

Colorado Revised Statutes 2017

TITLE 5

DEBT MANAGEMENT

ARTICLE 17

Colorado Child Support Collection Consumer Protection Act

Editor's note: This article was added with relocations in 2017. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

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.