

STATE OF COLORADO

COLLECTION AGENCY BOARD

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COLORADO'S NEW "BAD CHECK"/TREBLE DAMAGES LAW

ASSERT LIABILITY

The Collection Agency Board has received inquiries about the meaning of the phrase "assert that any maker has liability" for purposes of § 13-21-109(5), C.R.S. (1985), as amended by H.B. 1065 in the 1989 Session. H.B. 1065 became effective July 1, 1989. At its August 25, 1989 meeting, the Board took the following position with regard to the meaning of "assert liability" under the new law.

A debt collector or collection agency cannot assert that a consumer is liable for treble damages of not less than \$100 unless treble damages have been determined by an entry of a final judgment by a court of competent jurisdiction.

In other words, without going to court and obtaining a judgment, a debt collector cannot communicate to the consumer that the consumer will owe treble damages, or does owe treble damages. (Because the filing in court of a complaint and the service of the complaint upon the consumer constitute litigation, not collection activities, the Board believes that the allegations of a legal complaint are exempt from this prohibition.)

The question as to whether a debt collector has "asserted" that a debtor is liable for treble damages is factual and must be determined on a case-by-case basis.

It is the position of the Board that, depending on the context, language similar to the following does not constitute an assertion of liability:

"We could decide to take you to court, in which case we might be awarded xxx in damages if we prove our case against you."

It is the position of the Board that, depending on the context, language similar to the following does constitute an assertion of liability and is prohibited:

"The 15-day notice period has passed. You now owe us (or are liable for) xxx in damages"; or

"We are going to take you to court, and you will owe us xxx"; or

"Colorado law states that if you write a bad check, you incur treble damages, which means you owe us xxx."

The Board also determined that a debt collector or collection agency may agree to a settlement of more than the face value of a check after expiration of the 15-day notice period without full payment, as long as liability for treble damages is not asserted during those communications.

The position of the Board is to determine any violation of statute on a case-by-case basis as complaints occur. The above is meant only as a general statement of policy and not an official advisory position of the Board.

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