

Consumer Credit Solicitation Protection

This Act requires a creditor or charge card company that offers credit or a charge card by mail, and that receives an acceptance to the offer that lists an address for the applicant that is different from the address where the offer of credit or a charge card was sent, to verify that the person accepting the offer is the person to whom the creditor or charge card company made the offer of credit or a charge card. The legislation enumerates ways a creditor may verify that the person accepting the offer is the same person to whom the offer was made, including phoning the person, requesting proof of identification, using a method adopted in federal regulation, or a method sufficient under the standards and practices of the industry.

This Act establishes a private right of action against a person who uses the personal identifying information of another to commit fraud-type crimes. The legislation permits a plaintiff to recover regardless of whether there was a criminal conviction. The draft allows a plaintiff to recover actual damages, punitive damages, and attorneys fees and costs.

Submitted as:

Colorado

Chapter 205 of 2004

Status: Enacted into law in 2004.

Suggested State Legislation

1 Section 1. [*Short Title.*] This Act may be cited as “An Act Concerning Consumer Credit
2 Solicitation.”

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4 Section 2. [*Consumer Credit Solicitation Protection.*]

5 (1) A solicitor that makes a firm offer of credit for a lender credit card or a seller credit
6 card to a consumer by mail solicitation and receives an acceptance of that offer that lists the
7 address of the consumer accepting the offer as different from the address to which the offer was
8 sent shall, prior to issuing or directing issuances of the lender credit card or seller credit card,
9 verify that the consumer accepting the offer is the same consumer to whom the offer was sent.

10 (2) As used in this section, unless the context otherwise requires:

11 (a) “Firm offer of credit” shall have the same meaning as set forth in 15 U.S.C.
12 Sec. 1681a (l).

13 (b) “Solicitor” means the person making the offer by mail solicitation and does
14 not include a card issuer or other creditor when that creditor or card issuer relies on an
15 independent third party to provide the services.

16 (c) “Verify” means the use of commercially reasonable efforts to ascertain that the
17 consumer responding to a mail solicitation is the same consumer to whom the solicitation was
18 directed. For the purposes of this Act, a solicitor shall be deemed to verify that the consumer
19 accepting a mail solicitation is the same consumer to whom the solicitation was directed if:

20 (i) a consumer responding at a telephone number appearing in a publicly
21 available directory or database as the telephone number of the consumer to whom the solicitation
22 was mailed identifies himself or herself as the consumer to whom the solicitation was mailed and
23 acknowledges the consumer's acceptance of the solicitation; or

24 (ii) a consumer presents the solicitor, including presentation by facsimile
25 transmission or mail, the original or a copy of one more documents, including a driver's license,
26 social security card, passport, or any other identification document issued by a state or federal

27 governmental agency, that, on the face of the document or documents, appears to confirm such
28 consumer's identity as the consumer to whom a solicitation was mailed and the consumer
29 acknowledges acceptance of the solicitation; or

30 (iii) the solicitor verified, by any means adopted in federal regulations,
31 that the consumer accepting the solicitation is the consumer to whom the solicitation was
32 directed; or

33 (iv) the solicitor verified by any other means, that under the standards and
34 practices of the industry in which the solicitor is engaged would be deemed sufficient, that the
35 consumer accepting the solicitation as the same consumer to whom the solicitation was sent.

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37 Section 3. [*Civil Liability for Unlawful Use of Personal Identifying Information.*]

38 (1) Notwithstanding any other remedies provided under this Act, a person who suffers
39 damages as a result of a crime described in [insert citation], in which personal identifying
40 information was used in the commission of the crime, shall have a private civil right of action
41 against the perpetrator who committed the crime, regardless of whether the perpetrator was
42 convicted of the crime. In such action, the plaintiff shall be entitled to actual damages, including,
43 but not limited to damage to reputation or credit rating, punitive damages, and attorney fees and
44 costs.

45 (2) For purposes of this section, “personal identifying information” means any
46 information that may be used, alone or in conjunction with any other information, to identify a
47 specific individual, including but not limited to: name; date of birth; social security number;
48 personal identification number; password; pass code; official state-issued or government-issued
49 driver's license or identification card number; government passport number; biometric data;
50 employer, student, or military identification number; or financial transaction device as defined in
51 [insert citation].

52

53 Section 4. [*Severability.*] [Insert severability clause.]

54

55 Section 5. [*Repealer.*] [Insert repealer clause.]

56

57 Section 6. [*Effective Date.*] [Insert effective date.]