

COLORADO CREDIT SERVICES ORGANIZATION ACT

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COLORADO CREDIT SERVICES ORGANIZATION ACT

(July 1, 2003)

12-14.5-101. Short title. This article shall be known and may be cited as the "Colorado Credit Services Organization Act".

12-14.5-102. 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 which offer to obtain credit or improve the credit standing of such 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 article 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; and

(d) This article shall be construed liberally to achieve these purposes.

12-14.5-103. Definitions. As used in this article, 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 who, with respect to the extension of credit by others, represents that such 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 the following:

(a) Any nonprofit organization exempt from taxation under section 501 (c) (3) of the federal "Internal Revenue Code of 1986"; or

(b) Any person licensed to practice law in this state if such person renders such credit services within the course and scope of said person's 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.

12-14.5-104. 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.

12-14.5-105. Surety bond. (Repealed effective July 1, 2003).

12-14.5-106. 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 12-14.5-107. 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.

12-14.5-107. Content of written disclosure. (1) The information statement required pursuant to section 12-14.5-106 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 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;

12-14.5-108. 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, shall be easily detachable, and shall 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.

12-14.5-109. Waivers and exemptions. (1) Any waiver by a buyer of any part of this article is void as against public policy. Any attempt by a credit services organization to have a buyer waive rights given by this article is a violation of this article.

(2) In any proceeding involving this article, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

12-14.5-110. Criminal penalties and injunctive relief. (1) Any person who violates any provision of this article commits a class 1 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S. Violating any provision of this article 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, C.R.S.

(2) The administrator of the uniform consumer credit code, designated pursuant to section 5-6-103, C.R.S., or the district attorney of any judicial district may maintain an action to enjoin violations of this article.

(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 article.

12-14.5-110.5. Powers of administrator of the uniform consumer credit code and district attorney - subpoenas - hearings. (1) When the administrator of the uniform consumer credit code or district attorney has cause to believe that any person has violated or is violating any provision of this article, he may, in addition to the other powers conferred upon him by this article:

(a) Request such person to file a statement or report in writing under oath or otherwise, on forms prescribed by him, 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 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, and examine under oath any person in connection with the sale or advertisement of goods, property, or services by any credit services organization.

(2) Service of any notice or subpoena may be made in the manner prescribed by law or under the Colorado rules of civil procedure.

12-14.5-111. Damages. (1) Any buyer injured by a violation of this article or by a credit services organization's breach of contract subject to this article 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 article or of a contract subject to this article, 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.

12-14.5-112. Aiding or assisting violation. Any individual who, as a director, officer, partner, member, salesperson, agent, or representative of a credit services organization which violates this article, 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 section 12-14.5-111 and this section.

12-14.5-113. Remedies cumulative. The remedies provided for in this article are cumulative and in addition to any other procedures or remedies for any violation or conduct provided for in any other law.