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SENATE BILL 17-216

BY SENATOR(S) Gardner, Crowder, Fenberg, Kagan, Martinez Humenik, Merrifield, Tate, Todd;
also REPRESENTATIVE(S) Becker K. and Lontine, Coleman, Danielson, Exum, Hooton, Kennedy, Melton, Pabon, Pettersen, Rosenthal, Young.

CONCERNING CONTINUATION OF THE REGULATION OF COLLECTION AGENCIES UNDER THE "COLORADO FAIR DEBT COLLECTION PRACTICES ACT", AND, IN CONNECTION THEREWITH, IMPLEMENTING THE RECOMMENDATIONS OF THE 2016 SUNSET REPORT OF THE DEPARTMENT OF REGULATORY AGENCIES AND MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 24-34-104, **repeal** (12)(a)(VII); and **add** (29) as follows:

24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal. (12) (a) The following agencies, functions, or both, will repeal on July 1, 2017:

(VII) ~~The regulation of collection agencies in accordance with~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~article 14 of title 12, C.R.S.;~~

(29) (a) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, ARE SCHEDULED FOR REPEAL ON SEPTEMBER 1, 2028:

(II) THE ADMINISTRATION OF THE "COLORADO FAIR DEBT COLLECTION PRACTICES ACT" BY THE ADMINISTRATOR OF THE "UNIFORM CONSUMER CREDIT CODE", ARTICLES 1 TO 9 OF TITLE 5, IN ACCORDANCE WITH ARTICLE 14 OF TITLE 12.

(b) THIS SUBSECTION (29) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2030.

SECTION 2. In Colorado Revised Statutes, **amend** 12-14-137 as follows:

12-14-137. Repeal of article. This ~~article~~ ARTICLE 14 is repealed, effective ~~July 1, 2017~~ SEPTEMBER 1, 2028. BEFORE ITS REPEAL, THIS ARTICLE 14 IS SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION 24-34-104.

SECTION 3. In Colorado Revised Statutes, 12-14-103, **amend** the introductory portion; **repeal** (1.5); and **add** (6.5) as follows:

12-14-103. Definitions. As used in this ~~article~~ ARTICLE 14, unless the context otherwise requires:

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

(6.5) "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 14.

SECTION 4. In Colorado Revised Statutes, 12-14-111, **add** (2), (3), and (4) as follows:

12-14-111. Legal actions by collection agencies. (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.

SECTION 5. In Colorado Revised Statutes, 12-14-113, **amend** (3) and (4) as follows:

12-14-113. Civil liability. (3) A debt collector, private child support collector, as defined in section 12-14.1-102 (9), or collection agency may not be held liable in any action brought pursuant to ~~the provisions of this article~~ 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 ~~which~~ THE violation resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

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

SECTION 6. In Colorado Revised Statutes, **repeal** 12-14-116.

SECTION 7. In Colorado Revised Statutes, 12-14-117, **repeal** (1); and **add** (6), (7), (8), and (9) as follows:

12-14-117. Powers and duties of the administrator. (1) ~~Any provision of this article to the contrary notwithstanding, the board, created by section 12-14-116, is under the supervision and control of the administrator, who may exercise any of the powers granted to the board.~~

(6) THE ADMINISTRATOR SHALL PREPARE A REPORT ACCOUNTING FOR THE EFFICIENT DISCHARGE OF ALL RESPONSIBILITIES ASSIGNED BY LAW AND THE GENERAL ADMINISTRATION OF THE PROGRAM ON A BIENNIAL BASIS. IN ADDITION TO ANY OTHER INFORMATION DEEMED RELEVANT BY THE ADMINISTRATOR, THE BIENNIAL REPORT SHALL ADDRESS WITH SPECIFICITY THE FOLLOWING: ENFORCEMENT ACTIONS COMPLETED AND WHETHER THOSE ACTIONS WERE APPEALED OR OTHERWISE CHALLENGED, THE NUMBER OF COMPLAINTS PROCESSED AND DETAILS AS TO OUTCOMES AND RESOLUTIONS OF COMPLAINTS, AND CHANGES TO THE PROGRAM AND HOW THEY RELATE TO INDUSTRY OR CONSUMER CONCERNS. THE REPORT SHALL INCLUDE A DESCRIPTION OF ANY SIGNIFICANT LEGAL FILINGS SUCH AS AMICUS BRIEFS IN ANY COURT AND A SUMMARY OF NEW REGULATIONS, LEGAL DEVELOPMENTS THAT DIRECTLY IMPACT THE PROGRAM OR PROGRAM CHANGES, AND ANY SIGNIFICANT MATTERS THAT NEED TO BE ADDRESSED AT THE REQUEST OF THE REGULATED COMMUNITY OR PUBLIC. THE REPORT SHALL BE SUBMITTED TO THE SENATE JUDICIARY COMMITTEE AND THE HOUSE JUDICIARY COMMITTEE AND PUBLISHED ON THE ATTORNEY GENERAL'S WEBSITE BY JULY 1 AND DECEMBER 31 OF EACH YEAR.

(7) IN ORDER TO FACILITATE INFORMATION SHARING, TO PRESENT THE BIENNIAL REPORT OR SIMILAR INFORMATION, AND TO SOLICIT INFORMATION RELEVANT TO THE GENERAL ADMINISTRATION OF THE PROGRAM, THE ADMINISTRATOR, OR REPRESENTATIVE DESIGNATED BY THE ATTORNEY GENERAL, SHALL ATTEND MEETINGS AND CONFERENCES OF INTERESTED AND RELEVANT GROUPS AND ASSOCIATIONS. UPON ATTENDANCE, THE ADMINISTRATOR SHALL HAVE MINUTES FROM THOSE MEETINGS PREPARED AND PUBLISHED ON THE ATTORNEY GENERAL'S WEBSITE AND MADE PART OF THE NEXT BIENNIAL REPORT. THE ADMINISTRATOR, OR DESIGNEE, SHALL ATTEND THE FOLLOWING ON AN ANNUAL BASIS:

(a) AT THE INVITATION OF THE COLLECTION AGENCY INDUSTRY, ONE

LOCAL AND ONE NATIONAL ASSOCIATION OF COLLECTION AGENCIES OR OTHER COLLECTION AGENCY TRADE ASSOCIATION MEETING;

(b) AT THE INVITATION OF THE COLLECTION AGENCY INDUSTRY, ONE ANNUAL MEETING OF OTHER BUSINESS ENTITY ASSOCIATIONS OR GROUPS THAT REPRESENT CLIENTS OF COLLECTION AGENCIES, DEBT BUYERS, OR OTHER RELATED TRADE ASSOCIATIONS; AND

(c) ONE ANNUAL MEETING OF A RELEVANT CONSUMER ADVOCACY ASSOCIATION.

(8) THE ADMINISTRATOR SHALL HOST AN ANNUAL PUBLIC MEETING IN JANUARY OF EACH YEAR, WITH DIRECT NOTICE AT LEAST ONE MONTH IN ADVANCE TO CONSUMER ADVOCACY GROUPS AND ASSOCIATIONS AND OTHER INTERESTED PARTIES. THE ADMINISTRATOR SHALL ALSO HOST AN ANNUAL PUBLIC MEETING IN JULY OF EACH YEAR WITH DIRECT NOTICE AT LEAST ONE MONTH IN ADVANCE TO LICENSEES, INDUSTRY GROUPS, CLIENT GROUPS AND OTHER INTERESTED PARTIES.

(9) THIS SUBSECTION (9) AND SUBSECTIONS (6), (7), AND (8) OF THIS SECTION ARE REPEALED, EFFECTIVE JULY 1, 2020.

SECTION 8. In Colorado Revised Statutes, 12-14-124, **add** (12) as follows:

12-14-124. Bond. (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.

SECTION 9. In Colorado Revised Statutes, **add** 12-14-128.5 as follows:

12-14-128.5. Statute of limitations - actions by administrator. AN ACTION OR PROCEEDING BROUGHT BY THE ADMINISTRATOR PURSUANT TO THIS ARTICLE 14 OR PURSUANT TO ANY RULE ISSUED BY THE ADMINISTRATOR UNDER THIS ARTICLE 14 MUST BE BROUGHT WITHIN TWO YEARS AFTER THE DATE ON WHICH THE VIOLATION OCCURRED.

SECTION 10. In Colorado Revised Statutes, 12-14-130, **amend** (12) as follows:

12-14-130. Complaint - investigations - powers of administrator - sanctions. (12) ~~Members of the collection agency board,~~ The administrator, expert witnesses, and consultants ~~shall be~~ ARE immune from civil suit when they perform any duties in connection with any proceedings authorized under this section in good faith. Any person who files a complaint in good faith under this section ~~shall be~~ IS immune from civil suit.

SECTION 11. In Colorado Revised Statutes, **add** 12-14-136.5 as follows:

12-14-136.5. Debts sold or resold after January 1, 2018. THIS PART 1 APPLIES TO DEBT BUYERS WITH RESPECT TO CONSUMER DEBTS SOLD OR RESOLD ON OR AFTER JANUARY 1, 2018.

SECTION 12. Appropriation. For the 2017-18 state fiscal year, \$6,640 is appropriated to the department of law. This appropriation is from the collection agency cash fund created in section 5-16-134 (1)(a), C.R.S. To implement this act, the department may use this appropriation for the consumer credit unit.

SECTION 13. Effective date. This act takes effect upon passage; except that sections 3, 4, and 7 of this act take effect January 1, 2018.

SECTION 14. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Kevin J. Grantham
PRESIDENT OF
THE SENATE

Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO