

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 17-0298.01 Kristen Forrestal x4217

SENATE BILL 17-216

SENATE SPONSORSHIP

Gardner,

HOUSE SPONSORSHIP

Becker K. and Lontine,

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING CONTINUATION OF THE REGULATION OF COLLECTION**
102 **AGENCIES UNDER THE "COLORADO FAIR DEBT COLLECTION**
103 **PRACTICES ACT", AND, IN CONNECTION THEREWITH,**
104 **IMPLEMENTING THE RECOMMENDATIONS OF THE 2016 SUNSET**
105 **REPORT OF THE DEPARTMENT OF REGULATORY AGENCIES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Sunset Process - Senate Judiciary Committee. The bill implements the recommendations of the sunset review and report on the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

continuation of the "Colorado Fair Debt Collection Practices Act" (Act) by:

- ! Continuing the Act through 2028;
- ! Defining what is expected of a collection agency that purchases, sells, or attempts to collect on a purchased debt;
- ! Clarifying that when a collection agency attempts to collect on a debt, the Act applies, by removing language from the definition of "debt";
- ! Clarifying that the statute of limitations for private actions and actions by the administrator of the Act is 4 years;
- ! Repealing the collection agency board; and
- ! Allowing consumers who have monetary judgments against a collection agency to access surety bond funds.

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

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

4 **24-34-104. General assembly review of regulatory agencies**
5 **and functions for repeal, continuation, or reestablishment - legislative**
6 **declaration - repeal.** (12)(a) The following agencies, functions, or both,
7 will repeal on July 1, 2017:

8 (VII) ~~The regulation of collection agencies in accordance with~~
9 ~~article 14 of title 12, C.R.S.;~~

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

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

16 (b) THIS SUBSECTION (29) IS REPEALED, EFFECTIVE SEPTEMBER 1,
17 2030.

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

1 follows:

2 **12-14-137. Repeal of article.** This ~~article~~ ARTICLE 14 is repealed,
3 effective ~~July 1, 2017~~ SEPTEMBER 1, 2028. BEFORE ITS REPEAL, THIS
4 ARTICLE 14 IS SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION
5 24-34-104.

6 **SECTION 3. In Colorado Revised Statutes, 12-14-103, repeal**
7 (1.5) as follows:

8 **12-14-103. Definitions.** As used in this ~~article~~ ARTICLE 14, unless
9 the context otherwise requires:

10 (1.5) ~~"Board" means the collection agency board created in~~
11 ~~section 12-14-116.~~

12 =====

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

15 **12-14-111. Legal actions by collection agencies.** (2) A DEBT
16 COLLECTOR OR COLLECTION AGENCY WHO BRINGS A LEGAL ACTION ON A
17 DEBT OWNED BY A DEBT BUYER SHALL ATTACH THE FOLLOWING
18 MATERIALS TO THE COMPLAINT OR FORM:

19 (a) (I) A COPY OF THE CONTRACT, ACCOUNT-HOLDER AGREEMENT,
20 OR OTHER WRITING FROM THE ORIGINAL CREDITOR OR THE CONSUMER
21 EVIDENCING THE CONSUMER'S AGREEMENT TO THE ORIGINAL DEBT;

22 (II) IN THE CASE OF A MEDICAL DEBT, A COPY OF A REDACTED
23 ITEMIZATION OF CHARGES INCURRED;

24 (III) IF A SIGNED WRITING EVIDENCING THE ORIGINAL DEBT DOES
25 NOT EXIST, A COPY OF THE DOCUMENT PROVIDED TO THE CONSUMER
26 WHILE THE ACCOUNT WAS ACTIVE, DEMONSTRATING THAT THE DEBT WAS
27 INCURRED BY THE CONSUMER; OR, FOR A CREDIT CARD DEBT, THE MOST

1 RECENT MONTHLY STATEMENT RECORDING A PURCHASE TRANSACTION,
2 PAYMENT, OR BALANCE TRANSFER; OR

3 (IV) IF A CLAIM IS BASED ON AN ELECTRONIC TRANSACTION FOR
4 WHICH A SIGNED WRITING EVIDENCING THE ORIGINAL DEBT NEVER
5 EXISTED, A COPY OF THE RECORDS CREATED DURING THE TRANSACTION
6 EVIDENCING THE CONSUMER'S AGREEMENT TO THE DEBT AND RECORDING
7 THE DATE AND TERMS OF THE TRANSACTION AND INFORMATION PROVIDED
8 BY THE CONSUMER DURING THE TRANSACTION; AND

9 (b) A COPY OF THE ASSIGNMENT OR OTHER WRITING ESTABLISHING
10 THAT THE DEBT BUYER IS THE OWNER OF THE DEBT. IF THE DEBT WAS
11 ASSIGNED MORE THAN ONCE, EACH ASSIGNMENT OR OTHER WRITING
12 EVIDENCING TRANSFER OF OWNERSHIP MUST BE ATTACHED TO ESTABLISH
13 AN UNBROKEN CHAIN OF OWNERSHIP, BEGINNING WITH THE ORIGINAL
14 CREDITOR TO THE FIRST DEBT BUYER AND EACH SUBSEQUENT SALE.

15 (3) PRIOR TO ENTRY OF A DEFAULT JUDGMENT AGAINST A
16 CONSUMER IN A LEGAL ACTION ON A DEBT OWNED BY A DEBT BUYER, THE
17 PLAINTIFF SHALL FILE WITH THE COURT EVIDENCE THAT SATISFIES THE
18 REQUIREMENTS OF RULES 803(6) AND 902(11) OF THE COLORADO RULES
19 OF EVIDENCE OR IS OTHERWISE AUTHORIZED BY LAW OR RULE THAT
20 ESTABLISHES THE AMOUNT AND NATURE OF THE DEBT AND INCLUDE:

21 (a) THE ORIGINAL ACCOUNT NUMBER AT CHARGE-OFF;
22 (b) THE ORIGINAL CREDITOR AT CHARGE-OFF;
23 (c) THE AMOUNT DUE AT CHARGE-OFF OR, IF THE BALANCE HAS
24 NOT BEEN CHARGED OFF, AN ITEMIZATION OF THE AMOUNT CLAIMED TO BE
25 OWED, INCLUDING THE PRINCIPAL, INTEREST, FEES, AND OTHER CHARGES
26 OR REDUCTIONS FROM PAYMENT MADE OR OTHER CREDITS;
27 (d) AN ITEMIZATION OF POST CHARGE-OFF ADDITIONS, IF ANY;

1 (e) (I) THE DATE OF THE LAST PAYMENT, IF APPLICABLE; OR
2 (II) THE DATE OF THE LAST TRANSACTION; AND
3 (f) IF THE ACCOUNT IS NOT A REVOLVING CREDIT ACCOUNT, THE
4 DATE THE DEBT WAS INCURRED.

5 (4) IN THE ABSENCE OF EVIDENCE REQUIRED BY SUBSECTIONS
6 (2)(a) OR (2)(b) OF THIS SECTION, AN AFFIDAVIT DOES NOT SATISFY THE
7 REQUIREMENTS OF THESE SUBSECTIONS.

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

10 **12-14-113. Civil liability.** (3) A debt collector, private child
11 support collector, as defined in section 12-14.1-102 (9), or collection
12 agency may not be held liable in any action brought pursuant to ~~the~~
13 ~~provisions of this article~~ THIS SECTION if the debt collector or collection
14 agency shows by a preponderance of evidence that the violation was not
15 intentional or grossly negligent and ~~which~~ THE violation resulted from a
16 bona fide error, notwithstanding the maintenance of procedures
17 reasonably adapted to avoid any such error.

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

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

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

25 **12-14-117. Powers and duties of the administrator.** (1) ~~Any~~
26 ~~provision of this article to the contrary notwithstanding, the board, created~~
27 ~~by section 12-14-116,~~ is under the supervision and control of the

1 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.

1 MEETINGS PREPARED AND PUBLISHED ON THE ATTORNEY GENERAL'S
2 WEBSITE AND MADE PART OF THE NEXT BIANNUAL REPORT. THE
3 ADMINISTRATOR, OR DESIGNEE, SHALL ATTEND THE FOLLOWING ON AN
4 ANNUAL BASIS:

5 (a) AT THE INVITATION OF THE COLLECTION AGENCY INDUSTRY,
6 ONE LOCAL AND ONE NATIONAL ASSOCIATION OF COLLECTION AGENCIES
7 OR OTHER COLLECTION AGENCY TRADE ASSOCIATION MEETING;

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

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

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

21 **SECTION 8.** In Colorado Revised Statutes, 12-14-123, **add**
22 (1)(g), (1)(h), and (1)(i) as follows:

23 **12-14-123. Duties of collection agencies.** (1) A licensee shall:
24 (g) WHEN A DEBT IS SOLD, INCLUDE IN THE TRANSACTION ALL
25 RELEVANT DOCUMENTATION, AS DETERMINED BY RULE OF THE
26 ADMINISTRATOR, CONCERNING THE ORIGINAL TRANSACTION AND THE
27 CREDITOR VERIFYING THE DEBT;

5 (i) NOT SELL A RETIRED DEBT AS AN ACCOUNT RECEIVABLE.

6 **SECTION 9.** In Colorado Revised Statutes, 12-14-124, amend
7 (4) as follows:

15 (b) (I) IN A PRIVATE ACTION PURSUANT TO SECTION 12-14-113 (4),
16 THE CONSUMER MAY BRING SUIT UPON THE BOND IN THE NAME OF THE
17 CONSUMER.

18 (II) AN ORDER FOR RESTITUTION FOR A CONSUMER PURSUANT TO
19 SECTION 12-14-135 MAY INCLUDE RESTITUTION MADE THROUGH THE
20 BOND.

21

22 **SECTION 10.** In Colorado Revised Statutes, **add** 12-14-128.5 as
23 follows:

24 **12-14-128.5. Statute of limitations - actions by administrator.**
25 AN ACTION OR PROCEEDING BROUGHT BY THE ADMINISTRATOR PURSUANT
26 TO THIS ARTICLE 14 OR PURSUANT TO ANY RULE ISSUED BY THE
27 ADMINISTRATOR UNDER THIS ARTICLE 14 MUST BE BROUGHT WITHIN TWO

1 YEARS AFTER THE DATE ON WHICH THE VIOLATION OCCURRED.

2 **SECTION 11.** In Colorado Revised Statutes, 12-14-130, **amend**
3 (12) as follows:

4 **12-14-130. Complaint - investigations - powers of**
5 **administrator - sanctions.** (12) ~~Members of the collection agency~~
6 ~~board;~~ The administrator, expert witnesses, and consultants ~~shall be~~ ARE
7 immune from civil suit when they perform any duties in connection with
8 any proceedings authorized under this section in good faith. Any person
9 who files a complaint in good faith under this section ~~shall be~~ IS immune
10 from civil suit.

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

13 **12-14-136.5. Debts sold or resold after January 1, 2018. THIS**
14 PART 1 APPLIES TO DEBT BUYERS WITH RESPECT TO CONSUMER DEBTS
15 SOLD OR RESOLD ON OR AFTER JANUARY 1, 2018.

16 **SECTION 13. Effective date.** This act takes effect upon passage;
17 except that section 4 of this act takes effect January 1, 2018.

18 **SECTION 14. Safety clause.** The general assembly hereby finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, and safety.