basis of which the credit score was created.

(2) (a) Nothing in subsection (1) of this section shall be construed to compel a consumer reporting agency to develop or disclose a credit score if the agency does not:

(I) Distribute scores that are used in connection with extensions of credit secured by residential real estate; or

(II) Develop credit scores that assist creditors in understanding the general credit behavior of the consumer and predicting future credit behavior.

(b) Nothing in subsection (1) of this section shall be construed to require a consumer reporting agency that distributes credit scores developed by another person or entity to provide further explanation of those scores or to process a dispute that may arise about information; except that the consumer reporting agency shall be required to provide to the consumer the name of, and current contact information for, the person or entity that developed the score or developed the methodology for the score.

(c) Nothing in subsection (1) of this section shall be construed to require a consumer reporting agency to maintain credit scores in its files.

(d) Nothing in subsection (3) of this section shall be construed to compel disclosures of a credit score except upon specific request of a consumer. If a consumer requests a credit file and not the credit score, then the consumer shall be provided with the credit file together with a statement that the consumer may request and obtain a credit score.

(3) Pursuant to subsection (1) of this section, a consumer reporting agency shall supply to a consumer:

(a) A credit score that is derived from a credit scoring model that is widely distributed to users of credit scores by that consumer reporting agency in connection with any extension of credit secured by a dwelling; or

(b) A credit score accompanied by information specifically required to be disclosed pursuant to subsection (1) of this section that assists the consumer in understanding the credit scoring assessment of the credit behavior of the consumer and predictions about future credit behavior.

(4) For purposes of this section, "credit score" means a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default. The numerical value or the

categorization derived from this analysis may also be referred to as a "risk predictor" or "risk score". "Credit score" does not include any mortgage score or rating of an automated underwriting system that considers one or more factors in addition to credit information, including, but not limited to, the loan value ratio, the amount of down payment, or a consumer's financial assets. "Credit score" does not include other elements of the underwriting process or underwriting decision.

(5) Notwithstanding any other provision of this article 18 to the contrary, a consumer reporting agency may charge a reasonable fee for disclosing a credit score.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1118, § 3, effective August 9.

Editor's note: This section is similar to former § 12-14.3-104.3 as it existed prior to 2017.

5-18-108. Charges for certain disclosures.

(1) A consumer reporting agency shall not impose a charge for:

(a) A request for a copy of the consumer's file made within sixty days after adverse action is taken; or

(b) Notifying any person designated by the consumer, pursuant to the applicable provisions of the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681i, as amended, of the deletion of information that is found to be inaccurate or that can no longer be verified; or

(c) A set of instructions for understanding the information presented on the consumer report and a toll free telephone number that consumers may utilize to obtain additional assistance concerning the consumer report; or

(d) The first copy of a consumer disclosure provided to a consumer each calendar year pursuant to section 5-18-106 (2)(a).

(2) For all other disclosures to consumers of information pertaining to the consumer, the consumer reporting agency may impose a reasonable charge, not to exceed the retail price of a written report rendered in the normal course of business to the customers of the agency for each request for information.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1120, § 3, effective August 9. **L. 2021:** (1)(d) amended, (SB 21-266), ch. 423, p. 2794, § 1, effective July 2.

Editor's note: This section is similar to former § 12-14.3-105 as it existed prior to 2017.

5-18-109. Reporting of information prohibited - exceptions - repeal.

(1) Except as authorized under subsection (2) of this section, a consumer reporting agency shall not make any consumer report containing any of the following items of information:

(a) Cases under title 11 of the United States Code, or under the federal bankruptcy act that, from the date of entry of the order for relief or the date of adjudication, predate the report by more than ten years;

(b) Suits and judgments that, from the date of entry, predate the report by more than seven years or by more than the governing statute of limitations, whichever is the longer period;

(c) Paid tax liens that, from the date of payment, predate the report by more than seven years;

(d) Accounts placed for collection or charged to profit and loss that predate the report by more than seven years;

(e) Records of arrest, indictment, or conviction of a crime that, from the date of disposition, release, or parole, predate the report by more than seven years;

(e.5) Sealed records, expunged records, and records that did not result in a conviction;

(f) (I) Any adverse item of information that the consumer reporting agency knows or should know concerns medical debt.

(II) This subsection (1)(f) is repealed, effective July 1, 2028.

(g) Any other adverse item of information that predates the report by more than seven years.

(2) The provisions of subsection (1) of this section do not apply to the case of any consumer report to be used in connection with a credit transaction involving, or that may reasonably be expected to involve, a principal amount that exceeds the national conforming loan limit value for a one-unit property as determined annually by the federal housing finance agency.

(3) A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction or a direct marketing transaction, a consumer report that contains medical information about a consumer unless the consumer consents to the furnishing of the report.

(4) A consumer reporting agency shall not include, in a consumer report made to a person requesting credit information pertaining to a consumer, the names of any other persons who have requested credit information pertaining to that consumer or the number of such inquiries made

more than one year preceding the date of the consumer report; except that such information shall be retained for two years and provided to the consumer as provided in this article 18.

(5) Notwithstanding the provisions of subsection (4) of this section, a consumer reporting agency shall not furnish to any person, including a developer of credit scoring, a record of inquiries in connection with a credit or insurance transaction that is not initiated by the consumer. The term "credit or insurance transaction that is not initiated by the consumer" does not include inquiries resulting from the collection of an account or for purposes of reviewing an account.

(6) (a) The department of revenue shall contract with one or more entities to conduct a study to consider the impact of subsection (1)(f) of this section on consumers' creditworthiness, access to credit, medical debt burden, and economic stability, including consideration of the impacts of subsection (1)(f) of this section on persons of different racial groups and income levels. On or before January 1, 2028, the department of revenue shall deliver the conclusions of the study to the business affairs and labor committee of the house of representatives and the business, labor, and technology committee of the senate, or to any successor committees.

(b) This subsection (6) is repealed, effective July 1, 2028.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1120, § 3, effective August 9. **L. 2022:** (1)(e.5) added and (2) amended, (SB 22-099), ch. 276, p. 1980, § 2, effective August 10. **L. 2023:** IP(1), (1)(f), and (2) amended and (1)(g) and (6) added, (HB 23-1126), ch. 374, p. 2239, § 2, effective August 7.

Editor's note: This section is similar to former § 12-14.3-105.3 as it existed prior to 2017.

5-18-110. Procedure for disputed information.

(1) If the completeness or accuracy of any item of information contained in the consumer's file is disputed by the consumer and the consumer notifies the consumer reporting agency directly of the dispute, the agency shall reinvestigate the item free of charge and record the current status of the disputed information on or before thirty business days after the date the agency receives notice conveyed by the consumer. The consumer reporting agency shall provide the consumer with the option of speaking directly to a representative of the agency to notify the agency of disputed information contained in the consumer's file.

(2) On or before five business days after the date a consumer reporting agency receives notice of a dispute from a consumer in accordance with subsection (1) of this section, the agency shall provide notice of the dispute to all persons who provided any item of information in dispute.

(3) Notwithstanding subsection (1) of this section, a consumer reporting agency may terminate a reinvestigation of information disputed by a consumer under subsection (1) if the agency reasonably determines that the consumer's dispute is frivolous or irrelevant. Upon making such a determination, a consumer reporting agency shall promptly notify the consumer of its determination and reasons, by mail, or if authorized by the consumer for that purpose, by telephone. The presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for determining the dispute is frivolous or irrelevant.

(4) If, after a reinvestigation under subsection (1) of this section of any information disputed by a consumer, the information is inaccurate or cannot be verified, the consumer reporting agency shall promptly delete the information from the consumer's file, revise the file, provide the consumer and, at the request of the consumer, any person that, within the last twelve months, requested the disputed information with a revised consumer report indicating that it is a revised consumer report, and refrain from reporting the information in subsequent reports. The consumer reporting agency shall advise the consumer that he or she has the right to have a copy of the revised consumer report sent by the consumer reporting agency to any person that requested the disputed information within the last twelve months.

(5) Information deleted pursuant to subsection (4) of this section may not be reinserted in the consumer's file unless the person who furnishes the information reinvestigates and states in writing or by electronic record to the consumer reporting agency that the information is complete and accurate.

(6) A consumer reporting agency shall provide written notice of the results of any reinvestigation or reinsertion made pursuant to this section within five business days of the completion of the reinvestigation or reinsertion. The notice shall include:

(a) A statement that the reinvestigation is complete;

(b) A statement of the determination of the consumer reporting agency on the completeness or accuracy of the disputed information;

(c) A copy of the consumer's file or consumer report and a description of the results of the reinvestigation;

(d) A notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the consumer reporting agency, including the name, business address, and, if available, the telephone number of any person contacted in connection with that information;

(e) A notification that the consumer has the right, pursuant to the applicable provisions of the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681i, as amended, to add a statement to the consumer's file disputing the accuracy or completeness of the information; and

(f) A notification of the consumer's rights to dispute resolution under section 5-18-116, which are available after the consumer has followed all dispute procedures described in this section and has received the notice specified under this subsection (6).

(7) Nothing in this section shall be construed to require a person who obtains a consumer report for resale to alter or correct any inaccuracy in the consumer report if the consumer report was not assembled or prepared by the person.

(8) The consumer reporting agency shall provide a person who provides credit information to the agency with the option to speak directly with a representative of the agency or to submit corrections to previously reported information by facsimile or other automated means when inaccurate information that was reported by the credit information provider appears on a consumer's file. The consumer reporting agency shall, in a period not to exceed five business days from the receipt of the faxed or automated information regarding the corrections, correct the inaccuracies on the consumer's file and, upon request, communicate the corrections to the person who submitted the initial request for corrections. The credit information provider's communication shall include information established by the consumer reporting agency that identifies him or her as the credit information provider who provided the original inaccurate information. Nothing in this subsection (8) shall be construed to prohibit a consumer reporting agency from correcting inaccurate information in a consumer's file or a consumer report at any time.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1121, § 3, effective August 9.

Editor's note: This section is similar to former § 12-14.3-106 as it existed prior to 2017.

5-18-111. Consumer report information block.

(1) (a) A consumer reporting agency shall, within thirty days after the receipt of a police report or order pursuant to this subsection (1)(a), permanently block the reporting of any information that a consumer identifies on his or her consumer report as being subject to either a police report or a court order referenced in subsection (1)(a)(I) or (1)(a)(II) of this section if the consumer provides a consumer reporting agency with proof of the consumer's identification and a copy of:

(I) A police report that alleges that a person other than the consumer obtained or recorded, by means of fraud, theft, or other violation of the "Colorado Criminal Code", personal identifying information of the consumer without authorization from the consumer and that the person used

the information to obtain, or attempt to obtain, credit, goods, services, or money in the name of the consumer without the consumer's consent; or

(II) A certified court order issued pursuant to section 18-1.3-603 (7).

(b) The consumer reporting agency shall promptly notify the person who furnished the information that a police report or court order has been filed, that a block has been requested, and the effective date of the block.

(2) (a) A consumer reporting agency may decline to block or may rescind any block of consumer information if, in the exercise of good faith and reasonable judgment, the consumer reporting agency believes:

(I) The information was blocked due to a misrepresentation of fact by the consumer relevant to the request to block under this section;

(II) The consumer agrees that the blocked information or portions of the blocked information were blocked in error;

(III) The consumer knowingly obtained possession of goods, services, or money as a result of the blocked transaction or transactions or the consumer should have known that he or she obtained possession of goods, services, or money as a result of the blocked transaction or transactions; or

(IV) The consumer so requests in writing and presents proof of the consumer's identity.

(b) A consumer reporting agency shall decline to block or shall rescind any block of consumer information if, in the case of a block or block request based upon the filing of an order, the sentencing court amends, dismisses, or withdraws its prior order to correct records issued pursuant to section 18-1.3-603 (7), and the consumer provides documentation from the court and proof of the consumer's identity.

(3) If a block of credit information is declined or rescinded pursuant to this section, the consumer reporting agency shall promptly notify the consumer in the same manner as consumers are notified of the reinsertion of information pursuant to section 5-18-110. The prior presence of the blocked information in the consumer reporting agency's file on the consumer is not evidence of whether the consumer knew or should have known that he or she obtained possession of any goods, services, or money.

(4) This section does not apply to a consumer reporting agency that acts as a reseller of information by assembling and merging information contained in the data base of one or more other consumer reporting agencies and that does not maintain a data base of the assembled or merged information from which new consumer reports are produced.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1123, § 3, effective August 9.

Editor's note: This section is similar to former § 12-14.3-106.5 as it existed prior to 2017.

5-18-112. Security freeze - timing - covered entities - cost.

(1) (a) A consumer may elect to place a security freeze on his or her consumer report by making a request in writing by certified mail to a consumer reporting agency.

(b) Except as provided in subsections (6)(b) and (11) of this section, if a security freeze is in place, information from a consumer report may not be released to a third party without prior, express authorization from the consumer.

(c) This section does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer report.

(2) (a) A consumer reporting agency shall place a security freeze on a consumer report no later than five business days after receiving the request from the consumer.

(b) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within ten business days and, with the confirmation, shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his or her consumer report to a specific party or for a specific period of time.

(3) If a consumer wishes to allow his or her consumer report to be accessed by a specific party or for a specific period of time while a freeze is in place, he or she shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:

(a) Proper identification;

(b) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (2)(b) of this section; and

(c) The proper information regarding the third party who is to receive the consumer report or the time period that the report shall be available to users of the consumer report.

(4) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a consumer report pursuant to subsection (3) of this section, shall comply with the request no later than three business days after receiving the request.

(5) A consumer reporting agency may develop procedures involving the use of telephone, fax, internet, or other electronic media to receive and process a request from a consumer to place a freeze or to temporarily lift a freeze on a consumer report pursuant to subsection (3) of this section in an expedited manner.

(6) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer report only in the following cases:

(a) Upon consumer request, pursuant to subsection (3) or (9) of this section; or

(b) If the consumer report was frozen due to a material misrepresentation of fact by the consumer or somebody purporting to be the consumer. If a consumer reporting agency intends to remove a freeze on a consumer report pursuant to this subsection (6)(b), the consumer reporting agency shall notify the consumer in writing prior to removing the freeze placed on the consumer report.

(7) If a third party requests access to a consumer report on which a security freeze is in effect, and the request is in connection with an application for credit or other use, and the consumer does not allow his or her consumer report to be accessed by that specific party or during that period of time, the third party may treat the application as incomplete.

(8) If a consumer requests a security freeze, the consumer reporting agency shall disclose the process of placing and temporarily lifting a freeze and the process for allowing access to information from the consumer report to a specific party or for a specific period of time while the freeze is in place.

(9) Except as otherwise provided pursuant to subsection (6)(b) of this section, a security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides both of the following:

(a) Proper identification; and

(b) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (2)(b) of this section.

(10) A consumer reporting agency shall require proper identification of the person making a request to place a security freeze in a manner consistent with the requirements of this section.

(11) The provisions of this section shall not apply to the use of a consumer report by or for any of the following:

(a) A person or entity, or a subsidiary, affiliate, or agent of that person or entity that owns a financial obligation owing by the consumer to that person or entity, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing

the account or collecting the financial obligation owing for the account, contract, debt, or negotiable instrument, and lawful associated costs;

(b) An assignee or a prospective assignee of a financial obligation owing by the consumer to a person or entity in subsection (11)(a) of this section;

(c) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (3) of this section for purposes of facilitating the extension of credit or other permissible use;

(d) A state or local agency, law enforcement agency, trial court, private collection agency, or person acting pursuant to a court order, warrant, or subpoena authorizing the use of the consumer report;

(e) A child support enforcement agency acting to enforce child support obligations;

(f) The department of health care policy and financing or its agents or assigns acting to investigate fraud;

(g) The department of human services or its agents or assignees acting to investigate fraud;

(h) The department of revenue or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities or exercise any of its statutory authority;

(i) The use of credit information for the purposes of prescreening as provided for by the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681 et seq.;

(j) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed;

(k) Any person or entity for the purpose of providing a consumer with a copy of his or her consumer report upon the consumer's request;

(l) Any person or entity for use in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes;

(m) A pension plan acting to determine the consumer's eligibility for plan benefits or payments authorized by law or to investigate fraud;

(n) A person conducting a pre-sentence investigation in a criminal matter or a probation officer using this information for supervision of an offender;

(o) A collections investigator or other person engaged in the collecting of fees, fines, or restitution assessed in a court proceeding;

(p) A licensed hospital with which the consumer has or had a contract, or a debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the contract, account, or debt;

(q) A law enforcement agency or its agents acting to investigate a crime or conducting a criminal background check.

(12) (a) Fees for requesting a security freeze, temporarily lifting a security freeze, and permanently removing a security freeze from consumer reports may be charged only in accordance with this subsection (12).

(b) A consumer reporting agency may not charge a fee for a consumer's first request to place a security freeze on his or her consumer report.

(c) Except as provided for in subsections (12)(a) and (12)(b) of this section, a consumer reporting agency may charge a consumer a reasonable fee of no more than ten dollars for:

(I) A temporary lift for a period of time or permanent removal of a security freeze from the consumer report; or

(II) A subsequent request for a security freeze of the consumer report after the consumer's first request for a security freeze has been permanently removed from his or her consumer report.

(d) Except as provided for in subsections (12)(a) and (12)(b) of this section, a consumer reporting agency may charge a fee not to exceed twelve dollars for temporarily lifting a security freeze on the consumer report for a specific party.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1124, § 3, effective August 9.

Editor's note: This section is similar to former § 12-14.3-106.6 as it existed prior to 2017.

5-18-112.5. Security freeze for protected consumers.

(1) A representative may place a security freeze on a protected consumer's consumer report or record by:

(a) Submitting a written request to a consumer reporting agency in the manner prescribed by that agency; and

(b) Providing the consumer reporting agency with sufficient proof of authority and sufficient proof of identification of the representative.

(2) (a) If a consumer reporting agency does not have a consumer report pertaining to a protected consumer when the consumer reporting agency receives a request for a security freeze under subsection (1) of this section, the consumer reporting agency shall create a record for the protected consumer and place a security freeze on the record, only if the protected consumer's representative requests, in writing, a security freeze and provides required documentation in accordance with subsection (1) of this section.

(b) A protected consumer's record created pursuant to subsection (2)(a) of this section shall not be used to consider the protected consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or eligibility for other financial services.

(3) A consumer reporting agency shall place a security freeze on a consumer report or record within ten business days after confirming the authenticity of a security freeze request made in accordance with this section.

(4) (a) Except as provided in subsections (7)(c) and (9) of this section, if a security freeze is in place on a protected consumer's consumer report or record, information from the consumer report or record shall not be released to a third party without prior, express authorization from the protected consumer's representative or, if a protected consumer has provided the documentation required by subsection (7)(b) of this section, from the protected consumer.

(b) A consumer reporting agency may advise a third party that a security freeze is in effect with respect to a protected consumer's consumer report or record.

(5) Within ten business days after instituting a security freeze on a protected consumer's consumer report or record, the consumer reporting agency shall:

(a) Send written confirmation of the security freeze to the address on file; and

(b) Provide the representative with instructions for removing the security freeze.

(6) A consumer reporting agency shall not state or imply to any person that a security freeze reflects a negative credit score, a negative credit history, or a negative credit rating.

(7) (a) A security freeze on a protected consumer's consumer report or record remains in effect until the protected consumer's representative or, if authorized under this subsection (7), the protected consumer requests removal of the security freeze.

(b) Within ten business days after confirming the authenticity of a request, a consumer reporting agency shall remove a security freeze from a protected consumer's consumer report or record if a protected consumer or the protected consumer's representative requests that the security freeze be removed and provides to the consumer reporting agency sufficient proof of identification, and:

(I) If the protected consumer's representative makes the request, sufficient proof of authority; or

(II) If the protected consumer makes the request, documentation demonstrating that the representative's proof of authority used to request the security freeze is no longer valid. Such documentation may include proof that the protected consumer is sixteen years of age or older or that the representative's appointment is no longer valid.

(c) If the consumer report or record was frozen due to a material misrepresentation of fact by the protected consumer's representative or someone purporting to be the protected consumer's representative, the consumer reporting agency shall remove the security freeze from the protected consumer's consumer report or record after notifying the protected consumer in writing.

(8) Pursuant to any procedures developed in accordance with section 5-18-112 (5), a consumer reporting agency may use email or other electronic media to receive and process a security freeze request.

(9) This section does not apply to:

(a) The use of a consumer report or record by or for any of the users or uses listed in section 5-18-112 (11);

(b) A consumer reporting agency providing a copy of the protected consumer's consumer report or record to the protected consumer or the protected consumer's representative if requested by the protected consumer or protected consumer's representative; or

(c) An entity listed in section 5-18-115 (2).

(10) A consumer reporting agency shall not charge a fee to create a record in accordance with this section or for a request to place or remove a security freeze on a protected consumer's consumer report or record. A consumer reporting agency also shall not charge a fee to place, temporarily lift, temporarily lift for a specific party, or permanently remove a security freeze on the consumer report or record of any consumer under eighteen years of age.

(11) A third party may treat a protected consumer's application for credit as incomplete if:

(a) The third party requested access to the protected consumer's consumer report or record in connection with an application for credit; and

(b) The protected consumer's consumer report or record is frozen pursuant to this section.

(12) If a consumer reporting agency violates a security freeze placed on a protected consumer's consumer report or record by releasing information subject to the security freeze without proper authorization to release the information, the consumer reporting agency shall notify the protected consumer's representative or protected consumer in writing of the release of

information within five business days after discovering the release of information. The notice must include the specific information released and the name, address, phone number, and, if available, email address of the recipient of the information.

(13) A protected consumer's representative or, if a protected consumer has demonstrated that his or her representative's proof of authority is no longer valid pursuant to subsection (7)(b)(II) of this section, a protected consumer may dispute information in the protected consumer's consumer report or record pursuant to the procedures set forth in section 5-18-110 and may request that a consumer reporting agency block the reporting of information in the protected consumer's consumer report or record pursuant to section 5-18-111.

Source: L. 2018: Entire section added, (HB 18-1233), ch. 75, p. 652, § 2, effective January 1, 2019.

5-18-113. Notice of rights.

(1) At any time that a consumer is required to receive a summary of rights required under section 609 of the federal "Fair Credit Reporting Act" or under state law, the following notice shall be included:

State Consumers Have the Right to Obtain a Security Freeze

You may obtain a security freeze on your consumer report to protect your privacy and ensure that credit is not granted in your name without your knowledge, except as provided by law. You have a right to place a security freeze on your consumer report to prohibit a consumer reporting agency from releasing any information in your consumer report without your express authorization or approval, except as the law allows.

You will not be initially charged to place a security freeze on your consumer report. However, you will be charged a fee of no more than ten dollars to temporarily lift the freeze for a period of time, to permanently remove the freeze from your consumer report, or when you make a subsequent request for a freeze to be placed on your consumer report. As well, you may be charged a fee of no more than twelve dollars to temporarily lift the freeze for a specific party.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your consumer report, within five business days you will be provided procedures for the temporary release of your consumer report to a specific party or parties or for a period

of time after the security freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide the proper information regarding the third party or parties who are to receive the consumer report or the period of time for which the report shall be available to users of the consumer report.

A consumer reporting agency that receives a request from a consumer to temporarily lift a security freeze on a consumer report shall comply with the request no later than three business days after receiving the request.

A security freeze does not apply to circumstances where you have an existing account relationship, and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

You should be aware that using a security freeze to take control over who gains access to the personal and financial information in your consumer report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding new loans, credit, mortgage, insurance, government services or payments, rental housing, employment, investment, license, cellular phone, utilities, digital signature, internet credit card transaction, or other services, including an extension of credit at the point of sale. You should plan ahead and lift a security freeze either completely if you are shopping around, or specifically for a certain creditor a few days before actually applying for new credit.

You have the right to bring a civil action or submit to binding arbitration against a consumer reporting agency to enforce an obligation under the security freeze law after following specified dispute procedures and having received the necessary notice.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1128, § 3, effective August 9.

Editor's note: This section is similar to former § 12-14.3-106.7 as it existed prior to 2017.

5-18-113.5. Notice of rights regarding protected consumers.

Whenever a consumer reporting agency is required to provide a summary of rights to a consumer under section 609 of the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681g, as amended, or under state law, the following notice must be included:

State Consumers Have the Right to Obtain a

Security Freeze for Their Children or Legal Wards

You may obtain from a consumer reporting agency a credit report security freeze for your child who is under sixteen years of age or for your legal ward. If a consumer report has not yet been created for your child or legal ward, you may request that a consumer reporting agency create a consumer record for him or her and place a security freeze on his or her consumer record. You will not be charged to have a security freeze placed on your child's or legal ward's consumer report or to have a consumer record created for your child or legal ward and to have a security freeze placed on the consumer record. You will not be charged to have a security freeze placed on or removed from your child's or legal ward's credit report or record.

Source: L. 2018: Entire section added, (HB 18-1233), ch. 75, p. 654, § 3, effective January 1, 2019.

5-18-114. Security freeze - prohibition of changing official information in credit report or record.

If a security freeze is in place, a consumer reporting agency shall not change any of the following official information in a consumer report or record without sending a written notice of the change to the consumer or to a protected consumer's representative within thirty days after the change is posted to the consumer's or protected consumer's file: Name, date of birth, social security number, and address. Written notice is not required for technical modifications of a consumer's or protected consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the consumer reporting agency shall send the written notice to both the new address and the former address.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1129, § 3, effective August 9. **L. 2018:** Entire section amended, (HB 18-1233), ch. 75, p. 655, § 4, effective January 1, 2019.

Editor's note: This section is similar to former § 12-14.3-106.8 as it existed prior to 2017.

5-18-115. Security freeze - exemptions.

(1) (a) Except as specified in subsection (1)(b) of this section, sections 5-18-112 to 5-18-114 do not apply to a consumer reporting agency that:

(I) Acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer reporting agencies; and

(II) Does not maintain a permanent database of credit information from which new consumer reports or records are produced.

(b) A consumer reporting agency shall honor any security freeze placed on a consumer report or record by another consumer reporting agency.

(2) The following entities are not required to place a security freeze in a consumer report or record:

(a) A check service or company or fraud prevention service or company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments;

(b) A deposit account information service or company that issues reports regarding account closures due to fraud, substantial overdrafts, or automatic teller machine abuse or similar negative information regarding a consumer or protected consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution;

(c) A fraud prevention service or company issuing reports to prevent or investigate fraud.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1129, § 3, effective August 9. **L. 2018:** (1), IP(2), and (2)(b) amended, (HB 18-1233), ch. 75, p. 655, § 5, effective January 1, 2019.

Editor's note: This section is similar to former § 12-14.3-106.9 as it existed prior to 2017.

5-18-116. Consumer's right to file action in court or arbitrate disputes.

(1) A consumer, protected consumer, or protected consumer's representative may bring an action to enforce any obligation a consumer reporting agency has to a consumer, protected

consumer, or protected consumer's representative under this article 18 in any court of competent jurisdiction as provided by the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681 et seq., as amended, or submit an enforcement action to binding arbitration, in the manner set forth in the rules of the American Arbitration Association, to determine whether the consumer reporting agency met its obligations under this article 18 after the consumer, protected consumer, or protected consumer's representative has followed, as applicable:

(a) All dispute procedures in section 5-18-110 and has received the notice specified in section 5-18-110 (6);

(b) All of the block procedures in section 5-18-111; or

(c) All of the freeze procedures in section 5-18-112 or 5-18-112.5.

(2) An arbitrator's decision pursuant to this section does not affect the validity of any obligations or debts owed to any party. A successful party to any arbitration proceeding shall be compensated for the costs and attorney fees of the proceeding as determined by the court or arbitration. A consumer, protected consumer, or protected consumer's representative shall not submit more than one action to arbitration against any consumer reporting agency during any one-hundred-twenty-day period.

(3) The results of an arbitration action brought against a consumer reporting agency doing business in this state shall be communicated in a timely manner with all other consumer reporting agencies doing business in this state. If, as a result of an arbitration, a determination is made in favor of the consumer, protected consumer, or protected consumer's representative, any adverse information in the consumer's or protected consumer's file, report, or record shall be blocked, removed, or stricken in a timely manner, or the consumer report or record shall be frozen within five days after receipt of the determination by the consumer reporting agency. If the adverse information is not blocked, removed, or stricken, or the file is not frozen, the consumer, protected consumer, or protected consumer's representative may bring an action against the noncomplying agency pursuant to this section notwithstanding the one-hundred-twenty-day waiting period.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1130, § 3, effective August 9. **L. 2018:** Entire section amended, (HB 18-1233), ch. 75, p. 656, § 6, effective January 1, 2019.

Editor's note: This section is similar to former § 12-14.3-107 as it existed prior to 2017.

5-18-117. Violations.

(1) A consumer reporting agency that willfully violates this article 18 or the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681c, as amended, is liable for three times the amount of actual damages or one thousand dollars, whichever is greater, for a violation of section 5-18-112 or 5-18-112.5, or for each inaccurate or unblocked entry in the consumer's or protected consumer's file that was disputed or alleged to be unauthorized in accordance with section 5-18-111 by the consumer, protected consumer, or protected consumer's representative, plus reasonable attorney fees and costs.

(2) (a) A consumer reporting agency that negligently violates this article 18 or the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681c, as amended, is liable for the greater of actual damages or one thousand dollars for each violation of section 5-18-112 or 5-18-112.5, or for each inaccurate or unblocked entry in the consumer's or protected consumer's file that was disputed or alleged by the consumer, protected consumer, or protected consumer's representative to be unauthorized in accordance with section 5-18-111, that affects the consumer's or protected consumer's creditworthiness, as defined in section 5-18-103 (6), plus reasonable attorney fees and costs if:

(I) Within thirty days after receiving notice of dispute from a consumer, protected consumer, or protected consumer's representative in accordance with section 5-18-110, the consumer reporting agency does not:

(A) Correct the complained of items or activities; and

(B) Send the consumer, protected consumer, or protected consumer's representative and, upon request of the consumer, protected consumer, or protected consumer's representative, any person who has requested the consumer information, written notification of the corrective action, in accordance with section 5-18-110 (6), 5-18-112, or 5-18-112.5; or

(II) Within thirty days after receiving a copy of a police report alleging, or a certified court order finding, unauthorized activity, the consumer reporting agency does not block the information in accordance with section 5-18-111.

(b) A consumer reporting agency that negligently violates this article 18 or the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681c, as amended, is liable for the greater of actual damages or one thousand dollars for all violations of section 5-18-112 or 5-18-112.5 or all inaccurate or unblocked entries in the consumer's or protected consumer's file that were disputed or alleged by the consumer, protected consumer, or protected consumer's representative to be unauthorized in accordance with section 5-18-111, 5-18-112, or 5-18-112.5 and that did not affect the consumer's or protected consumer's creditworthiness, plus reasonable attorney fees and costs if:

(I) Within thirty days after receiving notice of dispute from a consumer, protected consumer, or protected consumer's representative in accordance with section 5-18-110, the consumer reporting agency does not:

(A) Correct the complained of items or activities; and

(B) Send to the consumer, protected consumer, or protected consumer's representative and, if requested by the consumer, protected consumer, or protected consumer's representative, to any person who has requested the consumer information, written notification of the corrective action, in accordance with section 5-18-110 (6), 5-18-112, or 5-18-112.5; or

(II) Within thirty days after receiving a copy of a police report alleging, or a certified court order finding, unauthorized activity, the consumer reporting agency does not block the information in accordance with section 5-18-111.

(3) In addition to the damages assessed under subsections (1) and (2) of this section, if, ten days after the entry of any judgment for damages, the consumer's or protected consumer's file is still not corrected, blocked, or frozen by the consumer reporting agency, the assessed damages shall be increased to one thousand dollars per day per unfrozen consumer report or record or inaccurate or unblocked entry that remains in the consumer's or protected consumer's file until the inaccurate entry is corrected or blocked, or the consumer report or record is frozen.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1130, § 3, effective August 9. **L. 2018:** Entire section amended, (HB 18-1233), ch. 75, p. 656, § 7, effective January 1, 2019.

Editor's note: This section is similar to former § 12-14.3-108 as it existed prior to 2017.

5-18-118. Provisions of article cumulative.

The provisions of this article 18 are cumulative, and any action taken under the provisions of this article 18 shall not constitute an election to take any such action to the exclusion of any other action authorized by law; except that a credit reporting agency shall not be subject to suit with respect to any issue that was the subject of an arbitration proceeding brought pursuant to section 5-18-116.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1131, § 3, effective August 9.

Editor's note: This section is similar to former § 12-14.3-109 as it existed prior to 2017.

ARTICLE 19

Debt-management Services

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COLORADO CREDIT SERVICES ORGANIZATION ACT

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PART 1

COLORADO CREDIT SERVICES ORGANIZATION ACT

5-19-101. Short title.

The short title of this part 1 is the "Colorado Credit Services Organization Act".

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1131, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-101 as it existed prior to 2017.

5-19-102. Legislative declaration.

(1) The general assembly finds and declares that:

(a) The ability to obtain and use credit has become of great importance to consumers, who have a vital interest in establishing and maintaining their creditworthiness and credit standing. The extension or receipt of credit has value and should be protected. As a result, consumers who have experienced credit problems may seek assistance from credit services organizations that offer to obtain credit or improve the credit standing of consumers.

(b) Certain advertising and business practices of some credit services organizations have worked a financial hardship upon the people of this state, often those who are of limited economic means and inexperienced in credit matters. Credit services organizations have significant impact upon the economy and well-being of this state and its people.

(c) The purposes of this part 1 are to provide prospective buyers of services of credit services organizations with the information necessary to make an intelligent decision regarding the purchase of those services and to protect the public from unfair or deceptive advertising and business practices;

(d) This part 1 shall be construed liberally to achieve these purposes; and

(e) It is the intent of the general assembly to further regulate the conduct of persons who provide credit services in accordance with this part 1 by adopting the regulatory requirements contained in part 2 of this article 19.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1132, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-102 as it existed prior to 2017.

5-19-103. Definitions.

As used in this part 1, unless the context otherwise requires:

(1) "Buyer" means any individual who is solicited to purchase or who purchases the services of a credit services organization.

(2) "Credit services organization" means any person, including a nonprofit organization exempt from taxation under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", who, with respect to the extension of credit by others, represents that the person can or will, in return for the payment of money or other valuable consideration by the buyer, improve or attempt to improve a buyer's credit record, history, or rating. The term "credit services organization" does not include any person licensed to practice law in this state if he or she renders credit services within the course and scope of his or her practice as an attorney.

(3) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family, or household purposes.

(4) "Person" includes any individual, corporation, partnership, joint venture, or any business entity.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1132, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-103 as it existed prior to 2017.

5-19-104. Prohibited acts.

(1) A credit services organization; its salespersons, agents, and representatives; and independent contractors who sell or attempt to sell the services of a credit services organization shall not:

(a) Charge or receive any money or other valuable consideration prior to full and complete performance of the services the credit services organization has agreed to perform for the buyer;

(b) Make, counsel, or advise any buyer to make any statement that is untrue or misleading to a credit reporting agency or to any person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit with respect to a buyer's creditworthiness, credit standing, or credit capacity;

(c) Make or use any untrue or misleading representations in the offer or sale of the services of a credit services organization or engage, directly or indirectly, in any act, practice, or course of business that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a credit services organization; or

(d) Make, counsel, or advise any buyer to make a request to a credit reporting agency to verify information contained in a consumer credit report, unless the buyer states in writing to the credit services organization that the buyer believes the information to be verified is incorrect or inaccurate, and states specifically the basis of the inaccuracy or incorrectness of each disputed item of information.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1133, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-104 as it existed prior to 2017.

5-19-105. Written disclosure required.

Before the execution of a contract or agreement between the buyer and a credit services organization or before the receipt by the credit services organization of any money or other valuable consideration, whichever occurs first, the credit services organization shall provide the buyer with a statement in writing containing all the information required by section 5-19-106. The credit services organization shall maintain on file for a period of two years an exact copy of the statement, personally signed by the buyer, acknowledging receipt of a copy of the statement.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1133, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-106 as it existed prior to 2017.

5-19-106. Content of written disclosure.

(1) The information statement required pursuant to section 5-19-105 shall be printed in at least ten-point type and shall include:

(a) The following statements concerning consumer credit reports and consumer credit agencies:

RIGHTS UNDER COLORADO

AND FEDERAL LAW

You have a right to obtain a copy of your credit report from a credit bureau at no charge once per year with additional copies available for a small fee. You have a right to dispute inaccurate information by contacting the credit bureau directly. However, you have no right to have accurate information removed from your credit bureau report. Under the federal "Fair Credit Reporting Act", the credit bureau must remove accurate negative information from your report only if it is over 7 years old. Bankruptcy can be reported for 10 years. Even when a debt has been completely repaid, your report can show that it was paid late if that is accurate. You have a right to sue a credit repair company that violates the "Colorado Credit Services Organization Act". This law prohibits deceptive practices by repair companies. The "Colorado Credit Services Organization Act" also gives you a right to cancel your contract for any reason within 5 working days from the date you sign it.

The Federal Trade Commission enforces the federal "Fair Credit Reporting Act". For more information, call or write the Federal Trade Commission. The administrator of the "Uniform Consumer Credit Code" enforces the "Colorado Credit Services Organization Act". For more information, call or write the Colorado attorney general's office.

(b) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total amount the buyer will have to pay, or become obligated to pay, for the services.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1133, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-107 as it existed prior to 2017.

5-19-107. Written contracts required.

(1) Each contract between the buyer and a credit services organization for the purchase of the services of the credit services organization shall be in writing, dated, signed by the buyer, and include the following:

(a) A conspicuous statement in bold-faced type, in immediate proximity to the space reserved for the signature of the buyer, as follows: "You, the buyer, may cancel this contract at any time prior to midnight of the fifth working day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right."

(b) The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to some other person;

(c) A full and detailed description of the services to be performed by the credit services organization for the buyer, including:

(I) All guarantees and all promises of full or partial refunds;

(II) The estimated date by which the services are to be performed, or the estimated length of time for performing the services;

(III) A list of the adverse information appearing on the buyer's credit report that is to be modified and a description of the precise nature of each modification. A copy of the consumer's current credit report issued by a consumer credit reporting agency shall be annexed to the contract with the adverse entries and proposed modifications clearly marked.

(d) The credit services organization's principal business address which shall be the actual office location of the organization and the name and address of its agent in the state authorized to receive service of process.

(2) The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation", that shall be attached to the contract, be easily detachable, and contain in bold-faced type the following statement written in the same language as used in the contract:

Notice of Cancellation

You may cancel this contract, without any penalty or obligation, within five (5) working days from the date the contract is signed.

If you cancel any payment made by you under this contract, it will be returned within ten (10) days following receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed, dated copy of this cancellation notice, or any other written notice to _____(name of seller)_____ at (address of seller)____(place of business)__ not later than midnight ___(date)___.

I hereby cancel this transaction,

_____(date)_____

_____(purchaser's signature)_____.

(3) The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit services organization requires the buyer to sign at the time they are signed.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1134, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-108 as it existed prior to 2017.

5-19-108. Waivers and exemptions.

(1) Any waiver by a buyer of any part of this part 1 is void as against public policy. Any attempt by a credit services organization to have a buyer waive rights given by this part 1 is a violation of this part 1.

(2) In any proceeding involving this part 1, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1135, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-109 as it existed prior to 2017.

5-19-109. Criminal penalties and injunctive relief.

(1) Any person who violates any provision of this part 1 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501. Violating any provision of this part 1 with respect to any buyer shall constitute a class 1 public nuisance subject to the provisions of part 3 of article 13 of title 16.

(2) The administrator of the uniform consumer credit code, designated pursuant to section 5-6-103, or the district attorney of any judicial district may maintain an action to enjoin violations of this part 1 and for restitution and penalties in an amount not to exceed one thousand five hundred dollars per violation. The state treasurer shall transfer the penalties collected pursuant to this subsection (2) to the general fund.

(3) Costs and reasonable attorney fees shall be awarded to the administrator of the uniform consumer credit code or a district attorney in all injunctive actions where the administrator of the uniform consumer credit code or district attorney successfully enforces this part 1.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1135, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-110 as it existed prior to 2017.

5-19-110. Powers of administrator of the uniform consumer credit code and district attorney - subpoenas - hearings - notification - cease-and-desist orders - definitions.

(1) When the administrator of the uniform consumer credit code or district attorney has cause to believe that any person, whether located in this state or elsewhere, has violated or is violating any provision of this part 1, the administrator or district attorney may, in addition to the other powers conferred upon the administrator or district attorney by this part 1:

(a) Request the person to file a statement or report in writing under oath or otherwise, on forms prescribed by him or her, as to all facts and circumstances concerning the sale or advertisement of goods, property, or services by any credit services organization and any other data and information he or she deems necessary;

(b) Prior to the filing of a complaint, issue subpoenas to require the attendance of witnesses or the production of documents; conduct hearings in aid of any investigation or inquiry; administer oaths; examine under oath any person in connection with the sale or advertisement of goods, property, or services by any credit services organization; and apply to the appropriate court for an appropriate order to effect the purposes of this article 19.

(2) Service of any notice or subpoena may be made in the manner prescribed by law or under the Colorado rules of civil procedure.

(3) (a) Credit services organizations shall file a notification with, and pay the fee prescribed in subsection (4) of this section to, the administrator within thirty days after commencing business in this state and, thereafter, on or before July 1 of each year. The notification must state:

(I) The name of the credit services organization;

(II) The name in which business is transacted, if the name is different from the name provided pursuant to subsection (3)(a)(I) of this section;

(III) The address of the credit services organization's principal office, which may be outside of this state; and

(IV) Other information the administrator may require.

(b) If information in a notification becomes inaccurate after filing, no further notification is required until the following year's notification filing is due.

(4) A person required to file the notification described in subsection (3) of this section shall pay to the administrator a nonrefundable annual notification fee. The administrator may examine the transactions, business, and records of a person that files a notification without issuance of a subpoena.

(5) The state treasurer shall credit all fees collected under this part 1 to the consumer credit unit cash fund.

(6) (a) After notice and hearing, the administrator may order a person to cease and desist from engaging in violations of this code or any rule or order lawfully made pursuant to this part 1. The order issued by the administrator may require the person to pay to a buyer a refund of unlawful charges under this part 1 charged to the buyer and to pay an administrative penalty of up to one thousand five hundred dollars per violation.

(b) The state treasurer shall credit all receipts from the imposition of administrative penalties under this section to the consumer credit unit cash fund.

(c) A respondent aggrieved by an order of the administrator may seek judicial review of the order in the Colorado court of appeals. The administrator may obtain a court order for enforcement of the administrator's order in district court under section 24-4-106. All proceedings under this section are governed by sections 24-4-105 and 24-4-106.

(7) As used in this section, unless the context otherwise requires:

(a) "Administrator" means the administrator of the uniform consumer credit code.

(b) "Consumer credit unit cash fund" means the consumer credit unit cash fund created in section 5-2-302 (11).

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1136, § 4, effective August 9. **L. 2024:** (3), (4), (5), (6), and (7) added, (HB 24-1380), ch. 463, p. 3220, § 2, effective August 7.

Editor's note: This section is similar to former § 12-14.5-110.5 as it existed prior to 2017.

5-19-111. Damages.

(1) Any buyer injured by a violation of this part 1 or by a credit services organization's breach of contract subject to this part 1 may maintain an action in a court of competent jurisdiction for recovery of actual damages, plus cost of suit and reasonable attorney fees. In case of an action brought by a buyer, actual damages shall not be less than the amount paid by the buyer to the credit services organization.

(2) In the event of a willful violation by a credit services organization of this part 1 or of a contract subject to this part 1, a person who is injured thereby shall be awarded, in addition to the damages allowable under subsection (1) of this section, an additional amount equal to twice the actual damages awarded under subsection (1) of this section.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1136, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-111 as it existed prior to 2017.

ANNOTATION

Annotator's note. Since § 5-19-111 is similar to former § 12-14.5-111, a relevant case construing that provision has been included in the annotations to this section.

The availability of double damages in subsection (2) serves punitive and deterrent functions. In re Jensen, 395 B.R. 472 (Bankr. D. Colo. 2008).

Double damages are not dischargeable under 11 U.S.C. § 523(a)(7). In re Jensen, 395 B.R. 472 (Bankr. D. Colo. 2008).

5-19-112. Aiding or assisting violation.

Any individual who, as a director, officer, partner, member, salesperson, agent, or representative of a credit services organization that violates this part 1, assists or aids, directly or indirectly, in such violation shall be responsible therefor and subject to the criminal penalties, injunctive relief, and damages provided for in this section and section 5-19-111.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1137, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-112 as it existed prior to 2017.

5-19-113. Remedies cumulative.

The remedies provided for in this part 1 are cumulative and in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1137, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-113 as it existed prior to 2017.

5-19-114. Relation between parts of article.

In the event of a conflict between part 2 of this article 19 and this part 1, the provisions of part 2 of this article 19 shall control. A credit service organization that also performs debt-management services shall comply with the requirements of part 2 of this article 19.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1137, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-114 as it existed prior to 2017.

PART 2

UNIFORM DEBT-MANAGEMENT SERVICES ACT

5-19-201. Short title.

The short title of this part 2 is the "Uniform Debt-Management Services Act".

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1137, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-201 as it existed prior to 2017.

5-19-202. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Administrator" means the assistant attorney general designated by the attorney general pursuant to section 5-6-103.

(2) "Affiliate":

(A) With respect to an individual, means:

(i) The spouse of the individual;

(ii) A sibling of the individual or the spouse of a sibling;

(iii) An individual or the spouse of an individual who is a lineal ancestor or lineal descendant of the individual or the individual's spouse;

(iv) An aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew, whether related by the whole or the half blood or adoption, or the spouse of any of them; or

(v) Any other individual occupying the residence of the individual; and

(B) With respect to an entity, means:

(i) A person that directly or indirectly controls, is controlled by, or is under common control with, the entity;

(ii) An officer of, or an individual performing similar functions with respect to, the entity;

(iii) A director of, or an individual performing similar functions with respect to, the entity;

(iv) A person that receives or received more than twenty-five thousand dollars from the entity in either the current year or the preceding year or a person that owns more than ten percent of, or an individual who is employed by or is a director of, a person that receives or received more than twenty-five thousand dollars from the entity in either the current year or the preceding year;

(v) An officer or director of, or an individual performing similar functions with respect to, a person described in subsection (2)(B)(i) of this section;

(vi) The spouse of, or an individual occupying the residence of, an individual described in subsections (2)(B)(i) to (2)(B)(v) of this section; or

(vii) An individual who has the relationship specified in subsection (2)(A)(iv) of this section to an individual or the spouse of an individual described in subsections (2)(B)(i) to (2)(B)(v) of this section.

(3) "Agreement" means an agreement between a provider and an individual for the performance of debt-management services.

(4) "Bank" means a financial institution, including a commercial bank, savings bank, savings and loan association, credit union, mortgage bank, and trust company, engaged in the business of banking, chartered under federal or state law, and regulated by a federal or state banking regulatory authority.

(5) "Business address" means the physical location of a business, including the name and number of a street.

(6) "Concessions" means assent to repayment of a debt on terms more favorable to an individual than the terms of the contract between the individual and a creditor.

(7) "Day" means calendar day.

(8) (A) "Debt-management services" means services as an intermediary between an individual and one or more creditors of the individual for the purpose of obtaining concessions, but does not include:

(i) Legal services provided in an attorney-client relationship by an attorney licensed to practice law in this state;

(ii) Accounting services provided in an accountant-client relationship by a certified public accountant certified or authorized by the state board of accountancy to provide accounting services in this state; or

(iii) Representative services provided before the internal revenue service, the department of revenue, or the department of labor and employment in an enrolled agent-client relationship for

tax purposes by an enrolled agent who is authorized by and in good standing with the United States department of treasury, if the enrolled agent is not engaging in other debt management services.

(B) The exemptions in subsection (8)(A) of this section do not apply to any person who directly or indirectly provides any debt management services on behalf of a licensed attorney, certified public accountant, or enrolled agent if that person is not an employee of the licensed attorney, certified public accountant, or enrolled agent.

(9) "Entity" means a person other than an individual.

(10) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.

(11) "Individual" means a natural person.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a public corporation, government, or governmental subdivision, agency, or instrumentality.

(13) "Plan" means a program or strategy in which a provider furnishes debt-management services to an individual and that includes a schedule of payments to be made by or on behalf of the individual and used to pay debts owed by the individual.

(14) "Principal amount of the debt" means the amount of a debt at the time of an agreement.

(15) "Provider" means a person that provides, offers to provide, or agrees to provide debt-management services directly or through others.

(16) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(17) "Settlement fee" means a charge imposed on or paid by an individual in connection with a creditor's assent to accept in full satisfaction of a debt an amount less than the principal amount of the debt.

(18) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic sound, symbol, or process.

(19) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(20) (A) "Trust account" means an account held by a provider that is:

(i) Established in an insured bank;

(ii) Separate from other accounts of the provider or its designee;

(iii) Designated as a trust account or other account designated to indicate that the money in the account is not the money of the provider; and

(iv) Used to hold money of one or more individuals for disbursement to creditors of the individuals.

(B) For a plan under which creditors will settle debts for less than the principal amount of the debt, nothing in this part 2 prohibits a provider from requesting or requiring an individual to place funds in an account, separate from the individual's then-existing bank account, to be used for the provider's fees and for payments to creditors or debt collectors in connection with the debt management services, if:

(i) The funds are held in an account at an insured financial institution;

(ii) The individual owns the funds held in the account and is paid accrued interest on the account, if any;

(iii) The entity administering the account is not owned, controlled by, or in any way affiliated with the provider;

(iv) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business involving the debt management provider or plan; and

(v) The individual may withdraw from the debt management plan at any time without penalty, and immediately receives all funds in the account, other than fees earned in compliance with section 5-19-223, as required by section 5-19-226.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1137, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-202 as it existed prior to 2017.

ANNOTATION

Annotator's note. Since § 5-19-202 is similar to former § 12-14.5-202, relevant cases construing that provision have been included in the annotations to this section.

The Uniform Debt-Management Services Act does not violate the separation of powers doctrine of the Colorado constitution by regulating attorneys. Limited regulation of attorneys under the Act does not implicate the Colorado supreme court's regulatory authority over bar admission, discipline, or license revocation of attorneys. Coffman v. Williamson, 2015 CO 35, 348 P.3d 929.

The Act does not violate the commerce clause or the privileges and immunities clause of the United States constitution with respect to regulating out-of-state attorneys because the Act is facially neutral and any burden on out-of-state attorneys is incidental. Out-of-state attorneys can still conduct debt-management services in Colorado, provided they comply with the Act or fall within the legal services exemption by associating with a local attorney and satisfying pro hac vice requirements to appear before a court. Coffman v. Williamson, 2015 CO 35, 348 P.3d 929.

The Act's exemptions from regulation should be applied narrowly because the Act was enacted to protect consumers and is remedial in nature. For a nonlawyer assistant to be covered under the legal services exemption to regulation under the Act, a person must at a minimum work for an attorney and under the attorney's supervision. Coffman v. Williamson, 2015 CO 35, 348 P.3d 929.

The legal services exemption only extends to a nonlawyer assistant if the nonlawyer assistant works for the attorney providing debt-management services. A nationwide legal software company owned and operated by nonlawyers that contracted with lawyers to provide debt-management services did not fall within the legal services exemption because the legal software company did not act on behalf of the lawyers in the provision of debt-management services; rather, the lawyers acted on behalf of the legal software company. Coffman v. Williamson, 2015 CO 35, 348 P.3d 929.

The legal services exception in subsection (10)(A)(i) does not implicate subject matter jurisdiction, and, therefore, can be waived if not timely asserted as an affirmative defense. State ex rel. Suthers v. Johnson Law Group, 2014 COA 150, 350 P.3d 961.

5-19-203. Exempt agreements and persons.

(a) This part 2 does not apply to an agreement with an individual who the provider has no reason to know resides in this state at the time of the agreement.

(b) This part 2 does not apply to a provider to the extent that the provider:

(1) Provides or agrees to provide debt-management, educational, or counseling services to an individual who the provider has no reason to know resides in this state at the time the provider agrees to provide the services;

(2) Receives no compensation for debt-management services from or on behalf of the individuals to whom it provides the services or from their creditors;

(3) Provides debt-management services only to persons that have incurred debt in the conduct of business; or

(4) Is subject to the "Colorado Foreclosure Protection Act", part 11 of article 1 of title 6.

(c) This part 2 does not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person's business or profession:

(1) A judicial officer, a person acting under an order of a court or an administrative agency, or an assignee for the benefit of creditors;

(2) A bank;

(3) An affiliate, as defined in section 5-19-202 (2)(B)(i), of a bank if the affiliate is regulated by a federal or state banking regulatory authority; or

(4) A title insurer, escrow company, or other person that provides bill-paying services if the provision of debt-management services is incidental to the bill-paying services.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1140, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-203 as it existed prior to 2017.

5-19-204. Registration required.

(a) Except as otherwise provided in subsection (b) of this section, on or after July 1, 2008, a provider may not provide debt-management services to an individual who it reasonably should know resides in this state at the time it agrees to provide the services, unless the provider is registered under this part 2.

(b) If a provider is registered under this part 2, subsection (a) of this section does not apply to an employee or agent of the provider.

(c) The administrator shall maintain and publicize a list of the names of all registered providers.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1141, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-204 as it existed prior to 2017.

ANNOTATION

Annotator's note. Since § 5-19-204 is similar to former § 12-14.5-204, a relevant case construing that provision has been included in the annotations to this section.

The Uniform Debt-Management Services Act, enacted to protect consumers, is remedial in nature and, therefore, its exemptions from regulation should be applied narrowly. To fall within the nonlawyer assistant component of the legal services exemption to regulation under the Act, a person must at a minimum work for an attorney and under the attorney's supervision. Coffman v. Williamson, 2015 CO 35, 348 P.3d 929.

5-19-205. Application for registration - form, fee, and accompanying documents.

(a) An application for registration as a provider shall be in a form prescribed by the administrator.

(b) An application for registration as a provider shall be accompanied by:

(1) The fee established by the administrator. The administrator shall transmit the fee to the state treasurer, who shall:

(A) Repealed.

(B) For fees collected on and after July 1, 2024, deposit the money in the consumer credit unit cash fund created in section 5-2-302 (11).

(2) The bond required by section 5-19-213;

(3) Identification of all trust accounts required by section 5-19-222 and an irrevocable consent authorizing the administrator to review and examine the trust accounts;

(4) Proof of compliance with the requirements of title 7 that specify the prerequisites for an entity to do business in this state; and

(5) If the applicant is organized as a not-for-profit entity or is exempt from taxation, evidence of not-for-profit and tax-exempt status applicable to the applicant under the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501, as amended.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1141, § 4, effective August 9. **L. 2023:** (b)(1) amended, (SB 23-248), ch. 360, p. 2153, § 12, effective August 7.

Editor's note: (1) This section is similar to former § 12-14.5-205 as it existed prior to 2017.

(2) Subsection (b)(1)(A)(ii) provided for the repeal of subsection (b)(1)(A), effective July 1, 2026. (See L. 2023, p. 2153.)

5-19-206. Application for registration - required information.

An application for registration shall be signed under penalty of false statement and include:

(1) The applicant's name, principal business address and telephone number, and all other business addresses in this state, electronic-mail addresses, and internet website addresses;

(2) All names under which the applicant conducts business;

(3) The address of each location in this state at which the applicant will provide debt-management services or a statement that the applicant will have no such location;

(4) The name and home address of each officer and director of the applicant and each person that owns at least ten percent of the applicant;

(5) Identification of every jurisdiction in which, during the five years immediately preceding the application:

(A) The applicant or any of its officers or directors has been licensed or registered to provide debt-management services; or

(B) Individuals have resided when they received debt-management services from the applicant;

(6) A statement describing, to the extent it is known or should be known by the applicant, any material civil or criminal judgment or litigation and any material administrative or enforcement action by a governmental agency in any jurisdiction against the applicant, any of its officers, directors, owners, or agents, or any person who is authorized to initiate transactions to the trust account required by section 5-19-222;

(7) The applicant's financial statements, audited by an accountant licensed to conduct audits, for each of the two years immediately preceding the application or, if it has not been in operation for the two years preceding the application, for the period of its existence;

(8) A description of the three most commonly used educational programs that the applicant provides or intends to provide to individuals who reside in this state and a copy of any materials used or to be used in those programs;

(9) A description of the applicant's financial analysis and initial plan, including any form or electronic model, used to evaluate the financial condition of individuals. The description shall be deemed to be confidential commercial data under section 24-72-204 (3)(a)(IV).

(10) A copy of each form of agreement that the applicant will use with individuals who reside in this state;

(11) The schedule of fees and charges that the applicant will use with individuals who reside in this state;

(12) At the applicant's expense, the results of a state and national fingerprint-based criminal history record check, conducted within the immediately preceding twelve months, covering every officer of the applicant and every employee of the applicant who is authorized to initiate transactions to the trust account required by section 5-19-222. The administrator shall be the authorized agency to receive information regarding the result of the national criminal history record check. If a provider delegates to an independent contractor or subcontractor the authority to initiate transactions to the trust account required by section 5-19-222, the administrator is entitled to receive the results of the state and national fingerprint-based criminal history record check only for those independent contractors or subcontractors who are authorized to initiate trust account transactions pursuant to that delegated authority.

(13) The names and addresses of all employers of each director during the five years immediately preceding the application; except that if a director receives no compensation from the provider, the applicable period shall be two years. The names and addresses shall be deemed to be confidential.

(14) A description of any ownership interest of at least ten percent by a director, owner, or employee of the applicant in:

(A) Any affiliate of the applicant; or

(B) Any entity that provides products or services to the applicant or any individual relating to the applicant's debt-management services;

(15) For not-for-profit providers, a statement of the amount of compensation of the applicant's five most highly compensated employees for each of the three years immediately preceding the application or, if it has not been in operation for the three years immediately preceding the application, for the period of its existence;

(16) The identity of each director who is an affiliate, as defined in section 5-19-202 (2)(A) or (2)(B)(i), (2)(B)(ii), (2)(B)(iv), (2)(B)(v), (2)(B)(vi), or (2)(B)(vii), of the applicant; and

(17) Any other information that the administrator reasonably requires to perform the administrator's duties under section 5-19-209.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1142, § 4, effective August 9. **L. 2021:** (12) amended, (SB 21-057), ch. 378, p. 2515, § 1, effective June 29. **L. 2022:** (12) amended, (HB 22-1410), ch. 404, p. 2873, § 2, effective August 10.

Editor's note: This section is similar to former § 12-14.5-206 as it existed prior to 2017.

5-19-206.5. Name-based judicial record check.

When the results of a fingerprint-based criminal history record check of an officer of the applicant or employee or agent of the applicant performed pursuant to section 5-19-206 (12) reveal a record of arrest without a disposition, the administrator shall require that person to submit to a name-based judicial record check, as defined in section 22-2-119.3 (6)(d).

Source: L. 2019: Entire section added, (HB 19-1166), ch. 125, p. 537, § 1, effective April 18. **L. 2022:** Entire section amended, (HB 22-1270), ch. 114, p. 513, § 2, effective April 21.

5-19-206.7. Remote work authorized - definition.

(1) Subject to rules adopted by the administrator, nothing in this part 2 prohibits a registered provider from permitting its employees to work from a remote location so long as the registered provider:

(a) Ensures that no in-person customer interactions are conducted at the remote location and does not designate the remote location to consumers as a business location;

(b) Maintains appropriate safeguards for registered provider and consumer data, information, and records, including the use of secure virtual private networks, also known as "VPNs", where appropriate;

(c) Employs appropriate risk-based monitoring and oversight processes of work performed from a remote location and maintains records of the monitoring and oversight processes;

(d) Ensures consumer information and records are not maintained at a remote location;

(e) Ensures consumer and registered provider information and records remain accessible and available for regulatory oversight and examination; and

(f) Provides appropriate employee training to ensure employees working from a remote location keep all conversations about and with consumers that are conducted from the remote location confidential, as if conducted from a commercial location, and to ensure that employees working at a remote location work in an environment that is conducive and appropriate to ensuring privacy and confidential conversations.

(2) As used in this section, "remote location" means a private residence of an employee of a registered provider or another location selected by the employee and approved by the registered provider.

Source: L. 2023: Entire section added, (SB 23-248), ch. 360, p. 2153, § 13, effective August 7.

5-19-207. Application for registration - obligation to update information.

An applicant or registered provider shall notify the administrator within fifteen days after a change in the information specified in section 5-19-205 (b)(5) or section 5-19-206 (1), (3), (6), (10), or (11).

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1144, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-207 as it existed prior to 2017.

5-19-208. Application for registration - public information.

Except for the information required by section 5-19-206 (7), (9), (12), (13), and (15), and the addresses required by section 5-19-206 (4), the administrator shall make the information in an application for registration as a provider available to the public.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1144, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-208 as it existed prior to 2017.

5-19-209. Certificate of registration - issuance or denial.

(a) Except as otherwise provided in subsections (b) and (c) of this section, the administrator shall issue a certificate of registration as a provider to a person that complies with sections 5-19-205 and 5-19-206.

(b) The administrator may deny registration if:

(1) The application contains information that is materially erroneous or incomplete;

(2) An officer, director, or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving dishonesty or the violation of state or federal securities laws;

(3) The applicant or any of its officers, directors, or owners has defaulted in the payment of money collected for others; or

(4) The administrator, upon reasonable belief, finds that the financial responsibility, experience, character, or general fitness of the applicant or its owners, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this part 2.

(c) The administrator shall deny registration if:

(1) The application is not accompanied by the fee established by the administrator; or

(2) With respect to an applicant that is organized as a not-for-profit entity or has obtained tax-exempt status under the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 501, as amended, the applicant's board of directors is not independent of the applicant's employees and agents.

(d) A board of directors is not independent for purposes of subsection (c) of this section if more than one-fourth of its members:

(1) Are affiliates of the applicant, as defined in section 5-19-202 (2)(A), (2)(B)(i), (2)(B)(ii), (2)(B)(iv), (2)(B)(v), (2)(B)(vi), or (2)(B)(vii); or

(2) After the date ten years before first becoming a director of the applicant, were employed by or directors of a person that received from the applicant more than twenty-five thousand dollars in either the current year or the preceding year.

(e) The administrator may temporarily approve a certificate of registration in the event an applicant has made a timely effort to obtain a criminal records check as required in section 5-19-206 (12), but for which a timely return of information has not occurred, for a reasonable period of time but no longer than one hundred twenty days, provided that the applicant has provided all other required information in the application for registration and the administrator finds no

reason to believe from the information that has been provided that the applicant may not provide fair and honest services to debtors under this part 2.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1144, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-209 as it existed prior to 2017.

5-19-210. Certificate of registration - timing.

(a) The administrator shall approve or deny an initial registration as a provider within ninety days after an application is filed. In connection with a request pursuant to section 5-19-206 (17) for additional information, the administrator may extend the ninety-day period for not more than thirty days. Within seven days after denying an application, the administrator, in a record, shall inform the applicant of the reasons for the denial.

(b) If the administrator denies an application for registration as a provider or does not act on an application within the time prescribed in subsection (a) of this section, the applicant may appeal and request a hearing pursuant to article 4 of title 24.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1145, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-210 as it existed prior to 2017.

5-19-211. Renewal of registration.

(a) A provider shall obtain a renewal of its registration annually before the expiration date of the registration to be renewed, as specified in this section.

(b) An application for renewal of registration as a provider shall be in a form prescribed by the administrator, signed under penalty of false statement, and:

(1) Be filed before the registration expires;

(2) Be accompanied by the fee established by the administrator and the bond required by section 5-19-213;

(3) Contain a financial statement, reviewed by an accountant licensed to conduct audits, for the applicant's fiscal year immediately preceding the application; except that the third renewal after initial registration and every fourth renewal thereafter shall be audited rather than reviewed;

(4) Disclose any changes in the information contained in the applicant's application for registration or its immediately previous application for renewal, as applicable;

(5) Disclose the total amount of money received by the applicant pursuant to plans during the preceding twelve months from or on behalf of individuals who reside in this state and the total amount of money distributed to creditors of those individuals during that period;

(6) If the applicant does not hold money on behalf of any debtor, disclose for business done with debtors in the state of Colorado during the preceding twelve months, the number of debtors with whom the applicant has had agreements, the number of fully settled debt agreements with creditors that applicant concluded for debtors, and an estimate of the total amount of debt under contract between applicant and debtors; and

(7) Provide any other information that the administrator reasonably requires to perform the administrator's duties under this section.

(c) Except for the information required by section 5-19-206 (7), (9), (12), (13), and (15) and the addresses required by section 5-19-206 (4), the administrator shall make the information in an application for renewal of registration as a provider available to the public.

(d) If a registered provider files a timely and complete application for renewal of registration, the registration remains effective until the administrator, in a record, notifies the applicant of a denial and states the reasons for the denial.

(e) If the administrator denies an application for renewal of registration as a provider, the applicant, within thirty days after receiving notice of the denial, may appeal and request a hearing pursuant to article 4 of title 24. Subject to section 5-19-234, while the appeal is pending, the applicant shall continue to provide debt-management services to individuals with whom it has agreements. If the denial is affirmed, subject to the administrator's order and section 5-19-234, the applicant shall continue to provide debt-management services to individuals with whom it has agreements until, with the approval of the administrator, it transfers the agreements to another registered provider or returns to the individuals all unexpended money that is under the applicant's control.

(f) If a registered provider fails to file by July 1 a complete application for renewal of registration and the required renewal fee, the registration shall automatically expire on that date.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1145, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-211 as it existed prior to 2017.

5-19-212. Registration in another state.

If a provider holds a license or certificate of registration in another state authorizing it to provide debt-management services, the provider may submit a copy of that license or certificate and the application for it instead of an application in the form prescribed by section 5-19-205 (a), 5-19-206, or 5-19-211 (b). The administrator shall accept the application and the license or certificate from the other state as an application for registration as a provider or for renewal of registration as a provider, as appropriate, in this state if:

(1) The application in the other state contains information substantially similar to, or more comprehensive than, that required in an application submitted in this state;

(2) The applicant provides the information required by section 5-19-206 (1), (3), (8), (10), and (11);

(3) The applicant, under penalty of false statement, certifies that the information contained in the application is current or, to the extent it is not current, supplements the application to make the information current; and

(4) The application is accompanied by the items required in section 5-19-205 (b).

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1146, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-212 as it existed prior to 2017.

5-19-213. Bond required.

(a) Except as otherwise provided in section 5-19-214, a provider that is required to be registered under this part 2 shall file a surety bond with the administrator, which shall:

(1) Be in effect during the period of registration and for two years after the provider ceases providing debt-management services to individuals in this state; and

(2) Run to this state for the benefit of this state and of individuals who reside in this state when they agree to receive debt-management services from the provider, as their interests may appear.

(b) A surety bond filed pursuant to subsection (a) of this section shall:

(1) Be in the amount of fifty thousand dollars or other larger or smaller amount that the administrator determines is warranted by the financial condition and business experience of the provider, the history of the provider in performing debt-management services, the risk to individuals, and any other factor the administrator considers appropriate;

(2) Be issued by a bonding, surety, or insurance company authorized to do business in this state and rated at least A by a nationally recognized rating organization; and

(3) Have payment conditioned upon noncompliance of the provider or its agent with this part 2.

(c) If the principal amount of a surety bond is reduced by payment of a claim or a judgment, the provider and the surety shall notify the administrator immediately and, within thirty days after notice by the administrator, the provider shall file a new or additional surety bond in an amount set by the administrator. The amount of the new or additional bond shall be at least the amount of the bond immediately before payment of the claim or judgment. If for any reason a surety terminates a bond, the surety shall provide written notice of the termination to the administrator immediately, and the provider shall immediately file a new surety bond in the amount of fifty thousand dollars or other amount determined pursuant to subsection (b) of this section.

(d) The administrator or an individual may obtain satisfaction out of the surety bond procured pursuant to this section if:

(1) The administrator assesses expenses under section 5-19-232 (b)(1), issues a final order under section 5-19-233 (a)(2), or recovers a final judgment under section 5-19-233 (a)(4), (a)(5), or (d); or

(2) An individual recovers a final judgment pursuant to section 5-19-235 (a), (b), (c)(1), (c)(2), or (c)(4).

(e) If claims against a surety bond exceed or are reasonably expected to exceed the amount of the bond, the administrator, on the initiative of the administrator or on petition of the surety, shall, unless the proceeds are adequate to pay all costs, judgments, and claims, distribute the proceeds in the following order:

(1) To satisfaction of a final order or judgment under section 5-19-233 (a)(2), (a)(4), (a)(5), or (d);

(2) To final judgments recovered by individuals pursuant to section 5-19-235 (a), (b), (c)(1), (c)(2), or (c)(4), pro rata;

(3) To claims of individuals established to the satisfaction of the administrator, pro rata; and

(4) If a final order or judgment is issued under section 5-19-233 (a), to the expenses charged pursuant to section 5-19-232 (b)(1).

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1147, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-213 as it existed prior to 2017.

5-19-214. Bond required - substitute.

(a) Instead of the surety bond required by section 5-19-213, a provider may deliver to the administrator, in the amount required by section 5-19-213 (b), and, except as otherwise provided in subsection (a)(1) of this section, payable or available to this state and to individuals who reside in this state when they agree to receive debt-management services from the provider, as their interests may appear, if the provider or its agent does not comply with this part 2:

(1) With the approval of the administrator, an irrevocable letter of credit, issued or confirmed by a bank approved by the administrator, payable upon presentation of a certificate by the administrator stating that the provider or its agent has not complied with this part 2.

(b) If a provider furnishes a substitute pursuant to subsection (a) of this section, the provisions of section 5-19-213 (a), (c), (d), and (e) apply to the substitute.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1148, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-214 as it existed prior to 2017.

5-19-215. Good faith requirement.

A provider shall act in good faith in all matters under this part 2.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1149, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-215 as it existed prior to 2017.

5-19-216. Customer service.

A provider required to be registered under this part 2 shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a counselor, debt specialist, or customer-service representative, as appropriate, during ordinary business hours.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1149, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-216 as it existed prior to 2017.

5-19-217. Prerequisites for providing debt-management services.

(a) Before providing or contracting to provide debt-management services, a registered provider shall give the individual an itemized list of goods and services and the charges for each. The list shall be clear and conspicuous, be in a record the individual may keep whether or not the individual assents to an agreement, and describe the goods and services the provider offers:

(1) Free of additional charge if the individual enters into an agreement;

(2) For a charge if the individual does not enter into an agreement; and

(3) For a charge if the individual enters into an agreement, using the following terminology, as applicable, and format:

Set-up fee _____ *dollar amount of fee*

Monthly service fee _____*dollar amount of fee or method of determining amount*

Settlement fee _____*dollar amount of fee or method of determining amount*

Goods and services in addition to those provided in connection with a plan:

_____

(item) dollar amount or method of determining amount

(item) dollar amount or method of determining amount.

(b) A provider may not furnish or contract to furnish debt-management services unless the provider, through the services of a counselor or debt specialist:

(1) Provides the individual with reasonable education about the management of personal finance. The provider shall maintain records of the education provided to an individual pursuant to this subsection (b)(1).

(2) Has prepared a financial analysis; and

(3) If the individual is to make regular, periodic payments:

(A) Has prepared a plan, as defined in section 5-19-202 (13), for the individual;

(B) Has made a determination, based on the provider's analysis of the information provided by the individual and otherwise available to it, that the plan is suitable for the individual and the individual will be able to meet the payment obligations under the plan; and

(C) Believes that each creditor of the individual listed as a participating creditor in the plan will accept payment of the individual's debts as provided in the plan.

(c) Before an individual assents to an agreement to engage in a plan, a provider shall:

(1) Provide the individual with a copy of the analysis and plan required by subsection (b) of this section in a record that identifies the provider and that the individual may keep whether or not the individual assents to the agreement;

(2) Inform the individual of the availability, at the individual's option, of assistance by a toll-free communication system or in person to discuss the financial analysis and plan required by subsection (b) of this section; and

(3) With respect to all creditors identified by the individual or otherwise known by the provider to be creditors of the individual, provide the individual with a list of:

(A) Creditors that the provider expects to participate in the plan and grant concessions;

(B) Creditors that the provider expects to participate in the plan but not grant concessions; and

(C) Creditors that the provider expects not to participate in the plan.

(D) (Deleted by amendment, L. 2024).

(d) Before an individual assents to an agreement to engage in a plan, the provider shall inform the individual, in a record that contains nothing else, that is given separately, and that the individual may keep whether or not the individual assents to the agreement:

(1) Of the name and business address of the provider;

(2) That plans are not suitable for all individuals and the individual may ask the provider about other ways, including bankruptcy, to deal with indebtedness;

(3) That establishment of a plan may adversely affect the individual's credit rating or credit scores;

(4) That nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including litigation;

(5) Unless it is not true, that the provider may receive compensation from the creditors of the individual; and

(6) That, unless the individual is insolvent, if a creditor settles for less than the full amount of the debt, the plan may result in the creation of taxable income to the individual, even though the individual does not receive any money.

(e) If a provider may receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may comply with subsection (d) of this section by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) Using a debt-management plan may hurt your credit rating or credit scores.

(3) We may receive compensation for our services from your creditors.

_____

Name and business address of provider

(f) If a provider will not receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment,

default, or delinquency, a provider may comply with subsection (d) of this section by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) Using a debt-management plan may hurt your credit rating or credit scores.

_____

Name and business address of provider

(g) If a plan contemplates that creditors will settle debts for less than the full principal amount of debt owed, a provider may comply with subsection (d) of this section by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Our program is not right for all individuals, and you may ask us to provide information about bankruptcy and other ways to deal with your debts.

(2) Nonpayment of your debts under our program may:

Hurt your credit rating or credit scores;

Lead your creditors to increase finance and other charges; and

Lead your creditors to undertake activity, including lawsuits, to collect the debts.

(3) Reduction of debt under our program may result in taxable income to you, even though you will not actually receive any money.

_____

Name and business address of provider

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1149, § 4, effective August 9. **L. 2024:** (b)(1) amended, (HB 24-1251), ch. 226, p. 1401, § 3, effective August 7; (b)(3)(A) and (c)(3) amended, (HB 24-1380), ch. 463, p. 3222, § 3, effective August 7.

Editor's note: This section is similar to former § 12-14.5-217 as it existed prior to 2017.

5-19-218. Communication by electronic or other means - definitions.

(a) As used in this section, unless the context otherwise requires:

(1) "Consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.

(2) "Federal act" means the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., as amended.

(b) A provider may satisfy the requirements of section 5-19-217, 5-19-219, or 5-19-227 by means of the internet or other electronic means if the provider obtains a consumer's consent at the time of satisfying the requirements of section 5-19-217, 5-19-219, or 5-19-227 in the manner provided by section 101 (c)(1) of the federal act.

(c) The disclosures and materials required by sections 5-19-217, 5-19-219, and 5-19-227 shall be presented in a form that is capable of being accurately reproduced for later reference.

(d) With respect to disclosure by means of an internet website, the disclosure of the information required by section 5-19-217 (d) shall appear on one or more screens that:

(1) Contain no other information; and

(2) The individual must see before proceeding to assent to formation of a plan.

(e) At the time of providing the materials and agreement required by sections 5-19-217 (c) and (d), 5-19-219, and 5-19-227, a provider shall inform the individual that upon electronic, telephonic, or written request, it will send the individual a written copy of the materials, and shall comply with a request as provided in subsection (f) of this section.

(f) If a provider is requested, before the expiration of ninety days after a plan is completed or terminated, to send a written copy of the materials required by section 5-19-217 (c) and (d), 5-19-219, or 5-19-227, the provider shall send them at no charge within three business days after the request, but the provider need not comply with a request more than once per calendar month or if it reasonably believes the request is made for purposes of harassment. If a request is made more than ninety days after a plan is completed or terminated, the provider shall send within a reasonable time a written copy of the materials requested.

(g) A provider that maintains an internet website shall disclose on the home page of its website or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals its contents:

(1) Its name and all names under which it does business;

(2) Its principal business address, telephone number, and electronic mail address, if any; and

(3) The names of its principal officers.

(h) Subject to subsection (i) of this section, if a consumer who has consented to electronic communication in the manner provided by section 101 of the federal act withdraws consent as provided in the federal act, a provider may terminate its agreement with the consumer.

(i) If a provider wishes to terminate an agreement with a consumer pursuant to subsection (h) of this section, it shall notify the consumer that it will terminate the agreement unless the consumer, within thirty days after receiving the notification, consents to electronic communication in the manner provided in section 101 (c) of the federal act. If the consumer consents, the provider may terminate the agreement only as permitted by section 5-19-219 (a)(6)(H).

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1152, § 4, effective August 9. **L. 2024:** (b) amended, (HB 24-1380), ch. 463, p. 3222, § 4, effective August 7.

Editor's note: This section is similar to former § 12-14.5-218 as it existed prior to 2017.

5-19-219. Form and contents of agreement.

(a) An agreement shall:

(1) Be in a record;

(2) Be dated and signed by the provider and the individual;

(3) Include the name of the individual and the address where the individual resides;

(4) Include the name, business address, and telephone number of the provider;

(5) Be delivered to the individual immediately upon formation of the agreement; and

(6) Disclose:

(A) The services to be provided;

(B) In a clear and conspicuous manner, the amount, percentage, or method of determining the amount, of all fees, individually itemized, to be paid by the individual, using only the terminology contained in section 5-19-223;

(C) The schedule of payments to be made by or on behalf of the individual, including the amount of each payment, the date on which each payment is due, an estimate of the date of the final payment, and an estimate of the total of all payments to be made under the plan;

(D) In a clear and conspicuous manner, the following information:

(i) The amount of time necessary to achieve the represented results;

(ii) If the plan includes a settlement offer to any of the individual's creditors or debt collectors, the time by which the provider will make a bona fide settlement offer to each of them and the amount of money or the percentage of each outstanding debt that the individual must accumulate before the provider will make a bona fide settlement offer to each of them; and

(iii) If the provider requests or requires the individual to place funds in an account at an insured financial institution, that the individual owns the funds held in the account, the individual may withdraw from the plan at any time without penalty, and, if the individual withdraws, the individual must receive all funds in the account, other than funds earned by the provider in compliance with section 5-19-222 (h);

(E) If a plan provides for regular periodic payments to creditors:

(i) Each creditor of the individual to which payment will be made, the amount owed to each creditor, and any concessions the provider reasonably believes each creditor will offer; and

(ii) The schedule of expected payments to each creditor, including the amount of each payment and the date on which it will be made;

(F) If the provider holds money on behalf of the individual, each creditor that the provider believes will not participate in the plan and to which the provider will not direct payment;

(G) How the provider will comply with its obligations under section 5-19-227 (a);

(H) If the provider holds money on behalf of the individual, that the provider may terminate the agreement for good cause, upon return of unexpended money of the individual;

(I) That the individual may cancel the agreement as provided in section 5-19-220;

(J) That the individual may contact the administrator with any questions or complaints regarding the provider; and

(K) The address, telephone number, and internet address or website of the administrator.

(b) For purposes of subsection (a)(5) of this section, delivery of an electronic record occurs when it is made available in a format in which the individual may retrieve, save, and print it, and the individual is notified that it is available.

(c) If the administrator supplies the provider with any information required under subsection (a)(6)(K) of this section, the provider may comply with that requirement only by disclosing the information supplied by the administrator.

(d) An agreement shall provide that:

(1) The individual has a right to terminate the agreement at any time, without penalty or obligation, by giving the provider written or electronic notice, in which event:

(A) The provider will refund all unexpended money that the provider or its agent has received from or on behalf of the individual for the reduction or satisfaction of the individual's debt; and

(B) All powers of attorney granted by the individual to the provider are revoked and ineffective;

(2) The individual authorizes any bank in which the provider or its agent has established a trust account to disclose to the administrator any financial records relating to the trust account; and

(3) The provider will notify the individual within five days after learning of a creditor's decision to reject or withdraw from a plan and that this notice will include:

(A) The identity of the creditor; and

(B) The right of the individual to modify or terminate the agreement.

(e) An agreement may not:

(1) Provide for application of the law of any jurisdiction other than the United States and this state;

(2) Except as permitted by the uniform arbitration act, part 2 of article 22 of title 13, contain a provision that modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are generally available to the individual under law other than this part 2;

(3) Contain a provision that restricts the individual's remedies under this part 2 or law other than this part 2; or

(4) Contain a provision that:

(A) Limits or releases the liability of any person for not performing the agreement or for violating this part 2; or

(B) Indemnifies any person for liability arising under the agreement or this part 2.

(f) All rights and obligations specified in subsection (d) of this section and section 5-19-220 exist even if not provided in the agreement. A provision in an agreement that violates subsection (d), (e), or (f) of this section is void.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1153, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-219 as it existed prior to 2017.

5-19-220. Cancellation of agreement - waiver.

(a) An individual may cancel an agreement before midnight of the third business day after the individual assents to it, unless the agreement does not comply with subsection (b) of this section or section 5-19-219 or 5-19-228, in which event the individual may cancel the agreement within thirty days after the individual assents to it. To exercise the right to cancel, the individual shall give notice in a record to the provider. Notice by mail is given when mailed.

(b) An agreement shall be accompanied by a separate form that contains in bold-faced type, surrounded by bold black lines:

Notice of Right to Cancel

You may cancel this agreement, without any penalty or obligation, at any time before midnight of the third business day that begins the day after you agree to it by electronic communication or by signing it.

To cancel this agreement during this period, send an email to *(Email address of provider)* or mail or deliver a signed, dated copy of this notice, or any other written notice to *(Name of provider)* at *(Address of provider)* before midnight on *(Date)*.

If you cancel this agreement within the 3-day period, we will refund all money you already have paid us.

You also may terminate this agreement at any later time, but we are not required to refund fees you have paid us.

I cancel this agreement,

_____

Print your name

_____

Signature

_____

Date

(c) If a personal financial emergency necessitates the disbursement of an individual's money to one or more of the individual's creditors before the expiration of three days after an agreement is signed, an individual may waive the right to cancel. To waive the right, the individual shall send or deliver a signed, dated statement in the individual's own words describing the circumstances that necessitate a waiver. The waiver shall explicitly waive the right to cancel. A waiver by means of a standard form record is void.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1156, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-220 as it existed prior to 2017.

5-19-221. Required language.

Unless the administrator, by rule, provides otherwise, the disclosures and documents required by this part 2 shall be in English. If a provider communicates with an individual primarily in a language other than English, the provider shall furnish a translation into the other language of the disclosures and documents required by this part 2.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1157, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-221 as it existed prior to 2017.

5-19-222. Trust account.

(a) All money paid to a provider by or on behalf of an individual pursuant to a plan for distribution to creditors is held in trust. Within two business days after receipt, the provider shall deposit the money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services.

(b) Money held in trust by a provider is not property of the provider or its designee. The money is not available to creditors of the provider or designee, except an individual from whom or on whose behalf the provider received money, to the extent that the money has not been disbursed to creditors of the individual.

(c) A provider shall:

(1) Maintain separate records of account for each individual to whom the provider is furnishing debt-management services;

(2) Disburse money paid by or on behalf of the individual to creditors of the individual as disclosed in the agreement; except that:

(A) The provider may delay payment to the extent that a payment by the individual is not final; and

(B) If a plan provides for regular periodic payments to creditors, the disbursement shall comply with the due dates established by each creditor; and

(3) Promptly correct any payments that are not made or that are misdirected as a result of an error by the provider or other person in control of the trust account and reimburse the individual for any costs or fees imposed by a creditor as a result of the failure to pay or misdirection.

(d) A provider may not commingle money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services with money of other persons.

(e) A trust account shall at all times have a cash balance equal to the sum of the balances of each individual's account.

(f) If a provider has established a trust account pursuant to subsection (a) of this section, the provider shall reconcile the trust account at least once a month. The reconciliation shall compare the cash balance in the trust account with the sum of the balances in each individual's account. If the provider or its designee has more than one trust account, each trust account shall be individually reconciled.

(g) If a provider discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the provider immediately shall notify the administrator by a method approved by the administrator. Unless the administrator by rule provides otherwise,

within five days thereafter, the provider shall give notice to the administrator describing the remedial action taken or to be taken.

(h) If an individual terminates an agreement or it becomes reasonably apparent to a provider that a plan has failed, the provider shall promptly refund to the individual all money paid by or on behalf of the individual that has not been paid to creditors, less fees that are payable to the provider under section 5-19-223.

(i) Before relocating a trust account from one bank to another, a provider shall inform the administrator of the name, business address, and telephone number of the new bank. As soon as practicable, the provider shall inform the administrator of the account number of the trust account at the new bank.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1157, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-222 as it existed prior to 2017.

5-19-223. Fees and other charges - rules.

(a) A provider may not impose directly or indirectly a fee or other charge on an individual or receive money from or on behalf of an individual for debt-management services except as permitted by this section.

(b) A provider may not impose charges or receive payment for debt-management services until the provider and the individual have signed an agreement that complies with sections 5-19-219 and 5-19-228.

(c) If an individual assents to an agreement, a provider may not impose a fee or other charge for educational or counseling services, or the like, except as otherwise provided in this subsection (c) and section 5-19-228 (d). The administrator may authorize a provider to charge a fee based on the nature and extent of the educational or counseling services furnished by the provider.

(d) The following rules apply:

(1) If an individual assents to a plan that contemplates that creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may charge:

(A) A fee not exceeding fifty dollars for consultation, obtaining a credit report, and setting up an account; and

(B) A monthly service fee, not to exceed ten dollars times the number of creditors remaining in a plan at the time the fee is assessed, but not more than fifty dollars in any month.

(2) If an individual assents to a plan that contemplates that creditors or debt collectors will settle debts for less than the principal amount of the debt:

(A) A provider may not request or receive payment of any fee or consideration until and unless:

(i) The provider has settled the terms of at least one debt pursuant to a settlement agreement or other valid contractual agreement executed by the individual;

(ii) The individual has made at least one payment pursuant to that settlement agreement or other valid contractual agreement between the individual and the creditor or debt collector; and

(iii) The fee or other charge complies with rules that the administrator adopts pursuant to subsection (d)(2)(C) of this section.

(B) Notwithstanding subsection (d)(2)(A) of this section, no individual who completes all of his or her obligations under the agreement may be charged fees such that those fees, when added to the aggregate of offers of settlement obtained by the provider for the debtor, exceeds the principal amount of the debt.

(C) The administrator may adopt rules regarding the fee or charge authorized pursuant to subsection (d)(2)(A)(iii) of this section by March 1, 2025. The rules must not unduly limit consumer access to debt management services programs based on available state and national data.

(3) A provider may not impose or receive fees under both subsection (d)(1) and (d)(2) of this section.

(4) Repealed.

(e) Repealed.

(f) If a payment to a provider by an individual under this part 2 is dishonored, a provider may impose a reasonable charge on the individual, not to exceed the lesser of twenty-five dollars and the amount permitted by law other than this part 2.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1158, § 4, effective August 9. **L. 2024:** (d)(2)(C) added, (HB 24-1380), ch. 463, p. 3222, § 5, effective August 7; (d)(2)(A)(iii) amended (HB 24-1380), ch. 463, p. 3222, § 5, effective March 1, 2025; (d)(4)(B) and (e)(2) added by revision, (HB 24-1380), ch. 463, pp. 3222, 3223, §§ 5, 6.

Editor's note: (1) This section is similar to former § 12-14.5-223 as it existed prior to 2017.

(2) Subsection (d)(4)(B) provided for the repeal of subsection (d)(4), effective March 1, 2025. (See L. 2024, pp. 3222, 3223.)

(3) Subsection (e)(2) provided for the repeal of subsection (e), effective March 1, 2025. (See L. 2024, pp. 3222, 3223.)

5-19-224. Voluntary contributions.

A provider may not solicit a voluntary contribution from an individual or an affiliate of the individual for any service provided to the individual. A provider may accept voluntary contributions from an individual but, until thirty days after completion or termination of a plan, the aggregate amount of money received from or on behalf of the individual may not exceed the total amount the provider may charge the individual under section 5-19-223.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1160, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-224 as it existed prior to 2017.

5-19-225. Voidable agreements.

(a) If a provider imposes a fee or other charge or receives money or other payments not authorized by section 5-19-223 or 5-19-224, the individual may void the agreement and recover as provided in section 5-19-235.

(b) If a provider is not registered as required by this part 2 when an individual assents to an agreement, the agreement is voidable by the individual.

(c) If an individual voids an agreement under subsection (b) of this section, the provider does not have a claim against the individual for breach of contract or for restitution.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1160, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-225 as it existed prior to 2017.

5-19-226. Termination of agreements.

(a) If an individual who has entered into an agreement fails for sixty days to make payments required by the agreement, a provider may terminate the agreement.

(b) If a provider or an individual terminates an agreement, the provider shall immediately return to the individual any money of the individual held in trust for the benefit of the individual.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1160, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-226 as it existed prior to 2017.

5-19-227. Periodic reports - retention of records.

(a) A provider shall provide the accounting required by subsection (b) of this section:

(1) Upon cancellation or termination of an agreement; and

(2) Before cancellation or termination of any agreement:

(A) At least once each month; and

(B) Within five business days after a request by an individual, but the provider need not comply with more than one request from an individual in any calendar month.

(b) A provider, in a record, shall provide each individual for whom it has established a plan an accounting of the following information:

(1) The amount of money received from the individual since the last report;

(2) The amounts and dates of disbursement made on the individual's behalf, or by the individual upon the direction of the provider, since the last report to each creditor listed in the plan;

(3) The amounts deducted from the amount received from the individual;

(4) The amount held in reserve; and

(5) If, since the last report, a creditor has agreed to accept as payment in full an amount less than the principal amount of the debt owed by the individual:

(A) The total amount and terms of the settlement;

(B) The amount of the debt when the individual assented to the plan;

(C) The amount of the debt when the creditor agreed to the settlement; and

(D) The calculation of a settlement fee.

(c) A provider shall maintain records for each individual for whom it provides debt-management services for five years after the final payment made by the individual and produce a copy of them to the individual within a reasonable time after a request for them. The provider may use electronic or other means of storage of the records.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1161, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-227 as it existed prior to 2017.

5-19-228. Prohibited acts and practices.

(a) A provider may not, directly or indirectly:

(1) Misappropriate or misapply money held in trust;

(2) Settle a debt on behalf of an individual without the individual's agreement to the settlement terms pursuant to a written settlement agreement or other valid written contractual agreement executed by the individual;

(3) Exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;

(4) Initiate a transfer from an individual's account at a bank or with another person unless the transfer is:

(A) A return of money to the individual; or

(B) Before termination of an agreement, properly authorized by the agreement and this part 2, and for:

(i) Payment to one or more creditors pursuant to a plan; or

(ii) Payment of a fee;

(5) Offer a gift or bonus, premium, reward, or other compensation to an individual for executing an agreement;

(6) Offer, pay, or give a gift or bonus, premium, reward, or other compensation to a person for referring a prospective customer, except for a sales lead, if the person making the referral has a financial interest in the outcome of debt-management services provided to the customer, unless neither the provider nor the person making the referral communicates to the prospective customer the identity of the source of the referral;

(7) Receive a bonus, commission, or other benefit for referring an individual to a person;

(8) Structure a plan in a manner that would result in a negative amortization of any of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt;

(9) Compensate its employees on the basis of a formula that incorporates the number of individuals the employee induces to enter into agreements;

(10) Settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification by the creditor that the payment is in full settlement of the debt;

(11) Make a representation that:

(A) The provider will furnish money to pay bills or prevent attachments;

(B) Payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or

(C) Participation in a plan will or may prevent litigation, collection activity, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment;

(12) Misrepresent that it is authorized or competent to furnish legal advice or perform legal services;

(13) Represent that it is a not-for-profit entity unless it is organized and properly operating as a not-for-profit under the law of the state in which it was formed or that it is a tax-exempt entity unless it has received certification of tax-exempt status from the federal internal revenue service; except that, if the provider represents that it is a not-for-profit entity and the provider does not have tax-exempt status under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, the provider shall state, in a clear and conspicuous manner and in close proximity to the representation: "We are not an educational, charitable, or religious organization granted tax-exempt status by the Internal Revenue Service."

(14) Take a confession of judgment or power of attorney to confess judgment against an individual;

(15) Employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information; or

(16) Advise, encourage, or suggest to the individual not to make a payment to creditors under the plan.

(b) If a provider furnishes debt-management services to an individual, the provider may not, directly or indirectly:

(1) Purchase a debt or obligation of the individual;

(2) Receive from or on behalf of the individual:

(A) A promissory note or other negotiable instrument other than a check or a demand draft; or

(B) A post-dated check or demand draft;

(3) Lend money or provide credit to the individual, except as a deferral of a settlement fee at no additional expense to the individual;

(4) Obtain a mortgage or other security interest from any person in connection with the services provided to the individual;

(5) Except as permitted by federal law, disclose the identity or identifying information of the individual or the identity of the individual's creditors, except to:

(A) The administrator, upon proper demand;

(B) A creditor of the individual, to the extent necessary to secure the cooperation of the creditor in a plan; or

(C) The extent necessary to administer the plan;

(6) Except as otherwise provided in section 5-19-223 (d)(2), provide the individual less than the full benefit of a compromise of a debt arranged by the provider;

(7) Charge the individual for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the internet, or any other matter not directly related to debt-management services or educational services concerning personal finance; or

(8) Furnish legal advice or perform legal services, unless the person furnishing that advice to or performing those services for the individual is licensed to practice law.

(c) This part 2 does not authorize any person to engage in the practice of law.

(d) A provider may not receive a gift or bonus, premium, reward, or other compensation, directly or indirectly, for advising, arranging, or assisting an individual in connection with obtaining an extension of credit or other service from a lender or service provider, except for

educational or counseling services required in connection with a government-sponsored program.

(e) Unless a person supplies goods, services, or facilities generally and supplies them to the provider at a cost no greater than the cost the person generally charges to others, a provider may not purchase goods, services, or facilities from the person if an employee or a person that the provider should reasonably know is an affiliate of the provider:

(1) Owns more than ten percent of the person; or

(2) Is an employee or affiliate of the person.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1161, § 4, effective August 9. **L. 2024:** (a)(2) amended, (HB 24-1251), ch. 226, p. 1401, § 4, effective August 7.

Editor's note: This section is similar to former § 12-14.5-228 as it existed prior to 2017.

5-19-229. Notice of litigation.

No later than thirty days after a provider has been served with notice of a civil action for violation of this part 2 by or on behalf of an individual who resides in this state at either the time of an agreement or the time the notice is served, the provider shall notify the administrator in a record that it has been sued.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1164, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-229 as it existed prior to 2017.

5-19-230. Advertising.

A provider that advertises debt-management services shall disclose, in an easily comprehensible manner, the information specified in section 5-19-217 (d)(3) and (d)(4).

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1164, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-230 as it existed prior to 2017.

5-19-231. Liability for the conduct of other persons.

If a provider delegates any of its duties or obligations under an agreement or this part 2 to another person, including an independent contractor, the provider is liable for conduct of the person that, if done by the provider, would violate the agreement or this part 2.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1164, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-231 as it existed prior to 2017.

5-19-232. Powers of administrator - rules.

(a) The administrator may act on its own initiative or in response to complaints and may receive complaints, take action to obtain voluntary compliance with this part 2, and seek or provide remedies as provided in this part 2.

(b) The administrator may investigate and examine, in this state or elsewhere, by subpoena or otherwise, the activities, books, accounts, and records of a person that provides or offers to provide debt-management services, or a person to which a provider has delegated its obligations under an agreement or this part 2, to determine compliance with this part 2. Information that identifies individuals who have agreements with the provider shall not be disclosed to the public. In connection with the investigation, the administrator may:

(1) Charge the person the reasonable expenses necessarily incurred to conduct the examination;

(2) Require or permit a person to file a statement under oath as to all the facts and circumstances of a matter to be investigated; and

(3) Seek a court order authorizing seizure from a bank at which the person maintains a trust account required by section 5-19-222, any or all money, books, records, accounts, and other

property of the provider that is in the control of the bank and relates to individuals who reside in this state.

(c) The administrator may adopt rules to implement the provisions of this part 2 in accordance with section 24-4-103.

(d) The administrator may enter into cooperative arrangements with any other federal or state agency having authority over providers and may exchange with any of those agencies information about a provider, including information obtained during an examination of the provider.

(e) The administrator shall administratively establish reasonable fees to be paid by providers for the expense of administering this part 2. The fees may vary by the type of debt-management service provided.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1165, § 4, effective August 9. **L. 2024:** (e) amended, (HB 24-1251), ch. 226, p. 1401, § 5, effective August 7.

Editor's note: This section is similar to former § 12-14.5-232 as it existed prior to 2017.

5-19-233. Administrative and legal remedies.

(a) The administrator may enforce this part 2 and rules adopted under this part 2 by taking one or more of the following actions:

(1) Ordering a provider or a director, employee, or other agent of a provider to cease and desist from any violations;

(2) Ordering a provider or a person that has caused a violation to correct the violation, including making restitution of money or property to a person aggrieved by a violation;

(3) Imposing on a provider or a person that has caused a violation a civil penalty not exceeding ten thousand dollars for each violation;

(4) Prosecuting a civil action to:

(A) Enforce an order; or

(B) Obtain restitution, a civil penalty not to exceed ten thousand dollars per violation, an injunction, or other equitable relief;

(5) Intervening in an action brought under section 5-19-235.

(b) If a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under subsection (a)(1) or (a)(2) of this section, the administrator or court may impose a civil penalty not exceeding twenty thousand dollars for each violation.

(c) The administrator may maintain an action to enforce this part 2 in any county.

(d) The administrator may recover the reasonable costs of enforcing this part 2 under subsections (a) to (c) of this section, including attorney fees based on the hours reasonably expended and the hourly rates for attorneys of comparable experience in the community.

(e) In determining the amount of a civil penalty to impose under subsection (a) or (b) of this section, the administrator or the court shall consider the seriousness of the violation, the good faith of the violator, any previous violations by the violator, the deleterious effect of the violation on the public, the net worth of the violator, and any other factor the administrator or the court considers relevant to the determination of the civil penalty.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1165, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-233 as it existed prior to 2017.

5-19-234. Suspension, revocation, or nonrenewal of registration - definitions.

(a) In this section, "insolvent" means:

(1) Having generally ceased to pay debts in the ordinary course of business other than as a result of good-faith dispute;

(2) Being unable to pay debts as they become due; or

(3) Being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C. sec. 101 et seq., as amended.

(b) In addition to the remedies otherwise available under this part 2, the administrator may suspend, revoke, or deny renewal of a provider's registration if:

(1) A fact or condition exists that, if it had existed when the registrant applied for registration as a provider, would have been a reason for denying registration;

(2) The provider has committed a material violation of this part 2 or a rule or order of the administrator under this part 2;

(3) The provider is insolvent;

(4) The provider or an employee or affiliate of the provider has refused to permit the administrator to make an examination authorized by this part 2, failed to comply with section 5-19-232 (b)(2) within fifteen days after request, or made a material misrepresentation or omission in complying with section 5-19-232 (b)(2); or

(5) The provider has not responded within a reasonable time and in an appropriate manner to communications from the administrator.

(c) If a provider does not comply with section 5-19-222 (f) or if the administrator otherwise finds that the public health, safety, or general welfare requires emergency action, the administrator may order a summary suspension of the provider's registration, effective on the date specified in the order.

(d) If the administrator suspends, revokes, or denies renewal of the registration of a provider, the administrator may seek a court order authorizing seizure of any or all of the money in a trust account required by section 5-19-222, books, records, accounts, and other property of the provider that are located in this state.

(e) If the administrator suspends or revokes a provider's registration, the provider may appeal and request a hearing pursuant to section 24-4-105.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1166, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-234 as it existed prior to 2017.

5-19-235. Private enforcement.

(a) If an individual voids an agreement pursuant to section 5-19-225 (b), the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except amounts paid to creditors, in addition to the recovery under subsections (c)(3) and (c)(4) of this section.

(b) If an individual voids an agreement pursuant to section 5-19-225 (a), the individual may recover in a civil action three times the total amount of the fees, charges, money, and payments made by the individual to the provider, in addition to the recovery under subsection (c)(4) of this section.

(c) Subject to subsection (d) of this section, an individual with respect to whom a provider violates this part 2 may recover in a civil action from the provider and any person that caused the violation:

(1) Compensatory damages for injury, including noneconomic injury, caused by the violation;

(2) Except as otherwise provided in subsection (d) of this section, with respect to a violation of section 5-19-217, 5-19-219 to 5-19-224, 5-19-227, or 5-19-228 (a), (b), or (d), the greater of the amount recoverable under subsection (c)(1) of this section or five thousand dollars;

(3) Punitive damages; and

(4) Reasonable attorney fees and costs.

(d) In a class action, except for a violation of section 5-19-228 (a)(4), the minimum damages provided in subsection (c)(2) of this section do not apply.

(e) In addition to the remedy available under subsection (c) of this section, if a provider violates an individual's rights under section 5-19-220, the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except for amounts paid to creditors.

(f) A provider is not liable under this section for a violation of this part 2 if the provider proves that the violation was not intentional and resulted from a good-faith error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. An error of legal judgment with respect to a provider's obligations under this part 2 is not a good-faith error. If, in connection with a violation, the provider has received more money than authorized by an agreement or this part 2, the defense provided by this subsection (f) is not available unless the provider refunds the excess within two business days after learning of the violation.

(g) The administrator shall assist an individual in enforcing a judgment against the surety bond or other security provided under section 5-19-213 or 5-19-214.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1167, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-235 as it existed prior to 2017.

5-19-236. Violation of unfair or deceptive practices statute.

If an act or practice of a provider violates both this part 2 and section 6-1-105, an individual may not recover under both for the same act or practice.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1168, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-236 as it existed prior to 2017.

5-19-237. Statute of limitations.

(a) An action or proceeding brought pursuant to section 5-19-233 (a), (b), or (c) shall be commenced within four years after the conduct that is the basis of the administrator's complaint.

(b) An action brought pursuant to section 5-19-235 shall be commenced within two years after the latest of:

(1) The individual's last transmission of money to a provider;

(2) The individual's last transmission of money to a creditor at the direction of the provider;

(3) The provider's last disbursement to a creditor of the individual;

(4) The provider's last accounting to the individual pursuant to section 5-19-227 (a);

(5) The date on which the individual discovered or reasonably should have discovered the facts giving rise to the individual's claim; or

(6) Termination of actions or proceedings by the administrator with respect to a violation of this part 2.

(c) The period prescribed in subsection (b)(5) of this section is tolled during any period during which the provider or, if different, the defendant has materially and willfully misrepresented information required by this part 2 to be disclosed to the individual, if the information so misrepresented is material to the establishment of the liability of the defendant under this part 2.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1168, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-237 as it existed prior to 2017.

5-19-238. Uniformity of application and construction.

In applying and construing this part 2, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1169, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-238 as it existed prior to 2017.

5-19-239. Relation to federal "Electronic Signatures in Global and National Commerce Act".

This part 2 modifies, limits, and supersedes the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or supersede section 101 (c) of that act, 15 U.S.C. sec. 7001 (c), or authorize electronic delivery of any of the notices described in section 103 (b) of that act, 15 U.S.C. sec. 7003 (b).

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1169, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-239 as it existed prior to 2017.

5-19-240. Transitional provisions - application to existing transactions.

Transactions entered into before January 1, 2008, and the rights, duties, and interests resulting from them may be completed, terminated, or enforced as required or permitted by a law amended, repealed, or modified by this part 2 as though the amendment, repeal, or modification had not occurred.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1169, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-240 as it existed prior to 2017.

5-19-241. Severability.

If any provision of this part 2 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part 2 that can be given effect without the invalid provision or application, and to this end the provisions of this part 2 are severable.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1169, § 4, effective August 9.

Editor's note: This section is similar to former § 12-14.5-241 as it existed prior to 2017.

5-19-242. Repeal of part.

This part 2 is repealed, effective September 1, 2035. Before the repeal, the department of regulatory agencies shall review the functions of the administrator pursuant to this part 2 and the registration of providers as provided for in section 24-34-104.

Source: L. 2017: Entire article added with relocations, (HB 17-1238), ch. 260, p. 1169, § 4, effective August 9. **L. 2024:** Entire section amended, (HB 24-1251), ch. 226, p. 1401, § 2, effective August 7.

Editor's note: This section is similar to former § 12-14.5-242 as it existed prior to 2017.

ARTICLE 20

Colorado Student Loan Equity

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PART 1

COLORADO STUDENT LOANS

5-20-101. Short title.

The short title of this article 20 is the "Colorado Student Loan Equity Act".

Source: L. 2019: Entire article added, (SB 19-002), ch. 157, p. 1856, § 2, effective August 2. **L. 2021:** Entire section amended, (SB 21-057), ch. 378, p. 2515, § 2, effective June 29.

5-20-102. Scope of article - residence of debtor.

(1) This part 1 applies to any person engaged in servicing a student education loan owed by an individual who is a resident of this state. For the purposes of this article 20, the residence of an individual is the address given by the individual as the individual's residence to the creditor or to the student loan servicer. Until an individual notifies the creditor or the student loan servicer of a new or different address, the given address is presumed to be unchanged.

(2) Part 2 of this article 20 applies to private education creditors and collection agencies in connection with student education loans that are not made, insured, or guaranteed under federal law and that are used for postsecondary education.

Source: L. 2019: Entire article added, (SB 19-002), ch. 157, p. 1856, § 2, effective August 2. **L. 2021:** Entire section amended, (SB 21-057), ch. 378, p. 2516, § 3, effective June 29. **L. 2023:** (2) amended, (SB 23-248), ch. 360, p. 2154, § 15, effective August 7.

5-20-103. Definitions.

As used in this article 20, unless the context otherwise requires:

(1) "Administrator" means the administrator designated in section 5-6-103.

(2) "Consumer reporting agency" has the meaning established in section 5-18-103 (4).

(3) "Education expenses" means any expense related, in whole or in part, expressly to financing postsecondary education, regardless of whether the debt incurred by a student to pay those expenses is owed to the provider of postsecondary education whose school, program, or facility the student attends.

(4) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(5) "Servicing" means:

(a) (I) Receiving any scheduled periodic payments from a borrower or notification of such payments; and

(II) Applying payments to the borrower's account pursuant to the terms of a student education loan or of the contract governing the servicing;

(b) During a period when no payment is required on a student education loan:

(I) Maintaining account records for the student education loan; and

(II) Communicating with the borrower regarding the student education loan, on behalf of the loan's holder; or

(c) Interactions with a borrower, including activities to help prevent default on obligations arising from student education loans, conducted to facilitate the activities described in subsection (5)(a) or (5)(b) of this section.

(6) "Student education loan":

(a) Means a loan that is made, insured, or guaranteed under Title IV of the federal "Higher Education Act of 1965", 20 U.S.C. sec. 1070 et seq., as amended, or that is extended to a student loan borrower for the purpose of funding, in whole or in part, education expenses. The term includes a loan that is extended in order to refinance or consolidate a student loan borrower's existing student education loans.

(b) Does not include a loan under an open-end credit plan, as defined in Regulation Z, 12 CFR 1026.2 (a)(20), or a loan that is secured by real property, regardless of the purpose for the loan.

(7) "Student loan borrower" or "borrower" means:

(a) An individual who has received or agreed to pay a student education loan; and

(b) For purposes of this part 1 only, an individual who shares responsibility with the individual specified in subsection (7)(a) of this section for repaying the student education loan.

(8) "Student loan servicer":

(a) Means a person that:

(I) (A) Receives any scheduled periodic payments from a student loan borrower or notification of the payments; and

(B) Applies payments to the student loan borrower's account pursuant to the terms of the student education loan or of the contract governing the servicing;

(II) During a period when no payment is required on a student education loan:

(A) Maintains account records for the loan; and

(B) Communicates with the student loan borrower regarding the loan, on behalf of the loan's holder; or

(III) Interacts with a student loan borrower, including activities to help prevent default on obligations arising from education loans, conducted to facilitate the activities described in subsection (8)(a)(I) or (8)(a)(II) of this section;

(b) Does not include:

(I) A bank, trust company, or industrial loan company doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States that is authorized to transact business in this state;

(II) A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in this state;

(III) A savings and loan association, savings bank, or credit union organized under the laws of this or any other state that is authorized to transact business in this state;

(IV) Except as otherwise provided in section 5-20-203, a collection agency, as defined in section 5-16-103 (3), whether or not licensed pursuant to section 5-16-120, whose student loan debt collection business involves collecting or attempting to collect on defaulted student loans; except that a collection agency that also services nondefaulted student loans as part of its business is a student loan servicer. For the purpose of this subsection (8)(b)(IV), "defaulted student loans" means federal student loans for which no payment has been received for two hundred seventy days or more or private education loans in default according to the terms of the loan documents. This subsection (8)(b)(IV) does not exempt a collection agency from complying with the requirements of the "Colorado Fair Debt Collection Practices Act", article 16 of this title 5.

(V) An agency, instrumentality, or political subdivision of this state, but only to the extent that servicing is performed through section 23-1-112 and pursuant to article 3.1 of title 23. This subsection (8)(b)(V) does not exempt a nongovernmental entity that performs student loan servicing pursuant to a contract with an agency, instrumentality, or political subdivision of the state.

Source: L. 2019: Entire article added, (SB 19-002), ch. 157, p. 1856, § 2, effective August 2. **L. 2021:** (3), (7), and (8)(b)(IV) amended, (SB 21-057), ch. 378, p. 2516, § 4, effective June 29.

5-20-104. Student loan ombudsperson - report - fund - rules.

(1) The administrator shall designate, support, and maintain a student loan ombudsperson to provide timely assistance to student loan borrowers. The student loan ombudsperson, in consultation with the administrator, shall:

(a) **Complaints.** Receive, review, and attempt to resolve complaints from student loan borrowers, including in collaboration with institutions of higher education, student loan servicers, and any other participants in student loan lending, including originators servicing their own student education loans;

(b) **Data.** Compile and analyze data on student loan borrower complaints as described in subsection (1)(a) of this section;

(c) **Assistance.** Assist student loan borrowers in understanding their rights and responsibilities under the terms of student education loans;

(d) **Information.** Provide information to the public, agencies, legislators, and others regarding the problems and concerns of student loan borrowers and make recommendations for resolving those problems and concerns;

(e) **Laws, rules, and policies.** Analyze and monitor the development and implementation of federal, state, and local laws, ordinances, regulations, rules, and policies relating to student loan borrowers and recommend any necessary changes;

(f) **Student loan history.** Review the complete student education loan history for a student loan borrower who provides written consent for the review;

(g) **Availability.** Disseminate information concerning the availability of the student loan ombudsperson to assist student loan borrowers and potential student loan borrowers, including disseminating the information to institutions of higher education, student loan servicers, and any other participants in student education loan lending with any servicing concerns;

(h) **Education course.** Establish and maintain a student loan borrower education course within existing resources that includes educational presentations and materials regarding student education loans. The course must include at least key loan terms, documentation requirements, monthly payment obligations, income-based repayment options, loan forgiveness, and disclosure requirements.

(i) **Other actions.** Take any other actions necessary to fulfill the duties of the student loan ombudsperson as set forth in this section.

(2) Repealed.

(3) **Student loan ombudsperson and student loan servicer licensing fund.**

(a) The student loan ombudsperson and student loan servicer licensing fund, referred to in this section as the "fund", is hereby created in the state treasury. The fund consists of licensing and investigation fees collected pursuant to sections 5-20-107 and 5-20-203 (2)(a), civil penalties collected pursuant to sections 5-20-114, 5-20-117, and 5-20-203 (4), any other money required by law to be deposited in the fund, and any other money that the general assembly may appropriate or transfer to the fund.

(b) The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund.

(c) All money held in the fund is continuously appropriated to the department of law. The administrator shall expend money held in the fund to administer this part 1.

Source: L. 2019: Entire article added, (SB 19-002), ch. 157, p. 1859, § 2, effective August 2. **L. 2021:** (3)(a) and (3)(c) amended, (SB 21-057), ch. 378, p. 2531, § 6, effective June 29.

Editor's note: Subsection (2)(b) provided for the repeal of subsection (2), effective September 1, 2023. (See L. 2019, p. 1859.)

5-20-105. License required.

On or after January 31, 2020, a person shall not act as a student loan servicer, directly or indirectly, without first obtaining a student loan servicing license from the administrator pursuant to this part 1.

Source: L. 2019: Entire article added, (SB 19-002), ch. 157, p. 1860, § 2, effective August 2. **L. 2021:** Entire section amended, (SB 21-057), ch. 378, p. 2531, § 7, effective June 29.

5-20-106. Licensure of student loan servicers - definition.

(1) **Automatic issuance of license for federal student loan servicing contractors.**

(a) A person seeking to act within this state as a student loan servicer is exempt from the application procedures described in subsection (2) of this section upon a determination by the administrator that the person is a party to a contract awarded by the United States secretary of

education under 20 U.S.C. sec. 1078, 1087f, or 1087hh, as amended. The administrator shall prescribe the procedure to document eligibility for the exemption.

(b) **Automatic license.** With regard to a person deemed exempt by this subsection (1), the administrator shall:

(I) Automatically issue a license upon payment of the fees required by section 5-20-107 (1)(a);

(II) Automatically issue a renewal license upon payment of the fees required by section 5-20-107 (1)(b); and

(III) Deem the person to have met all requirements set forth in subsection (2) of this section.

(c) **Procedural exemptions.** A person issued a license pursuant to this subsection (1) is exempt from subsections (3) to (9) and (11) of this section. A person issued a license pursuant to this subsection (1) shall comply with the record requirements in subsection (10) of this section except to the extent that the requirements are inconsistent with federal law.

(d) **Notice.** A person issued a license pursuant to this subsection (1) shall provide the administrator with written notice within seven days after notification of the expiration, revocation, or termination of any contract awarded by the United States secretary of education under 20 U.S.C. sec. 1087f. The person has thirty days after notification to satisfy all requirements established under subsection (2) of this section in order to continue to act within this state as a student loan servicer. At the expiration of the thirty-day period, if the person seeking to act within this state as a student loan servicer has not satisfied the requirements of subsection (2) of this section, the administrator shall summarily suspend any license granted to the person under this section in accordance with section 24-4-104 (4); except that the full investigation requirement specified in section 24-4-104 (4)(a) does not apply.

(e) **Preservation of authorities.** With respect to student loan servicing not conducted pursuant to a contract awarded by the United States secretary of education under 20 U.S.C. sec. 1087f, nothing in this section prevents the administrator from issuing, or filing a civil action for, an order to temporarily or permanently prohibit or bar any person from acting as a student loan servicer or violating applicable law.

(2) **Other student loan servicers.**

(a) A person seeking to act within this state as a student loan servicer, other than a person deemed exempt by the administrator pursuant to subsection (1) of this section, must apply to the administrator for an initial license in the form the administrator prescribes. The application must be accompanied by:

(I) A financial statement prepared by a certified public accountant or a public accountant, a general partner if the applicant is a partnership, a corporate officer if the applicant is a

corporation, or a member duly authorized to execute financial statements if the applicant is a limited liability company or association;

(II) Information regarding the history of criminal convictions of the following:

(A) The applicant;

(B) Partners of the applicant, if the applicant is in a partnership;

(C) Members of the applicant, if the applicant is a limited liability company or association; or

(D) Officers, directors, and principal employees of the applicant, if the applicant is a corporation.

(b) The information submitted pursuant to subsection (2)(a)(II) of this section must be sufficient, as determined by the administrator, to make the findings required under this section.

(3) **Investigation of applicant.**

(a) Upon the filing of an application for an initial license and the payment of the fees for licensing and investigation pursuant to section 5-20-107, the administrator shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant.

(b) The administrator may issue a license pursuant to this section if the administrator finds that:

(I) The applicant's financial condition is sound;

(II) The applicant's business will be conducted honestly, fairly, equitably, carefully, and efficiently within the purposes and intent of this part 1 and in a manner commanding the confidence and trust of the community;

(III) If the applicant is:

(A) An individual, the individual is in all respects properly qualified and of good character;

(B) A partnership, each partner is in all respects properly qualified and of good character;

(C) A limited liability company or association, each member is in all respects properly qualified and of good character; or

(D) A corporation, the president, chair of the executive committee, senior officer responsible for the corporation's business, chief financial officer or any other person who performs similar functions as determined by the administrator, each director, each trustee, and each shareholder owning ten percent or more of each class of the securities of the corporation are in all respects properly qualified and of good character;

(IV) No person acting on behalf of the applicant knowingly has made an incorrect statement of a material fact in the application or in any report or statement made pursuant to this part 1; and

(V) The applicant has met any other requirements as determined by the administrator.

(4) **License expiration.** A license issued pursuant to this section expires each January 31 unless renewed or earlier surrendered, suspended, or revoked pursuant to this part 1. No later than fifteen days after a licensee ceases to engage in the business of servicing in this state for any reason, including a business decision to terminate operations in this state, license revocation, bankruptcy, or voluntary dissolution, the licensee shall provide written notice of surrender to the administrator and shall surrender to the administrator its license for each location in which the licensee has ceased to engage in servicing. The written notice of surrender must identify the location where the records of the licensee will be stored and the name, address, and telephone number of a person authorized to provide access to the records. The surrender of a license does not reduce or eliminate the licensee's civil or criminal liability arising from acts or omissions occurring before the surrender of the license, including any administrative actions undertaken by the administrator to revoke or suspend a license, assess a civil penalty, order restitution, or exercise any other authority provided to the administrator.

(5) **License renewal - annual report.**

(a) A license issued pursuant to this section may be renewed for the ensuing twelve-month period upon the filing of an application containing all required records and fees, including renewal fees as established by the administrator in accordance with section 5-20-107. A renewal application must be filed on or before January 31 of the year in which the license expires. The administrator may establish a late fee for any renewal applications submitted after January 31.

(b) If an application for a renewal license has been filed with the administrator on or before the date the license expires, the license sought to be renewed continues in effect until the issuance by the administrator of the renewal license applied for or until the administrator has notified the licensee in writing of the administrator's refusal to issue the renewal license together with the grounds upon which the refusal is based.

(c) The administrator may refuse to issue a renewal license on any ground on which the administrator may refuse to issue an initial license.

(d) Along with the application for renewal, every licensee shall file with the administrator, in the form and manner determined by the administrator, an annual report concerning loans serviced by the licensee. Information included in an annual report filed pursuant to this subsection (5)(d) is confidential and may be published only in aggregate form, with no personal identifying information included.

(6) **Dishonored check.** If a check filed with the administrator to pay a license, investigation, or renewal fee under this section is dishonored, the administrator shall summarily suspend the

license or the renewal license that has been issued but is not yet effective in accordance with section 24-4-104 (4); except that the full investigation requirement specified in section 24-4-104 (4)(a) does not apply. The administrator shall give the licensee notice of the summary suspension pending proceedings for revocation or refusal to renew and an opportunity for a hearing on the actions in accordance with section 5-20-113.

(7) **Update application information.** An applicant or licensee under this section shall notify the administrator, in writing, of any change in the information provided in its initial application for a license or its most recent renewal application for a license, as applicable, not later than ten business days after the occurrence of the event that results in the change.

(8) **Incomplete application.** The administrator may consider an application for a license under this section abandoned if the applicant fails to respond to any request for information required under this part 1 or any rules adopted pursuant to this part 1, as long as the administrator notifies the applicant, in writing, that the application will be considered abandoned if the applicant fails to submit the information within sixty days after the date on which the request for information was made. Abandonment of an application pursuant to this subsection (8) does not preclude the applicant from submitting a new application for a license under this part 1.

(9) **Change of license notification.**

(a) A licensee under this section shall not act within this state as a student loan servicer under any name or at any place of business other than those named in the license. A licensee shall give prior written notice to the administrator of a change of business location. A licensee shall not operate more than one place of business under the same license, but the administrator may issue more than one license to a licensee that complies with this part 1 as to each license. A license is not transferable or assignable.

(b) (I) Subject to rules adopted by the administrator, nothing in subsection (9)(a) of this section prohibits a licensee from permitting its employees to work from a remote location so long as the licensee:

(A) Ensures that no in-person customer interactions are conducted at the remote location and does not designate the remote location to consumers as a business location;

(B) Maintains appropriate safeguards for licensee and consumer data, information, and records, including the use of secure virtual private networks, also known as "VPNs", where appropriate;

(C) Employs appropriate risk-based monitoring and oversight processes of work performed from a remote location and maintains records of the monitoring and oversight processes;

(D) Ensures consumer information and records are not maintained at a remote location;

(E) Ensures consumer and licensee information and records remain accessible and available for regulatory oversight and examination; and

(F) Provides appropriate employee training to ensure employees working from a remote location keep all conversations about and with consumers that are conducted from the remote location confidential, as if conducted from a commercial location, and to ensure that employees working at a remote location work in an environment that is conducive and appropriate to ensuring privacy and confidential conversations.

(II) As used in this subsection (9)(b), "remote location" means a private residence of an employee of a licensee or another location selected by the employee and approved by the licensee.

(10) **Records retention - records request.** A student loan servicer shall maintain adequate records of each student education loan transaction and all communications in connection with student education loan servicing for not less than two years after the final payment on the student education loan or the assignment of the student education loan, whichever occurs first, except as otherwise required by federal law, a federal student education loan agreement, or a contract between the federal government and a licensee. Upon request by the administrator, a student loan servicer shall make the records available or shall send the records to the administrator by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt, not later than five business days after requested by the administrator. Upon a licensee's request, the administrator may grant the licensee additional time to make the records available or to send the records to the administrator.

(11) **License suspension and revocation - refusal to renew.**

(a) The administrator may suspend, revoke, annul, limit, modify, or refuse to renew a license issued pursuant to subsection (2) of this section or take any other action in accordance with this part 1 if the administrator finds one or more of the following:

(I) The licensee has violated any provision of this part 1 or any rule lawfully adopted or order lawfully issued pursuant to and within the authority of this part 1; or

(II) Any fact or condition exists that, if it had existed at the time of the original application for the license, clearly would have warranted a denial of the license.

(b) An abatement of the license fee may not be made if the license is surrendered, revoked, or suspended.

Source: L. 2019: Entire article added, (SB 19-002), ch. 157, p. 1861, § 2, effective August 2. **L. 2021:** (3)(b)(II), (3)(b)(IV), (4), (8), (9), IP(11)(a), and (11)(a)(I) amended, (SB 21-057), ch.

378, p. 2531, § 8, effective June 29. **L. 2023:** (1)(a), (9), and (10) amended and (5)(d) added, (SB 23-248), ch. 360, p. 2154, § 16, effective August 7.

5-20-107. License and investigation fees.

(1) A person applying for licensure under section 5-20-106 (1) or (2) shall pay the following nonrefundable fees established by the administrator:

(a) Initial license fee of at least one thousand dollars;

(b) Annual renewal fee of at least one thousand dollars; and

(c) Investigation fee.

(2) The administrator shall determine the amount of the fees required in this section and may periodically reduce or increase the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3) and (4), to reduce the uncommitted reserves of the fund created in section 5-20-104 (3). The fund is subject to the maximum reserve established in section 24-75-402.

Source: L. 2019: Entire article added, (SB 19-002), ch. 157, p. 1865, § 2, effective August 2.

5-20-108. Affirmative acts required of student loan servicers - definitions.

(1) Except as otherwise provided in federal law, federal student education loan agreements, or a contract between the federal government and a student loan servicer, a student loan servicer shall take the actions specified in this section.

(2) (a) A student loan servicer shall respond to a written inquiry from a student loan borrower, the representative of a student loan borrower, or the student loan ombudsperson within ten business days after receipt of the request and, within thirty business days after receipt of the request, provide information relating to the request and, if applicable, the action the student loan servicer will take to correct the account or an explanation for the student loan servicer's position that the borrower's account is correct.

(b) The thirty-day period described in subsection (2)(a) of this section may be extended for not more than fifteen days if, before the end of the thirty-day period, the student loan servicer notifies the borrower, the borrower's representative, or the ombudsperson, as applicable, of the extension and the reasons for the delay in responding.

(c) After receipt of a written request related to a dispute on a borrower's payment on a student education loan, a student loan servicer shall not, for the sixty days following receipt,

furnish adverse information to a consumer reporting agency regarding a payment that is the subject of the written inquiry.

(3) (a) Except as provided in federal law or required by a student loan agreement, a student loan servicer shall inquire of a borrower how to apply an overpayment to a student education loan. A borrower's direction on how to apply an overpayment to a student education loan stays in effect for any future overpayments during the term of a student education loan until the borrower provides different directions.

(b) For purposes of this subsection (3), "overpayment" means a payment on a student education loan in excess of the monthly amount due from a borrower on a student education loan, also commonly referred to as a prepayment.

(4) (a) A student loan servicer shall apply partial payments in a manner that minimizes late fees and negative credit reporting. Where loans on a borrower's student loan account have an equal level of delinquency, a student loan servicer shall apply partial payments to satisfy as many individual loan payments as possible on a borrower's account.

(b) For purposes of this subsection (4), "partial payment" means a payment on a student loan account that contains multiple individual loans in an amount less than the amount necessary to satisfy the outstanding payment due on all loans in the student loan account, also commonly referred to as an underpayment.

(5) In the event of the sale, assignment, or other transfer of the servicing of a student education loan that results in a change in the identity of the person to whom a student loan borrower is required to send payments or direct any communication concerning the student education loan, the following provisions apply:

(a) As a condition of a sale, an assignment, or any other transfer of the servicing of a student education loan, a student loan servicer shall require the new student loan servicer to honor all benefits originally represented as available to a student loan borrower during the repayment of the student education loan and preserve the availability of the benefits, including any benefits for which the student loan borrower has not yet qualified. If a student loan servicer is not also the loan holder or is not acting on behalf of the loan holder, the student loan servicer satisfies the requirement established by this subsection (5)(a) by providing the new student loan servicer with information necessary for the new student loan servicer to honor all benefits originally represented as available to a student loan borrower during the repayment of the student education loan and preserve the availability of the benefits, including any benefits for which the student loan borrower has not yet qualified.

(b) A student loan servicer shall transfer to the new student loan servicer all records regarding the student loan borrower, the account of the student loan borrower, and the student education loan of the student loan borrower.

(c) The records required under subsection (5)(b) of this section include the repayment status of the student loan borrower and any benefits associated with the student education loan of the student loan borrower.

(d) The student loan servicer shall complete the transfer of records required under subsection (5)(b) of this section within forty-five days after the sale, assignment, or other transfer of the servicing of a student education loan.

(e) The parties shall notify affected student loan borrowers of the sale, assignment, or other transfer of the servicing of a student education loan at least seven days before the next payment on the loan is due. The notice must include:

(I) The identity of the new student loan servicer;

(II) The effective date of the transfer of the student loan borrower's student education loan to the new student loan servicer;

(III) The date on which the existing student loan servicer will no longer accept payments; and

(IV) The contact information for the new student loan servicer.

(6) A student loan servicer that services a student education loan shall adopt policies and procedures to verify that the student loan servicer has received all records regarding the student loan borrower, the account of the student loan borrower, and the student education loan of the student loan borrower, including the repayment status of the student loan borrower and any benefits associated with the student education loan of the student loan borrower.

Source: L. 2019: Entire article added, (SB 19-002), ch. 157, p. 1865, § 2, effective August 2.

5-20-109. Prohibited acts of student loan servicers.

(1) A student loan servicer shall not:

(a) Directly or indirectly employ a scheme, a device, or artifice to defraud or mislead student loan borrowers;

(b) Engage in an unfair or deceptive practice toward any person or misrepresent or omit any material information in connection with the servicing of a student education loan, including misrepresenting the amount, nature, or terms of any fee or payment due or claimed to be due on a student education loan, the terms and conditions of the loan agreement, or the student loan borrower's obligations under the loan;

(c) Obtain property by fraud or misrepresentation;

(d) Misapply student education loan payments to the outstanding balance of a student education loan;

(e) Provide inaccurate information to a consumer reporting agency;

(f) Fail to report both the favorable and unfavorable payment history of a student loan borrower to a consumer reporting agency at least annually if the student loan servicer regularly reports information to a consumer reporting agency;

(g) Refuse to communicate with an authorized representative of a student loan borrower who provides a written authorization signed by the student loan borrower; except that the student loan servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the student loan borrower;

(h) Make any false statement or omit any material fact in connection with information or reports filed with a governmental agency or in connection with an investigation conducted by the administrator or another governmental agency; or

(i) Except as otherwise provided in federal law, federal student loan agreements, or a contract between the federal government and a student loan servicer, fail to properly evaluate a student loan borrower for an income-based or other student loan repayment program or for eligibility for a public service loan forgiveness program before placing the student loan borrower in forbearance or default, if an income-based repayment or other program is available to the student loan borrower.

Source: L. 2019: Entire article added, (SB 19-002), ch. 157, p. 1867, § 2, effective August 2.

5-20-110. Powers and duties of the administrator - rules.

(1) The administrator may conduct investigations and examinations as follows:

(a) For purposes of initial licensing, license renewal, license suspension, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this article 20, the administrator may access, receive, and use any records or information belonging to a licensee or person under examination, including criminal, civil, and administrative history information; personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603 (p) of the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681a, as amended; and any other records or information the administrator considers relevant to the inquiry or investigation regardless of the location, possession, control, or custody of the records or information.

(b) For the purposes of investigating violations or complaints arising under this article 20 or for the purposes of examination, the administrator may review, investigate, or examine any licensee or person subject to this article 20 as often as necessary in order to carry out the purposes of this article 20. The administrator may direct, subpoena, or order the attendance of and examine under oath any person whose testimony may be required about the student education loan or the business or subject matter of an examination or investigation and may direct, subpoena, or order the person to produce records the administrator considers relevant to the inquiry.

(c) (I) In making an examination or investigation authorized by this section, the administrator may control access to any records of the licensee or person under examination or investigation. The administrator may take possession of the records or place a person in exclusive charge of the records in the place where they are usually kept.

(II) During the period of administrator control pursuant to this subsection (1)(c), a person may not remove or attempt to remove any of the records except pursuant to a court order or with the consent of the administrator. Unless the administrator has reasonable grounds to believe that the records of the licensee or person have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of this article 20, the licensee or owner of the records may have access to the records as necessary to conduct its ordinary business affairs.

(2) In order to carry out the purposes of this section, the administrator may:

(a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and records or information obtained under this section;

(c) Use, hire, contract for, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee or person subject to this article 20;

(d) Accept and rely on examination or investigation reports made by other government officials within or outside this state; and

(e) Accept audit reports made by an independent certified public accountant of the licensee or person subject to this article 20 in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in a report of examination, report of investigation, or other writing of the administrator.

(3) A person subject to investigation or examination under this section shall not knowingly withhold, abstract, remove, mutilate, or destroy any records or other information relating to information regulated under this article 20.

(4) Whenever it appears to the administrator that a person has violated, is violating, or is about to violate a provision of this article 20 or a rule adopted pursuant to this article 20 or that a licensee or an owner, director, officer, member, partner, shareholder, trustee, employee, or agent of the licensee has committed fraud, engaged in dishonest activities, or made a misrepresentation, the administrator may take action against the person or licensee in accordance with this article 20.

(5) The administrator shall adopt rules as necessary to implement this article 20.

Source: L. 2019: Entire article added, (SB 19-002), ch. 157, p. 1868, § 2, effective August 2.

5-20-111. Compliance with federal law.

A student loan servicer shall comply with all applicable federal laws and regulations relating to servicing, including the federal "Truth in Lending Act", 15 U.S.C. secs. 1601 to 1667f, as amended, and the regulations adopted pursuant to that act. In addition to any other remedies provided by law, a violation of that act or regulations adopted pursuant to that act is a violation of this part 1 and a basis upon which the administrator may take enforcement action pursuant to this part 1.

Source: L. 2019: Entire article added, (SB 19-002), ch. 157, p. 1870, § 2, effective August 2. **L. 2021:** Entire section amended, (SB 21-057), ch. 378, p. 2532, § 9, effective June 29.

5-20-112. Civil action.

(1) A violation of this part 1 is a deceptive trade practice within the meaning of section 6-1-105.

(2) A student loan servicer who fails to comply with any requirement imposed under this part 1 with respect to a student loan borrower is liable in an amount equal to the sum of:

(a) Any actual damages sustained by the student loan borrower as a result of the failure;

(b) A monetary award equal to three times the total amount the student loan servicer collected from the student loan borrower in violation of this part 1;

(c) Punitive damages as the court may allow; and

(d) In the case of any successful action by a student loan borrower to enforce the liability set out in this section, the costs of the action, together with reasonable attorney fees as determined by the court.

(3) The remedies provided in this section are not the exclusive remedies available to a student loan borrower.

Source: L. 2019: Entire article added, (SB 19-002), ch. 157, p. 1870, § 2, effective August 2. **L. 2021:** (1), IP(2), and (2)(b) amended, (SB 21-057), ch. 378, p. 2533, § 10, effective June 29.

5-20-113. Application of administrative procedures - provisions.

Except as otherwise provided, sections 24-4-102 to 24-4-106 apply to and govern all rules promulgated and all administrative action taken by the administrator pursuant to this part 1; except that section 24-4-104 (3) does not apply to any such action.

Source: L. 2019: Entire article added, (SB 19-002), ch. 157, p. 1871, § 2, effective August 2. **L. 2021:** Entire section amended, (SB 21-057), ch. 378, p. 2533, § 11, effective June 29.

5-20-114. Administrative enforcement orders.

(1) After notice and hearing, the administrator may order a student loan servicer or a person acting in the student loan servicer's behalf to cease and desist from engaging in violations of this part 1 or any rule lawfully adopted or order lawfully issued pursuant to this part 1. The order issued by the administrator may also require the student loan servicer or person to make refunds to persons of unlawful charges under this part 1 and an administrative penalty of up to one thousand five hundred dollars per violation, all or part of which may be specifically designated for consumer and creditor educational purposes.

(2) A respondent aggrieved by an order of the administrator may obtain judicial review of the order in the Colorado court of appeals. The administrator may obtain an order of the court for enforcement of the administrator's order in the district court under section 24-4-106. All proceedings under this section are governed by sections 24-4-105 and 24-4-106.

Source: L. 2019: Entire article added, (SB 19-002), ch. 157, p. 1871, § 2, effective August 2. **L. 2021:** (1) amended, (SB 21-057), ch. 378, p. 2533, § 12, effective June 29.

5-20-115. Assurance of discontinuance.

If it is claimed that a person has violated this part 1, the administrator may accept an assurance in writing that the person will not engage in the conduct in the future. The assurance may also require the person to make refunds to persons of unlawful charges under this part 1, pay a penalty authorized in section 5-20-114 (1), all or part of which may be specifically designated for consumer and creditor educational purposes, and reimburse the administrator for the administrator's reasonable costs incurred in investigating the conduct. If a person giving an assurance of discontinuance fails to comply with its terms, the assurance is evidence that prior to the assurance the person engaged in the conduct described in the assurance.

Source: L. 2019: Entire article added, (SB 19-002), ch. 157, p. 1871, § 2, effective August 2. **L. 2021:** Entire section amended, (SB 21-057), ch. 378, p. 2533, § 13, effective June 29.

5-20-116. Injunctions.

The administrator may bring a civil action to restrain a person from violating this part 1 or rules promulgated pursuant to this part 1 and for other appropriate relief, including such orders or judgments as may be necessary to completely compensate or restore any person affected by the violation to the person's original position. The administrator may also apply for a temporary restraining order or a preliminary injunction against a respondent pending final determination of proceedings. No bond or other security is required of the administrator before relief under this section may be granted.

Source: L. 2019: Entire article added, (SB 19-002), ch. 157, p. 1871, § 2, effective August 2. **L. 2021:** Entire section amended, (SB 21-057), ch. 378, p. 2533, § 14, effective June 29.

5-20-117. Civil actions by the administrator.

The administrator may bring a civil action against a student loan servicer for any violation of this part 1. An action may relate to transactions with more than one person. The court may order a student loan servicer to refund to a person any charges collected in violation of this part 1 and may also assess civil penalties against the student loan servicer as set forth in section 5-20-112 (2). If the administrator prevails in an action brought under this section, the administrator may recover reasonable costs in investigating and bringing the action and may recover reasonable attorney fees.

Source: L. 2019: Entire article added, (SB 19-002), ch. 157, p. 1872, § 2, effective August 2. **L. 2021:** Entire section amended, (SB 21-057), ch. 378, p. 2534, § 15, effective June 29.

5-20-118. Limitations.

Notwithstanding article 80 of title 13, all actions brought under this part 1 must be commenced within four years after the date on which any violation of this part 1 occurred or the date on which the last in a series of such acts or practices occurred or within four years after the plaintiff discovered or in the exercise of reasonable diligence should have discovered the occurrence of a violation of this part 1; except that the period of limitation provided in this section may be extended for a period of one year if the plaintiff proves that failure to timely commence the action was caused by the defendant engaging in conduct calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

Source: L. 2019: Entire article added, (SB 19-002), ch. 157, p. 1872, § 2, effective August 2. **L. 2021:** Entire section amended, (SB 21-057), ch. 378, p. 2534, § 16, effective June 29.

5-20-119. Confidential information.

(1) The administrator shall not make public the name or identity of a person whose acts or conduct the administrator investigates or examines pursuant to this part 1 or the facts disclosed in the investigation or examination.

(2) The administrator may disclose license application and renewal records provided to the administrator and other contents of license records maintained pursuant to this part 1, but the administrator shall not make public the confidential information contained in the records.

(3) The restrictions on the disclosure of information in subsections (1) and (2) of this section do not apply to disclosures by the administrator in actions or administrative enforcement proceedings pursuant to this part 1.

Source: L. 2019: Entire article added, (SB 19-002), ch. 157, p. 1872, § 2, effective August 2. **L. 2021:** Entire section amended, (SB 21-057), ch. 378, p. 2534, § 17, effective June 29.

PART 2

PRIVATE STUDENT EDUCATION LENDERS

5-20-201. Scope of part - construction with other laws - legislative declaration.

The general assembly finds, determines, and declares that this part 2 is enacted to address issues not fully addressed through the regulation of student loan servicers under part 1 of this article 20. This part 2 is intended to complement, and should be construed in harmony with, part 1 of this article 20 to provide seamless and consistent protection to borrowers whenever possible.

Source: L. 2021: Entire part added, (SB 21-057), ch. 378, p. 2517, § 5, effective June 29.

5-20-202. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Collection agency" means a collection agency, as defined in section 5-16-103 (3), that collects or attempts to collect, directly or indirectly, a consumer debt resulting from a private education credit obligation. The term includes a debt buyer, as defined in section 5-16-103 (8.5).

(2) (a) "Cosigner" means any individual who is liable for the obligation of another without compensation, regardless of how the individual is designated in the contract or instrument with respect to that obligation, including an obligation under a private education credit obligation extended to consolidate a borrower's preexisting student loans. The term includes any individual whose signature is requested as a condition to grant credit or to forbear on collection.

(b) "Cosigner" does not include a spouse of an individual described in subsection (2)(a) of this section if the spouse's signature is needed solely to perfect the security interest in a loan.

(3) Repealed.

(4) "Postsecondary educational institution" means an institution that provides postsecondary instruction, as defined in section 23-60-103 (3), including an employer that provides education and training to a worker where the expense of the education and training is recoverable pursuant to section 8-2-113 (3)(a).

(5) "Postsecondary education expense" means any expense associated with a student's enrollment in, or attendance at, a postsecondary educational institution, including an employer's recoverable expense of educating and training a worker pursuant to section 8-2-113 (3)(a).

(6) Repealed.

(7) (a) "Private education credit obligation" means a student education credit obligation that, unless otherwise exempt:

(I) Is not made, insured, or guaranteed under Title IV of the federal "Higher Education Act of 1965", 20 U.S.C. sec. 1070 et seq., as amended; and

(II) Is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses, regardless of whether the credit obligation is provided by the postsecondary educational institution that the student attends, including a payment plan or financing.

(b) "Private education credit obligation" does not include:

(I) A loan that is secured by real property, regardless of the purpose of the loan; or

(II) An extension of credit in which the covered postsecondary educational institution is the creditor if:

(A) The term of the extension of credit is ninety days or less; or

(B) An interest rate is not applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

(7.5) (a) "Private education creditor" or "creditor" means:

(I) Any person engaged in the business of making or extending private education credit obligation;

(II) A holder of a private education credit obligation; or

(III) A seller, lessor, lender, or person that makes or arranges a private education credit obligation and to whom the private education credit obligation is initially payable or the assignee of a creditor's right to payment.

(b) "Private education creditor" or "creditor" does not include:

(I) A bank, as defined in 12 U.S.C. sec. 1841 (c);

(II) A credit union;

(III) An industrial bank organized under Title 7, Chapter 8, "Financial Institutions Act", Utah Code Annotated, as amended; or

(IV) A collection agency, as defined in section 5-16-103 (3).

(8) "Private education credit borrower" means any resident of Colorado, including a student loan borrower, who has received or agreed to pay a private education credit obligation for the resident's own postsecondary education expenses or any resident of Colorado who cosigns for a private education credit obligation.

(8.5) "Refinanced" means an existing private education credit obligation is satisfied and replaced by a new private education credit obligation undertaken by the same consumer.

(9) (a) "Total and permanent disability" means, except as otherwise provided in subsection (9)(b) of this section, the condition of an individual who:

(I) Has been determined by the United States secretary of veterans affairs to be unemployable due to a service-connected disability; or

(II) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than twelve months, or can be expected to last for a continuous period of not less than twelve months.

(b) "Total and permanent disability" does not include a condition that has not progressed or been exacerbated, or that the individual did not acquire, until after the closing of the loan agreement.

Source: L. 2021: Entire part added, (SB 21-057), ch. 378, p. 2517, § 5, effective June 29. **L. 2023:** (1), (2)(a), (7), and (8) amended, (3) and (6) repealed, and (7.5) and (8.5) added, (SB 23-248), ch. 360, p. 2156, § 17, effective August 7. **L. 2024:** (4) and (5) amended, (HB 24-1324), ch. 316, p. 2119, § 3, effective August 7.

5-20-203. Registration of private education creditors - penalties - rules.

(1) On or after September 1, 2021, a person shall not offer or make a private education loan to a resident of Colorado without first registering with the administrator as provided in this section.

(2) A private education creditor shall:

(a) Register with the administrator pursuant to any registration procedures set forth by the administrator and pay the fee set by the administrator by rule; and

(b) Provide the administrator, at the time of registration and not less than once per year thereafter, as established by the administrator by rule, and at other times upon the administrator's request, with the following documents and information:

(I) A list of all schools at which the private education creditor has provided a private education credit obligation to a private education credit borrower; except that this requirement does not apply to a private education credit obligation that is refinanced;

(II) The volume of private education loans made annually to private education loan borrowers;

(III) The volume of private education credit obligations made annually at each school identified under subsection (2)(b)(I) of this section; except that this requirement does not apply to a private education credit obligation that is refinanced;

(IV) The default rate for private education credit borrowers obtaining private education credit obligations from the private education creditor, including the default rate for private education credit obligations made to private education credit borrowers at each school listed pursuant to subsection (2)(b)(I) of this section; except that this requirement does not apply to a private education credit obligation that is refinanced;

(V) A copy of each model promissory note, agreement, contract, or other instrument used by the private education lender during the previous year to substantiate that a private education loan has been extended to a private education loan borrower or that a private education loan borrower owes a debt to the lender; and

(VI) The name and address of the private education lender and any officer, director, partner, or owner of a controlling interest of the lender.

(3) The administrator shall create a publicly accessible website that includes the following information about private education lenders registered in Colorado:

(a) The name, address, telephone number, and website for all registered private education lenders;

(b) A summary of the information required under subsections (2)(b)(I) to (2)(b)(VI) of this section; and

(c) Copies of all model promissory notes, agreements, contracts, and other instruments provided to the administrator under subsection (2)(b)(V) of this section.

(4) The administrator may impose civil penalties on private education lenders and collection agencies in the same amounts, in substantially the same manner, and on substantially the same grounds as provided in sections 5-20-114 to 5-20-117 for the imposition of civil penalties on student loan servicers.

(5) The administrator may order that any person who has been found to have violated any provision of this part 2, or of the rules issued pursuant to this part 2, and has thereby caused financial harm to a consumer be barred for a term not exceeding ten years from acting as a private education lender or a stockholder, officer, director, partner or other owner, or employee of a private education lender.

(6) The administrator may prescribe an alternative registration process and fee structure for public and private nonprofit postsecondary educational institutions.

(7) An entity that is required to file a notification with the administrator pursuant to section 5-6-202 or required to hold a license pursuant to section 5-2-301, 5-16-118, or 5-20-106 is exempt from registration under this section but is subject to all other requirements of this part 2.

(8) The administrator may waive registration fees for:

(a) Private education creditors that make, extend, or hold fewer than five private education credit obligations in the year starting September 1 preceding the registration; and

(b) State or local governmental entities.

Source: L. 2021: Entire part added, (SB 21-057), ch. 378, p. 2519, § 5, effective June 29. **L. 2023:** IP(2), (2)(b)(I), (2)(b)(III), and (2)(b)(IV) amended, (SB 23-248), ch. 360, p. 2158, § 18, effective August 7. **L. 2024:** (8) added, (HB 24-1324), ch. 316, p. 2120, § 4, effective August 7.

5-20-204. Cosigner disclosures.

(1) Before extending a private education credit obligation that requires a cosigner, a private education creditor shall disclose to the cosigner:

(a) How the private education credit obligation will appear on the cosigner's credit;

(b) How the cosigner will be notified if the private education credit obligation becomes delinquent, including how the cosigner can cure the delinquency in order to avoid negative credit furnishing and loss of cosigner release eligibility; and

(c) Eligibility for release of the cosigner's obligation on the private education credit obligation, including the number of on-time payments and any other criteria required to approve the release of the cosigner from the credit obligation.

(2) For any private education credit obligation that obligates a cosigner, a creditor shall provide the private education credit borrower and the cosigner an annual written notice containing information about cosigner release, including the administrative, objective criteria the creditor requires to approve the release of the cosigner from the credit obligation and the process for applying for cosigner release. If the private education credit borrower has met the applicable payment requirement to be eligible for cosigner release, the creditor shall send the private education credit borrower and the cosigner a written notification by mail, and by electronic mail if a private education credit borrower or cosigner has elected to receive electronic communications from the creditor, informing the private education credit borrower and cosigner that the payments requirement to be eligible for cosigner release has been met. The notification must also include information about any additional criteria to qualify for cosigner release and the procedure to apply for cosigner release.

(3) A creditor shall provide written notice to a private education credit borrower who applies for cosigner release but whose application is incomplete. The written notice must include a description of the information needed to consider the application complete and the date by which the applicant must furnish the missing information in order to complete the application.

(4) Within thirty days after a private education credit borrower submits a completed application for cosigner release, the creditor shall send the private education credit borrower and cosigner a written notice that informs the private education credit borrower and cosigner whether the creditor has approved or denied the cosigner release application. If the creditor denies a request for cosigner release, the private education credit borrower may request copies of any documents or information used in the determination, including the credit score threshold used by the creditor, the private education credit borrower's consumer report, the private education credit borrower's credit score, and any other documents or information specific to the private education credit borrower. The creditor shall also provide any adverse action notices required under applicable federal law if the denial is based in whole or in part on any information contained in a consumer report.

(5) In response to a written or oral request by the private education credit borrower for cosigner release, a creditor shall provide to the private education credit borrower the information described in subsection (2) of this section.

Source: L. 2021: Entire part added, (SB 21-057), ch. 378, p. 2520, § 5, effective June 29. **L. 2023:** Entire section amended, (SB 23-248), ch. 360, p. 2158, § 19, effective August 7.

5-20-205. Cosigner release - definition.

(1) A creditor shall not impose any restriction that permanently bars a private education credit borrower from qualifying for cosigner release, including restricting the number of times a private education credit borrower may apply for cosigner release.

(2) A creditor shall not impose any negative consequences on a private education credit borrower or cosigner during the sixty days following the issuance of the notice required pursuant to section 5-20-204 (3) or until the creditor makes a final determination about a private education credit borrower's cosigner release application, whichever occurs later. As used in this subsection (2), "negative consequences" includes the imposition of additional eligibility criteria, negative credit reporting, lost eligibility for cosigner release, late fees, interest capitalization, or other financial injury.

(3) For any private education credit obligation issued on or after June 29, 2021, a creditor shall not require proof of more than twelve consecutive, on-time payments as part of the criteria for cosigner release. A private education credit borrower who has paid the equivalent of twelve

months of principal and interest payments within any twelve-month period is deemed to have satisfied the consecutive, on-time payment requirement even if the private education credit borrower has not made payments monthly during the twelve-month period. If a private education credit borrower or cosigner requests a change in terms that restarts the count of consecutive, on-time payments required for cosigner release, the creditor shall notify the private education credit borrower and cosigner in writing of the impact of the change and provide the private education credit borrower or cosigner the right to withdraw or reverse the request to avoid that impact.

(4) A private education credit borrower may request an appeal of a creditor's determination to deny a request for cosigner release, and the creditor shall permit the private education credit borrower to submit additional documentation evidencing the private education credit borrower's ability, willingness, and stability to meet the payment obligations. The private education credit borrower may request that another employee of the creditor review the cosigner release determination.

(5) A creditor shall establish and maintain a comprehensive record management system reasonably designed to ensure the accuracy, integrity, and completeness of information about cosigner release applications and to ensure compliance with applicable state and federal laws, including the federal "Equal Credit Opportunity Act", 15 U.S.C. sec. 1691 et seq., as amended, and the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681 et seq., as amended. This system must include the number of cosigner release applications received, the approval and denial rate, and the primary reasons for any denial.

Source: L. 2021: Entire part added, (SB 21-057), ch. 378, p. 2521, § 5, effective June 29. **L. 2023:** Entire section amended, (SB 23-248), ch. 360, p. 2159, § 20, effective August 7.

5-20-206. Cosigner rights.

(1) A creditor shall provide a cosigner with access to all documents or records related to the cosigned private education credit obligation that are available to the private education credit borrower.

(2) (a) If a creditor provides electronic access to documents and records for a private education credit borrower, the creditor shall provide equivalent electronic access to the cosigner.

(b) Upon the private education credit borrower's request, the creditor shall redact the private education credit borrower's contact information from documents and records provided to a cosigner.

(3) A creditor shall not include in a private education credit obligation executed after June 29, 2021, a provision that permits the creditor to accelerate payments, in whole or in part, except

upon a payment default. A creditor shall not place any credit obligation or account into default or accelerate a credit obligation for any reason other than payment default.

(4) A private education credit obligation executed before June 29, 2021, may permit the creditor to accelerate payments only if the promissory note or credit obligation agreement explicitly authorizes an acceleration and only for the reasons stated in the note or agreement.

Source: L. 2021: Entire part added, (SB 21-057), ch. 378, p. 2522, § 5, effective June 29. **L. 2023:** Entire section amended, (SB 23-248), ch. 360, p. 2160, § 21, effective August 7.

5-20-207. Bankruptcy or death of cosigner.

(1) If a cosigner dies, the creditor shall not attempt to collect against the cosigner's estate other than for payment default.

(2) With regard to the death or bankruptcy of a cosigner, if a private education creditor is not more than sixty days delinquent at the time the creditor is notified of the cosigner's death or bankruptcy, the creditor shall not change any terms or benefits under the promissory note, repayment schedule, repayment terms, or monthly payment amount or any other provision associated with the credit obligation.

Source: L. 2021: Entire part added, (SB 21-057), ch. 378, p. 2523, § 5, effective June 29. **L. 2023:** Entire section amended, (SB 23-248), ch. 360, p. 2161, § 22, effective August 7.

5-20-208. Total and permanent disability of the private education credit borrower or cosigner.

(1) For any private education credit obligation issued on or after June 29, 2021, a private education creditor, when notified of the total and permanent disability of a private education credit borrower or cosigner, shall release any cosigner from the obligations of the cosigner under a private education credit obligation. The creditor shall not attempt to collect a payment from a cosigner following a notification of total and permanent disability of the private education credit borrower or cosigner.

(2) A creditor shall, when notified of the total and permanent disability of a private education credit borrower, discharge the liability of the private education credit borrower and cosigner on the credit obligation.

(3) After receiving a notification described in subsection (2) of this section, the creditor shall not:

(a) Attempt to collect on the outstanding liability of the private education credit borrower or cosigner; or

(b) Monitor the disability status of the private education credit borrower at any point after the date of discharge.

(4) A creditor shall, within thirty days after the release of either a cosigner or private education credit borrower from the obligations of a private education credit obligation pursuant to subsection (1) or (2) of this section, notify both the private education credit borrower and cosigner of the release.

(5) A creditor shall, within thirty days after receiving notice of the total and permanent disability of a private education credit borrower pursuant to subsection (1) of this section, provide the private education credit borrower an option to designate an individual to have the legal authority to act on behalf of the private education credit borrower.

(6) If a cosigner is released from the obligations of a private education credit obligation pursuant to subsection (1) of this section, the creditor shall not require the private education credit borrower to obtain another cosigner on the credit obligation.

(7) A creditor shall not declare a default or accelerate the debt against the private education credit borrower on the sole basis of the release of the cosigner from the credit obligation due to total and permanent disability pursuant to subsection (1) of this section.

Source: L. 2021: Entire part added, (SB 21-057), ch. 378, p. 2523, § 5, effective June 29. **L. 2023:** Entire section amended, (SB 23-248), ch. 360, p. 2161, § 23, effective August 7.

5-20-209. Refinancing - additional disclosures - limitations on default pending approval.

(1) Before offering a person a private education credit obligation that is being used to refinance an existing education credit obligation, a private education creditor shall provide the person a disclosure explaining that benefits and protections applicable to the existing credit obligation may be lost due to the refinancing. The disclosure must be provided on a one-page information sheet in at least twelve-point type and must be written in simple, clear, understandable, and easily readable language.

(2) If a private education creditor offers any private education credit borrower modified or flexible repayment options in connection with a private education credit obligation, the creditor

shall offer those modified or flexible repayment options to all of the creditor's private education credit borrowers. In addition, the creditor shall:

(a) Provide on its website a description of any modified or flexible repayment options offered by the creditor for private education credit obligations;

(b) Establish policies and procedures and implement modified or flexible repayment options consistently in order to facilitate the evaluation of private education credit obligation modified or flexible repayment option requests, including providing accurate information regarding any such options that may be available to the private education credit borrower through the promissory note or that may have been marketed to the private education credit borrower through marketing materials; and

(c) Consistently present and offer private education credit obligation modified or flexible repayment options to private education credit borrowers with similar financial circumstances, if the creditor offers such repayment options.

(3) A private education creditor shall not place a credit obligation or account into default or accelerate a credit obligation while a private education credit borrower is seeking a credit obligation modification or enrollment in a modified or flexible repayment plan; except that a creditor may place a credit obligation or account into default or accelerate a credit obligation for payment default ninety days after the private education credit borrower's default.

Source: L. 2021: Entire part added, (SB 21-057), ch. 378, p. 2524, § 5, effective June 29. **L. 2023:** Entire section amended, (SB 23-248), ch. 360, p. 2162, § 24, effective August 7.

5-20-210. Prohibited conduct.

(1) A private education creditor shall not:

(a) Offer any private education credit obligation that does not comply with this part 2 or with rules or orders of the administrator that are issued under this part 2 or that violates any other state or federal law;

(b) Engage in any unfair, deceptive, or abusive act or practice;

(c) (I) Take an assignment of earnings of the private education credit borrower or cosigner for payment or as a security for payment of a debt arising out of a private education credit obligation. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the borrower or cosigner.

(II) A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a credit obligation to the seller, secured by an assignment of earnings.

(d) Make, advertise, print, display, publish, distribute, electronically transmit, telecast, or broadcast, in any manner, any statement or representation that is false, misleading, or deceptive.

Source: L. 2021: Entire part added, (SB 21-057), ch. 378, p. 2525, § 5, effective June 29. **L. 2023:** IP(1), (1)(a), and (1)(c) amended, (SB 23-248), ch. 360, p. 2163, § 25, effective August 7.

5-20-211. Record retention - confidentiality.

(1) A private education creditor shall establish and maintain records and permit the administrator to access and copy any records or records systems required to be maintained pursuant to this part 2 or rules of the administrator adopted to implement this part 2. The creditor shall retain loan files, including any records specified for retention under rules of the administrator, for not less than six years after the termination of the credit obligation account.

(2) The administrator shall not make public the name or identity of a person whose acts or conduct the administrator investigates or examines pursuant to this part 2 or the facts disclosed in the investigation or examination.

(3) The administrator may disclose registration application and renewal records provided to the administrator and other contents of registration records maintained pursuant to this part 2, but the administrator shall not make public the confidential information contained in the records.

(4) The restrictions on the disclosure of information in subsections (2) and (3) of this section do not apply to disclosures made by the administrator in furtherance of actions or administrative enforcement proceedings pursuant to this part 2.

Source: L. 2021: Entire part added, (SB 21-057), ch. 378, p. 2525, § 5, effective June 29. **L. 2023:** (1) amended, (SB 23-248), ch. 360, p. 2163, § 26, effective August 7.

5-20-212. Collection on debt - prerequisites - documentation.

(1) Unless the private education credit borrower has invoked the borrower's right to cease communication with the collection agency, a collection agency attempting to collect a private education credit obligation shall provide the following information, in addition to any other information required under applicable federal or state law, to the private education credit

borrower in the debt collection communication immediately following the communication confirming the correct identity of the private education credit borrower and at any other time the private education credit borrower so requests:

(a) For private education credit obligations referred to collections on or after June 29, 2021, the name of the owner of the private education credit obligation debt;

(b) The name of the true original creditor and every subsequent credit obligation holder, if applicable;

(c) The true original creditor's account number used to identify the private education credit obligation debt at the time of default, if the true original creditor used an account number to identify the private education credit obligation at the time of default. The collection agency may rely on account numbers provided by the creditor.

(d) The amount due when the private education credit obligation was referred to collections;

(e) For private education credit obligations referred to collections on or after June 29, 2021, a log of all payments made on the student credit obligation account;

(f) A copy of all pages of the contract, application, or other documents evidencing the private education credit borrower's liability for the private education credit obligation, stating all terms and conditions applicable to the credit obligation; and

(g) A clear and conspicuous statement disclosing that the private education credit borrower has a right to request all nonprivileged information possessed by the creditor or collection agency related to the defaulted private education credit obligation debt, including the required information described in subsection (2) of this section, and that failure to provide that information within thirty days after such a request precludes the collection agency from collecting or attempting to collect the credit obligation.

(1.5) (a) From the information listed in subsection (1) of this section, the collection agency may redact the private education credit borrower's social security number, all but the last four digits of the private education credit borrower's account number, and any other personal identifying information. A collection agency that, in good faith, attempts to validate the identity of the borrower and sends the information required by this section in conjunction with the notice required by 15 U.S.C. sec. 1692g (a) is deemed to have verified the identity of the borrower for purposes of this section.

(b) The information listed in subsection (1) of this section may accompany any debt validation notice issued to the debtor pursuant to section 5-16-109 (1).

(2) A collection agency shall not collect or attempt to collect a private education credit obligation debt unless the collection agency possesses and furnishes the following information to the private education credit borrower upon request within thirty days after the request; and, for

credit obligations referred to collections before June 29, 2021, the collection agency shall have thirty days to acquire the information from the private education creditor:

(a) The name of the owner of the private education credit obligation;

(b) The name of the true original creditor and every subsequent credit obligation holder, if applicable;

(c) The true original creditor's account number used to identify the private education credit obligation at the time of default, if the true original creditor used an account number to identify the credit obligation at the time of default, and the account number assigned to the credit obligation by each subsequent credit obligation holder, if known;

(d) The amount due when the private education credit obligation was referred to collections;

(e) An itemization of interest and fees, if any, claimed to be owed and whether those were imposed by the true original creditor or any subsequent owners of the private education creditor. The collection agency may rely on information provided by the creditor.

(f) The date that the private education credit obligation was incurred;

(g) A billing statement or other account record indicating the date of the last payment made on the private education credit obligation, if applicable;

(h) (I) A log of all collection attempts made by the collection agency in the immediately preceding twelve months, including the date and time of all calls and letters; and

(II) For private education credit obligations referred to collections on or after June 29, 2021, copies of all settlement letters or, in the alternative, a statement that the collection agency has not attempted to settle or otherwise renegotiate the credit obligation;

(i) A copy of all pages of the contract, application, or other documents evidencing the private education credit borrower's liability for the private education credit obligation, stating all terms and conditions applicable to the credit obligation; and

(j) Documentation establishing that the collection agency is the owner, or acting on behalf of the owner, of the specific, individual private education credit obligation at issue. If the private education credit borrower disputes the ownership or assignment of the credit obligation, the collection agency has the burden of establishing the unbroken chain of ownership, beginning with the true original creditor to the first subsequent credit obligation holder and each additional credit obligation holder.

(3) Upon a private education credit borrower's default in payment on a private education credit obligation, and before a creditor may accelerate the maturity of the credit obligation or commence a legal action against the private education credit borrower, the creditor shall provide to the private education credit borrower a notice of intention to accelerate the credit obligation.

The creditor shall provide the notice at least thirty days, but not more than one hundred days, in advance of the action.

(4) (a) A creditor or debt buyer that intends to collect or attempt to collect a private education credit obligation shall provide written notice of that intention to the private education credit borrower by registered or certified mail, return receipt requested, at the private education credit borrower's last-known address.

(b) The notice required by this subsection (4):

(I) Is effective on the date it is delivered in person or mailed, as applicable; and

(II) Must contain all information required by subsection (2) of this section.

(5) An action to enter a judgment against a private education credit borrower must be commenced within six years of the date the private education credit borrower failed to make a payment.

(6) A creditor or collection agency that, on or after June 29, 2021, commences a legal action against a private education credit borrower shall attach the following documentation and information to the complaint filed in a court of competent jurisdiction:

(a) A copy of the notice of intention provided pursuant to subsection (4) of this section;

(b) The date of the partial or missed payment that led to the referral of the private education credit obligation to collections;

(c) The date of the last payment, if applicable;

(d) A statement as to whether the creditor or collection agency is willing to renegotiate the terms of the credit obligation;

(e) A statement as to whether the debt is eligible for any modified or flexible repayment option.

Source: L. 2021: Entire part added, (SB 21-057), ch. 378, p. 2526, § 5, effective June 29. **L. 2023:** (1), (1.5)(a), (2), (3), (4)(a), (5), IP(6), (6)(b), and (6)(d) amended, (SB 23-248), ch. 360, p. 2163, § 27, effective August 7.

5-20-213. Actions - counterclaims.

(1) (a) For litigation proceedings commenced on or after June 29, 2021, a court shall not enter a judgment on a private education credit obligation if the collection agency does not comply with the requirements of section 5-20-212.

(b) For litigation proceedings commenced before June 29, 2021, the court shall not enter a judgment until the collection agency is provided an opportunity to submit proof of compliance with section 5-20-212.

(2) If a creditor or collection agency fails to comply with the requirements of this part 2, a private education credit borrower may bring an action, including a counterclaim, against the creditor or collection agency to recover or obtain:

(a) An order setting aside or vacating any default judgment entered against the private education credit borrower;

(b) A judgment in favor of the private education credit borrower;

(c) Actual damages or five hundred dollars, whichever is greater;

(d) Restitution of all money taken from or paid by the private education credit borrower after a judgment was obtained by a creditor;

(e) Punitive damages;

(f) Injunctive relief;

(g) Correction of the private education credit borrower's credit report;

(h) Attorney fees and court costs; and

(i) Any other relief that the court deems proper.

Source: L. 2021: Entire part added, (SB 21-057), ch. 378, p. 2529, § 5, effective June 29. **L. 2023:** (1)(a), IP(2), (2)(a), (2)(b), (2)(d), and (2)(g) amended, (SB 23-248), ch. 360, p. 2166, § 28, effective August 7.

5-20-214. Remedies - civil actions - limitations - deceptive trade practice.

(1) In addition to any other remedies provided by this part 2 or otherwise provided by law, whenever it is proven by a preponderance of the evidence that a creditor or collection agency has filed with a court or provided to the private education credit borrower information required under this part 2 that is false, the court shall award to the private education credit borrower the greater of:

(a) Treble damages; or

(b) One thousand five hundred dollars.

(2) A private education credit borrower or cosigner who suffers damage as a result of a violation of this part 2 may bring an action in a court of competent jurisdiction to recover:

(a) The greater of actual damages or five hundred dollars;

(b) An order requiring the creditor or collection agency to take all actions necessary to correct the private education loan borrower's credit report;

(c) Punitive damages;

(d) Attorney fees and court costs; and

(e) Any other relief that the court deems proper.

(2.5) A court shall not award monetary damages under both this part 2 and article 16 of this title 5 or 15 U.S.C. sec. 1692k for violations of law arising from specific instances of the same conduct.

(3) Notwithstanding article 80 of title 13, all actions brought under this part 2 must be commenced within six years after the date on which any violation of this part 2 occurred, within six years after the date on which the last in a series of such acts or practices occurred, or within six years after the plaintiff discovered, or in the exercise of reasonable diligence should have discovered, the occurrence of a violation of this part 2; except that the period of limitation provided in this subsection (3) may be extended for a period of one year if the plaintiff proves that failure to timely commence the action was caused by the defendant engaging in conduct calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

(4) A violation of this part 2 is a deceptive trade practice as specified in section 6-1-105. A private education creditor or collection agency that fails to comply with any requirement imposed under this part 2 with respect to a private education credit borrower or cosigner is liable in an amount equal to the sum of:

(a) Any actual damages sustained by the private education credit borrower or cosigner as a result of the failure;

(b) A monetary award equal to three times the total amount the private education creditor or collection agency collected from the private education credit borrower or cosigner in violation of this part 2;

(c) Punitive damages as the court may allow; and

(d) In the case of any successful action by a private education credit borrower to enforce the liability set out in this section, the costs of the action, together with reasonable attorney fees as determined by the court.

(5) The remedies provided in this section are not the exclusive remedies available to a private education credit borrower or cosigner.

Source: L. 2021: Entire part added, (SB 21-057), ch. 378, p. 2529, § 5, effective June 29. **L. 2023:** IP(1), IP(2), (2)(b), (4), and (5) amended, (SB 23-248), ch. 360, p. 2167, § 29, effective August 7.

ARTICLE 21

Colorado Nonbank Mortgage Servicers Act

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5-21-101. Short title.

The short title of this article 21 is the "Colorado Nonbank Mortgage Servicers Act".

Source: L. 2021: Entire article added, (HB 21-1282), ch. 482, p. 3436, § 1, effective January 1, 2022.

5-21-102. Scope of article.

Unless otherwise provided in this article 21, this article 21 applies to any person engaged in servicing a residential mortgage loan secured by a dwelling or residential real property located in this state.

Source: L. 2021: Entire article added, (HB 21-1282), ch. 482, p. 3436, § 1, effective January 1, 2022.

5-21-103. Definitions.

As used in this article 21, unless the context otherwise requires:

(1) "Administrator" means the administrator of the "Uniform Consumer Credit Code", articles 1 to 9 of this title 5, designated pursuant to section 5-6-103.

(2) "Borrower" means an individual obligated to repay a residential mortgage loan.

(3) "Loans held for sale" means loans originated and held for sale for up to three hundred sixty-four days after each loan's origination.

(4) "Mortgage servicer" means a person, wherever located, that is responsible for servicing a Colorado residential mortgage loan. A mortgage servicer includes a person that makes payments to a borrower under a reverse mortgage as defined in section 11-38-102 (4). A mortgage servicer does not include:

(a) A supervised financial organization as defined in section 5-1-301 (45);

(b) A mortgage loan originator regulated by the division of real estate or as defined in section 12-10-702 (14)(a) or a mortgage company regulated by the division of real estate or as defined in section 12-10-702 (12); except that a mortgage loan originator or mortgage company that also services a residential mortgage loan is a mortgage servicer;

(c) A federal agency or department;

(d) A collection agency as defined in section 5-16-103 (3) that is licensed pursuant to section 5-16-120 or is exempt from licensure under section 5-16-103 (3)(e) and whose mortgage debt collection business involves collection of residential mortgage loans obtained by the collection agency after default; except that a collection agency that also services residential mortgage loans assigned to the collection agency before default is a mortgage servicer;

(e) An agency, instrumentality, or political subdivision of this state;

(f) A supervised lender as defined in section 5-1-301 (46); except that a supervised lender, other than a supervised financial organization as defined in section 5-1-301 (45), that also services residential mortgage loans is a mortgage servicer;

(g) A small servicer that services fewer than five thousand residential mortgage loans in any calendar year, exclusive of loans held for sale, as determined by the administrator, who shall apply the criteria in 12 CFR 1026.41 (e)(4)(iii) or any successor regulation;

(h) A person that the administrator designates by rule or order as exempt. These exemptions are limited to nonprofit organizations, government agencies, or other entities whose primary business is not to service mortgages and that seek to promote affordable housing or financing.

(i) An originator or servicer that utilizes a subservicer to carry out the administrative functions of servicing a mortgage unless the subservicer is acting at the direction of the originator or servicer; or

(j) A person that services loans held for sale.

(5) "Notifier" means a person required to notify the administrator of the person's activities as a mortgage servicer pursuant to this article 21.

(6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(7) "Residential mortgage loan" means a loan that is primarily for personal, family, or household use and that is secured by a mortgage, deed of trust, or other equivalent, consensual security interest on a dwelling or residential real property upon which is constructed or intended to be constructed a dwelling as defined by section 5-1-301 (18).

(8) "Servicing" means receiving any scheduled periodic payments from a borrower pursuant to the terms of a residential mortgage loan, including amounts for escrow accounts, and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the residential mortgage servicing loan documents or servicing contract. In the case of a reverse mortgage, servicing includes making payments to the borrower.

Source: L. 2021: Entire article added, (HB 21-1282), ch. 482, p. 3436, § 1, effective January 1, 2022.

5-21-104. Notification required.

On and after January 31, 2022, a person shall not act as a mortgage servicer, directly or indirectly, without notifying the administrator pursuant to section 5-21-105.

Source: L. 2021: Entire article added, (HB 21-1282), ch. 482 p. 3438, § 1, effective January 1, 2022.

5-21-105. Notification by mortgage servicers - rules.

(1) **Notification.**

(a) A person acting as a mortgage servicer must notify the administrator and pay the fee prescribed in section 5-21-106 within thirty days after commencing servicing in the state, and, thereafter, on or before January 31 of each year. The notification must state the notifier's legal name and all trade names used, the address of the notifier's principal office, which may be outside this state, and such other information as the administrator may require.

(b) With every renewal notification or at a date prescribed by rule by the administrator, each notifier shall submit an annual report relating to mortgage servicing by the notifier in the form prescribed by the administrator. Information contained in annual reports is confidential, is not subject to disclosure pursuant to part 2 of article 72 of title 24, and may be published only in composite form.

(2) **Records retention - records request.**

(a) A mortgage servicer shall maintain adequate records for not less than four years following the final payment on the residential mortgage loan, transfer of the mortgage servicing rights, or the assignment of the loan, whichever occurs first. Upon request by the administrator, a mortgage servicer shall make the records available or shall send the records to the administrator by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt, not later than thirty business days after requested by the administrator or other method of delivery as agreed to in writing by the administrator, including secure electronic transmission. Upon a notifier's request, the administrator may grant the notifier additional time to make the records available or to send the records to the administrator.

(b) Every mortgage servicer shall maintain records in conformity with this article 21, rules adopted pursuant to this article 21, and generally accepted accounting principles and practices in a manner that will enable the administrator to determine whether the servicer is complying with this article 21. A mortgage servicer's record-keeping system is sufficient if the servicer makes the required information reasonably available. The records need not be kept in the place of business where mortgage loans are serviced if the administrator is given free access to the records wherever located.

Source: L. 2021: Entire article added, (HB 21-1282), ch. 482, p. 3438, § 1, effective January 1, 2022.

5-21-106. Fees.

(1) A notifier shall pay the following nonrefundable fees established by the administrator pursuant to subsection (3) of this section:

(a) An initial notification fee; and

(b) An annual notification fee.

(2) The administrator shall transmit the fees required by subsection (1) of this section to the state treasurer, who shall credit the fees collected:

(a) Repealed.

(b) On and after July 1, 2024, to the consumer credit unit cash fund created in section 5-2-302 (11).

(3) The administrator shall set the fees required by subsection (1) of this section in an amount estimated to cover the administrator's costs in implementing this article 21 and may periodically reduce or increase the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3) and (4) to reduce the uncommitted reserves of the uniform consumer credit code cash fund.

Source: L. 2021: Entire article added, (HB 21-1282), ch. 482, p. 3439, § 1, effective January 1, 2022. **L. 2023:** (2) amended, (SB 23-248), ch. 360, p. 2154, § 14, effective August 7.

Editor's note: Subsection (2)(a)(II) provided for the repeal of subsection (2)(a), effective July 1, 2026. (See L. 2023, p. 2154.)

5-21-107. Federal laws.

(1) A mortgage servicer shall comply with all federal laws and regulations applicable to mortgage servicers for their mortgage servicing activities, including:

(a) The federal "Real Estate Settlement Procedures Act of 1974", 12 U.S.C. sec. 2601 et seq., as amended; and

(b) The "Truth in Lending Act", 15 U.S.C. sec. 1601 et seq., as amended.

(2) In addition to any other remedies provided by law, a violation of any federal law or regulation that is covered by subsection (1) of this section shall be deemed a violation of this article 21.

(3) All financial responsibility requirements of this article 21 shall be presumed to be met if a mortgage servicer is currently approved to service loans by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Government National Mortgage Association or if it meets prudential standards established by the Conference of State Bank Supervisors.

Source: L. 2021: Entire article added, (HB 21-1282), ch. 482, p. 3439, § 1, effective January 1, 2022.

5-21-107.5. Disbursement of insurance proceeds to borrowers - disclosure of mortgage interest rate - retention of communications.

A mortgage servicer shall comply with the requirements of section 38-40-106 regarding disbursement of insurance proceeds to borrowers, disclosure of mortgage interest rates, and retention of communications.

Source: L. 2024: Entire section added, (HB 24-1011), ch. 189, p. 1074, § 3, effective May 17.

5-21-108. Powers and duties of the administrator - rules.

(1) The administrator may conduct investigations and examinations as follows:

(a) For purposes of general or specific inquiry or investigation to determine compliance with this article 21, the administrator may access, receive, and use any records or information belonging to a notifier or person subject to this article 21 who may have failed to notify the administrator pursuant to section 5-21-104, including criminal, civil, and administrative history information; personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603 (p) of the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681a, as amended; and any other records or information the administrator considers relevant to the inquiry or investigation regardless of the location, possession, control, or custody of the records or information.

(b) The administrator may initiate an investigation or examination where there is reason to believe that there is a potential violation that risks consumer harm, where a person who may be subject to this article 21 may have failed to notify the administrator, or based on a substantiated

complaint. The administrator may review, investigate, or examine any notifier or person subject to this article 21 as often as necessary in order to carry out the purposes of this article 21. The administrator may direct, subpoena, or order the attendance of and examine under oath any person whose testimony may be required about the residential mortgage loan, residential mortgage loan servicing, or the business or subject matter of an examination or investigation and may direct, subpoena, or order the person to produce records the administrator considers relevant to the inquiry. Nothing limits the scope of the administrator's authority to review and investigate potential violations or harm discovered in the course of an investigation.

(c) (I) In making an examination or investigation authorized by this section, the administrator may control access to any records of the notifier or person under examination or investigation. The administrator may take possession of the records or place a person in exclusive charge of the records in the place where they are usually kept.

(II) During the period of control, a person may not remove or attempt to remove any of the records except pursuant to a court order or with the written consent of the administrator. Unless the administrator has reasonable grounds to believe the records of the notifier or person have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of this article 21, the notifier or owner of the records may have access to the records as necessary to conduct its ordinary business affairs.

(2) In order to carry out the purposes of this section, the administrator may:

(a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in conducting examinations or investigations;

(b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and records or information obtained under this section;

(c) Use, hire, contract for, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the notifier or person subject to this article 21;

(d) Accept and rely on examination or investigation reports made by other government officials within or outside this state; and

(e) Accept audit reports made by an independent certified public accountant for the notifier or person subject to this article 21 in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in a report of examination, report of investigation, or other writing of the administrator.

(3) A person subject to investigation or examination under this section may not knowingly withhold, abstract, remove, mutilate, or destroy any records or other information relating to information regulated under this article 21.

(4) Whenever it appears to the administrator that a person has violated, is violating, or is about to violate this section or a rule adopted pursuant to this article 21 or that a notifier or an owner, director, officer, member, partner, shareholder, trustee, employee, or agent of the notifier has committed fraud, engaged in dishonest activities, or made a misrepresentation, the administrator may take action against the person or notifier in accordance with this article 21.

(5) The administrator shall adopt rules as necessary to implement this article 21.

Source: L. 2021: Entire article added, (HB 21-1282), ch. 482, p. 3440, § 1, effective January 1, 2022.

5-21-109. Application of administrative procedures.

Except as otherwise provided in this article 21, sections 24-4-102 to 24-4-106 apply to and govern all rules promulgated and all administrative action taken by the administrator pursuant to this article 21; except that section 24-4-104 (3) does not apply to any such action.

Source: L. 2021: Entire article added, (HB 21-1282), ch. 482, p. 3441, § 1, effective January 1, 2022.

5-21-110. Administrative enforcement orders.

(1) After notice and hearing, the administrator may order a mortgage servicer or a person acting in the mortgage servicer's behalf to cease and desist from engaging in violations of this article 21 or any rule or order lawfully made pursuant to this article 21. The order issued by the administrator may also require the mortgage servicer or person to make refunds to individuals of overcharges or other damages suffered by the borrower under this article 21 and a civil penalty in the amounts stated in 12 U.S.C. sec. 5565 (c)(2), all or part of which may be specifically designated for consumer and creditor educational purposes. When seeking civil penalties, the administrator shall consider the mitigating factors in 12 U.S.C. sec. 5565 (c)(3).

(2) A mortgage servicer aggrieved by an order of the administrator may obtain judicial review of the order in the Colorado court of appeals. The administrator may obtain an order of the court for enforcement of the administrator's order in the district court under section 24-4-106. All proceedings under this section are governed by sections 24-4-105 and 24-4-106.

Source: L. 2021: Entire article added, (HB 21-1282), ch. 482, p. 3442, § 1, effective January 1, 2022.

5-21-111. Assurance of discontinuance.

If it is claimed that a person has violated this article 21, the administrator may accept an assurance in writing that the person will not engage in the conduct in the future. The assurance may also require the person to make refunds to individuals of unlawful charges under this article 21, pay a penalty authorized in section 5-21-110, all or part of which may be specifically designated for consumer and creditor educational purposes, and reimburse the administrator for the administrator's reasonable costs incurred in investigating the conduct. If a person giving an assurance of discontinuance fails to comply with its terms, the assurance is evidence that prior to the assurance, that person engaged in the conduct described in the assurance.

Source: L. 2021: Entire article added, (HB 21-1282), ch. 482, p. 3442, § 1, effective January 1, 2022.

5-21-112. Injunctions.

The administrator may bring a civil action to restrain a person from violating this article 21 or rules promulgated pursuant to this article 21 and for other appropriate relief, including such orders or judgments as may be necessary to completely compensate or restore to the individual's original position any individual affected by the violation. The administrator may also apply for a temporary restraining order or a preliminary injunction against a respondent pending final determination of proceedings. No bond or other security is required of the administrator before relief under this section may be granted.

Source: L. 2021: Entire article added, (HB 21-1282), ch. 482, p. 3442, § 1, effective January 1, 2022.

5-21-113. Civil actions by the administrator.

(1) The administrator may bring a civil action against a mortgage servicer or any other person for any violations of this article 21. An action may relate to transactions with more than one individual. The court may order a mortgage servicer to refund to individuals overcharges or other damages suffered by the borrower collected in violation of this article 21 and may also assess civil penalties against the mortgage servicer as set forth in section 5-21-110. If the

administrator prevails in an action brought under this section, the administrator may recover reasonable costs in investigating and bringing the action and may recover reasonable attorney fees. When determining whether to seek civil penalties under this section, the administrator shall consider whether the federal consumer financial protection bureau has imposed civil penalties on the same servicer for the same violation and any other mitigating factors, in order to avoid duplicative civil penalties. If the federal consumer financial protection bureau has been awarded and paid civil penalties based on a particular act or omission or a series of acts or omissions, civil penalties under section 5-21-110 that are based on the same acts or omissions are reduced by the same amount or to one thousand five hundred dollars per violation, whichever is less. The administrator shall, to the extent possible, coordinate with the federal consumer financial protection bureau before taking action in order to avoid duplication of investigations and penalties, unless the administrator's investigation or penalties relate to acts or omissions separate from the federal consumer financial protection bureau activities.

(2) Nothing in this article 21:

(a) Creates a private right of action; or

(b) Affects any remedy that a borrower may have pursuant to law other than this article 21.

Source: L. 2021: Entire article added, (HB 21-1282), ch. 482, p. 3442, § 1, effective January 1, 2022.

5-21-114. Limitations.

Notwithstanding article 80 of title 13, all actions brought under this article 21 must be commenced within four years after the date on which any violation of this article 21 occurred or the date on which the last in a series of the acts or practices occurred or within four years after the plaintiff discovered or in the exercise of reasonable diligence should have discovered the occurrence of a violation of this article 21; except that the period of limitation provided in this section may be extended for a period of one year if the plaintiff proves that failure to timely commence the action was caused by the defendant engaging in conduct calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

Source: L. 2021: Entire article added, (HB 21-1282), ch. 482, p. 3443, § 1, effective January 1, 2022.

5-21-115. Confidential information.

(1) The administrator shall not make public the name or identity of a person whose acts or conduct the administrator investigates or examines pursuant to this article 21 or the facts disclosed in the investigation or examination.

(2) The administrator may disclose notification records provided to the administrator and other contents of the records maintained pursuant to this article 21, but the administrator shall not make public the confidential information contained in the records.

(3) The restrictions on the disclosure of information in subsections (1) and (2) of this section do not apply to disclosures by the administrator in actions or enforcement proceedings pursuant to this article 21.

Source: L. 2021: Entire article added, (HB 21-1282), ch. 482, p. 3443, § 1, effective January 1, 2022.

5-21-116. Reporting.

(1) The department of law shall include in its annual presentations held pursuant to section 2-7-203 updates concerning the administration of this article 21, including:

(a) Complaints data, enforcement actions, and other relevant regulatory data; and

(b) The use of fees collected by the administrator pursuant to this article 21 and the use of fees subject to section 12-10-718 that are reappropriated to the department of law pursuant to section 12-10-719.

Source: L. 2021: Entire article added, (HB 21-1282), ch. 482, p. 3444, § 1, effective January 1, 2022.