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ORDER OF THE ADMINISTRATOR

On June 29, 2020, Governor Polis signed into law SB-20-211 ("SB-211" or "the Act"). SB-211 imposed certain limitations on extraordinary collection actions from the effective date of the Act to November 1, 2020. SB-211 prohibits a judgment creditor from initiating or maintaining a new extraordinary collection action, except in accordance with the requirements of SB-211.

During the period from the effective date of SB-211 to November 1, 2020, or to February 1, 2021 if extended by the Administrator of the Uniform Consumer Credit Code ("Administrator"), the Act requires a judgment creditor, prior to execution or service of a writ or legal process intended to effect an extraordinary collection action, to provide a written notice to the judgment debtor consumer. The notice must be provided at least 10 but not more than 60 days prior to the execution or service of a writ or legal process intended to effect the extraordinary collection action. The notice provides that a judgment debtor consumer has a right to suspend the extraordinary collection action if they have experienced financial hardship due to the COVID-19 emergency, directly or indirectly. The judgment debtor consumer may inform the judgment creditor either by phone or in writing that they are experiencing economic hardship due to the COVID-19 emergency and is not required to provide documentation to support the request to suspend extraordinary collections actions. The notice further provides that the temporary suspension of extraordinary collections actions is not a waiver of the obligation to pay, or debt forgiveness and that interest may continue to accrue. Finally, the notice provides that the judgment debtor consumer may enter into a voluntary repayment plan with the judgment creditor, but is not required to do so.

SB-211 authorized the Administrator to issue an Order extending the limitations on extraordinary collection actions described in Section 2 of the Act through February 1, 2021. To issue such an Order, the Administrator must find that such an extension is necessary "to preserve and prioritize the resources of state and local agencies or to protect Colorado residents from economic hardship as a result of the disaster emergency caused by COVID-19."[1]

As discussed below, the Administrator reviewed public data on recent and current economic conditions. She also held a public meeting and requested written comments.

I. Economic conditions

In order to assess whether extending the limitations on extraordinary collection actions in the Act would "preserve and prioritize the resources of state and local agencies or protect Colorado residents from economic hardship as a result of the disaster emergency caused by COVID-19," the Administrator reviewed publicly available economic indicators to examine the extent of economic hardship facing Colorado residents caused by COVID-19. The Administrator believes it is a reasonable interpretation of SB-211 to compare economic conditions from late June 2020, where available, with data on economic conditions currently available. The legislature enacted SB-211 in late June 2020, expressing its judgment that limitations on extraordinary collections were necessary, so the Administrator believes this is a reasonable baseline. The Administrator reviewed publicly available data as well as data suggested by commenters to assess the economic hardship of Colorado residents due to the disaster emergency caused by COVID-19.

On October 6, 2020, Governor Polis issued his Executive Order D 2020 213 extending Safer at Home and in the Vast, Great Outdoors, due to the ongoing presence of COVID-19 in Colorado.[2] On October 8, Colorado Department of Public Health and Environment Executive Director Jill Hunsaker Ryan issued the Second Amended Public Health Order 20-35 in response to the existence of thousands of confirmed and presumptive COVID-19 cases and related deaths across Colorado.[3] The Order provides that as of October 8, 2020, there have been 75,785 known cases of COVID-19 in Colorado, 7,834 Coloradans have been hospitalized and 1,997 Coloradans have died from COVID-19. While the Public Health Order lessens some of the Safer at Home restrictions, it states that continuing restrictions to mitigate disease spread remain appropriate. The Public Health Order provides for three levels of Safer at Home based on county level metrics. At all levels, the Public Health Order limits public and private gatherings, office-based businesses, non-critical retail, non-critical manufacturing, personal services, and restaurants capacities to varying degrees.

The current economic situation has been precipitated by the pandemic, which necessarily requires a deliberate reduction in certain economic activity and the

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[1] SB-211 also exempted from levy and sale under writ of attachment or writ of execution up to $4000 in a depository account or accounts in the name of the debtor. This exemption extends to February 1, 2021.

[2] Colo. Executive Order No. D 2020 212 (October 6, 2020), https://drive.google.com/file/d/1_R8b62TIMfH_a1_eHFy7j0tXIjOtl0u_/view.

[3] Colo. Public Health Order No. 20-35 (October 8, 2020), https://drive.google.com/file/d/1wRxIxSUPE7NSQKf0wnr5P7BB2PAl9h_k/view.

attendant follow-on effects precipitating further economic contraction. Modeling released October 6, 2020 indicates an increase in hospitalizations and in the estimated number of Coloradans who are currently infectious.[4] The report from the Colorado Department of Public Health and Environment and the Colorado School of Public Health predicts that if Colorado remains on the current trajectory of its epidemic curve, it will see continued growth in cases and increased demand on hospitals. It notes the rise in cases after both Independence Day and Labor Day, and evaluates what might happen if people have more social contact than usual beginning the Friday before Thanksgiving and lasting through the new year, finding risk of a substantial increase in cases during and after the holidays. The report finds that at the higher projections, the state could be at risk for exceeding its ICU capacity as early as December unless Coloradans continue to take and maintain prevention measures. The report notes controlling infections in October and November can help reduce the severity of any holiday bump.

The Administrator notes that economists from the Colorado Legislative Council Staff reported in mid-September:

> Over the past three months, the U.S. and Colorado economies have recovered at a stronger pace than expected, as fiscal stimulus and the resiliency of businesses and consumer activity have buoyed growth. That said, data illustrate extensive and some lasting damage from the pandemic. In particular, labor markets have recovered only partially after their collapse in April. As the steadying effects of monetary and fiscal stimulus dissipate, some economic challenges will become more pronounced in the months ahead. Consumer activity and business investment are expected to grow, but unevenly and cautiously as the uncertainty surrounding the spread of COVID-19 continues. Risks to the forecast remain elevated, with a resurgence in the virus posing the largest downside risk to economic activity, and a near-term treatment for the virus or the passage of additional federal stimulus posing the greatest upside risks.[5]

Other sources of information reviewed by the Administrator similarly show that economic conditions improved since late March and April but have not changed dramatically since late June. The Administrator reviewed unemployment data, small business employment data, small business survey data, and household survey data.

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[4] Press Release, State of Colorado, New COVID-19 modeling report shows increased hospitalizations, potential holiday bump in cases, (October 6, 2020) https://covid19.colorado.gov/press-release/new-covid-19-modeling-report-shows-increased-hospitalizations-potential-holiday-bump [https://covid19.colorado.gov].

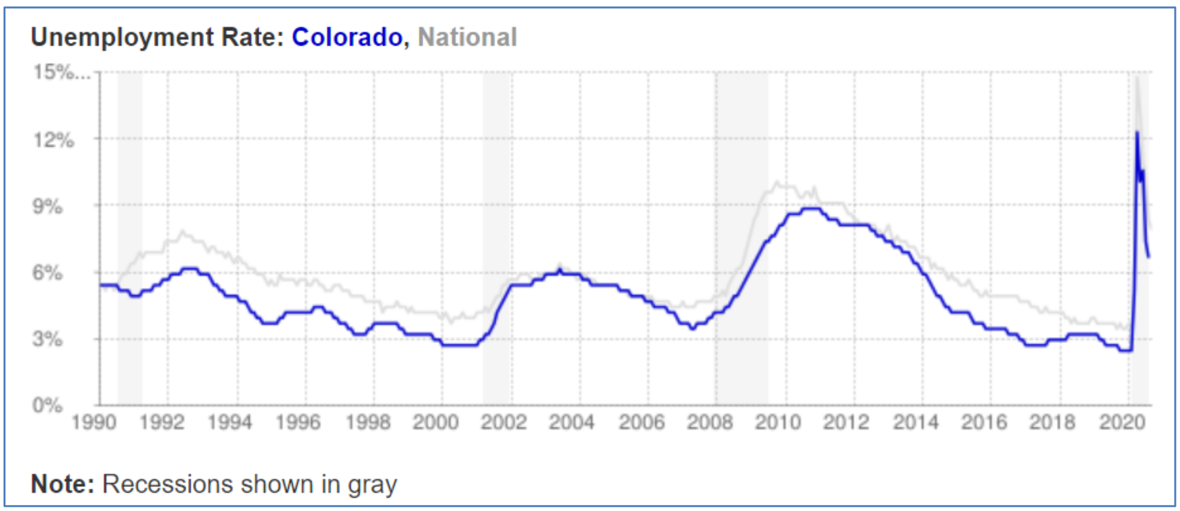
[5] *Economic & Revenue Forecast*, Colo. Leg. Council (September 18, 2020), at 4, https://leg.colorado.gov/sites/default/files/septforecast.pdf [https://leg.colorado.gov].

1) Unemployment

The Administrator reviewed data from the U.S. Bureau of Labor Statistics on unemployment in Colorado.

Date	National Unemployment Rate	Colorado Unemployment Rate	Colorado Unemployed
September 2020	7.9%	6.4% (P)	201,997(P)
August 2020	8.4%	6.7%	205,774
July 2020	10.2%	7.4%	229,572
June 2020	11.1%	10.6%	336,834
May 2020	13.3%	10.2%	313,656
April 2020	14.7%	12.2%	373,643
March 2020	4.4%	5.2%	164,027
February 2020	3.5%	2.5%	80,264

[6]



Source: raw data from Bureau of Labor and Statistics, updated for August 2020

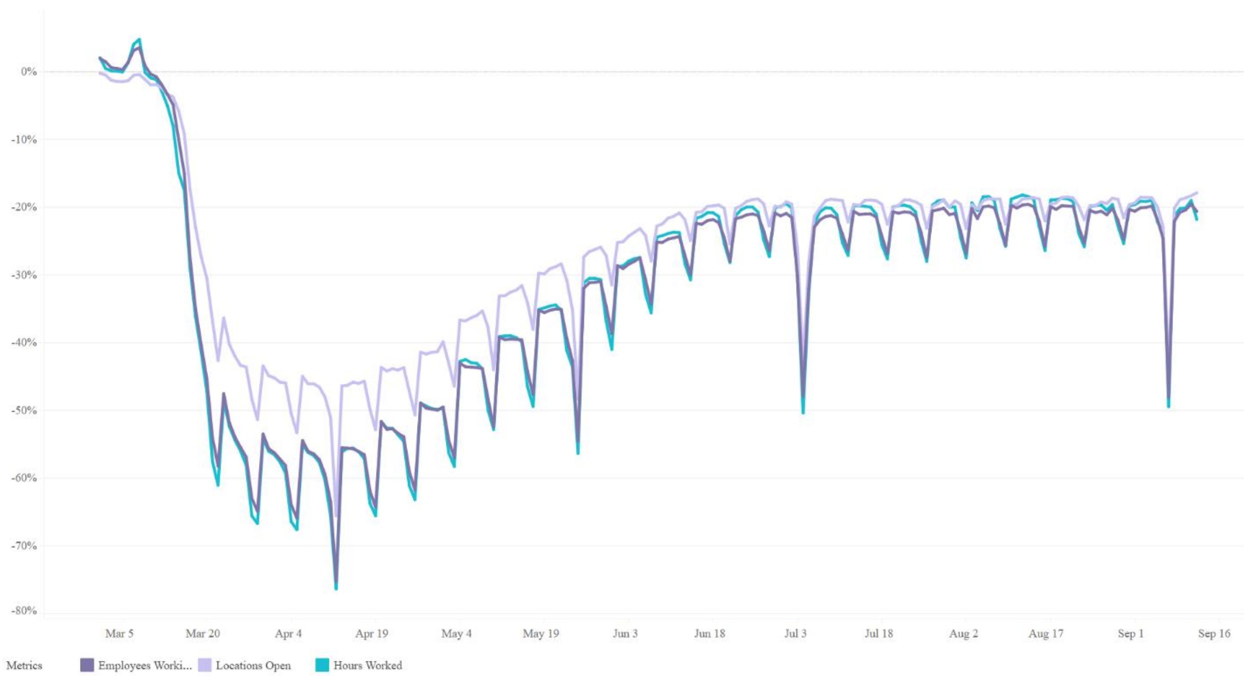
While unemployment improved since its peak in April, it remains high, still not far from its peak of the Great Recession. Similarly, the Colorado Department of Labor and Employment processed 4,840 initial claims for unemployment in the week that ended on September 26. This data marked the first time since March that claims fell below 5,000 claims. Colorado Public Radio reports that, for context, 4,800 was

[6] *Unemployment Rates – Mountain-Plains Region – Colo.*, BUREAU OF LABOR STATISTICS (August 2020) https://www.bls.gov/regions/mountain-plains/colorado.htm#eag [https://www.bls.gov].

the average weekly number of initial claims during The Great Recession.[7] The Colorado Department of Labor and Employment expects there will be an uptick in claims activity in the fourth quarter.[8]

2) Small business employment

The Administrator reviewed data on reported employment from Homebase. Homebase provides scheduling and time tracking tools for predominantly small businesses in the restaurant, food and beverage, retail and services industries. The chart below is based on Homebase data for over 60,000 businesses and 1 million hourly employees active in the United States in January 2020.



Nationally, from a substantial dip of roughly 60-70% of small business employees not working in early April and a similar drop in hours worked, both figures stabilized around roughly 20% fewer employees working and hours worked compared to the baseline of early March. The number has not dramatically improved from late June, when the legislature enacted SB-211, to mid-September.[9]

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7 Taylor Allen, *Unemployment Claims Reach a Pandemic Low as Colorado Warns of a Winter Bump*, COLORADO PUBLIC RADIO (October 1, 2020), https://www.cpr.org/2020/10/01/unemployment-claims-reach-a-pandemic-low-as-colorado-warns-of-a-winter-bump/ [https://www.cpr.org].

8 Id.

9 *Coronavirus Stats: Impact on Local Small Business National Summary*, HOMEBASE (last reviewed October 21, 2020), https://joinhomebase.com/data/national/ [https://joinhomebase.com].

The data from Colorado follow a similar pattern, where hours worked and employees working fell by 75% in April, and both recovered to around 9% fewer employees working, and fewer hours worked. The Colorado numbers in mid-September remain similar to late June when the legislature enacted SB-211.[10]

3) U.S. Census Small Business Pulse Survey Data

The Administrator reviewed pulse survey data from the U.S. Census on small businesses reporting a large negative effect from the COVID-19 pandemic. In June 21-27, 32.8% of small businesses in Colorado reported a large negative effect from COVID, down from about 42% in early April. In September 27-October 2, 2020, the number improved to 24.7%.[11] In October 4-12, the number was 26.2%.[12]

4) U.S. Census Household Pulse Survey

The Administrator also reviewed pulse survey data from the U.S. Census.

Food insecurity. In Week 9 (June 25-30), the percentage of adults in Colorado living in households where there was either sometimes or often not enough to eat in the last 7 days was 6.1% (+/- 1.7%).[13] In Week 15 (September 16-28), the percentage of

[10] *Coronavirus Stats: Impact on Local Small Business Colo. Summary*, HOMEBASE (last reviewed October 21, 2020), https://joinhomebase.com/data/state-wise-comparison/ [https://joinhomebase.com]
[11] *Small Business Pulse Data,* U.S. CENSUS BUREAU (last reviewed October 21, 2020), https://portal.census.gov/pulse/data/ [https://portal.census.gov].
[12] *Id.*
[13] *Measuring Household Experiences during the Coronavirus Pandemic – Colo. Week 9* , U.S. CENSUS BUREAU (last reviewed October 14, 2020), https://www.census.gov/data/experimental-data-products/household-pulse-survey.html [https://portal.census.gov].

adults in Colorado living in households where there was either sometimes or often not enough to eat in the last 7 days was 9.8% (+/- 2.3%). In Week 16 (September 30-October 12), the percentage decreased slightly to 7.2% (+/- 1.4%).[14]

Expected Loss in Employment Income. In Week 9 (June 25-30), the percentage of adults in Colorado who expect someone in their household to have a loss in employment income in the next 4 weeks was 28.8% (+/- 3.4%).[15] In Week 15 (September 16-28), the percentage of adults in Colorado who expect someone in their household to have a loss in employment income in the next 4 weeks was 23.7% (+/- 2.4%). In Week 16 (September 30-October 12), the percentage decreased slightly to 20.2% (+/- 2.1%).[16]

Difficulty paying usual household expenses. In Week 15 (September 16-28), the percentage of adults in Colorado living in households where it has been somewhat or very difficult to pay for usual household expenses during the coronavirus pandemic was 31.8 % (+/- 2.5%). In Week 16 (September 30- October 12), the percentage decreased to 25.1% (+/-2.1%).[17]

II. Public Comments on Extension of SB-211

The Administrator sought input from the public, licensees, and interested parties on whether to issue an Order. The Administrator requested feedback that the members of the public believe will be helpful to the determination required by the Act. In particular, she requested feedback on how the limitations in the Act are functioning in practice, the need to preserve and prioritize the resources of state and local agencies, and the extent of continuing economic hardship experienced by Colorado residents as a result of the disaster emergency caused by COVID-19. The Administrator requested any written feedback by October 1, 2020. The Administrator's staff also held a public meeting on October 1, 2020 via Zoom to gather feedback. The Administrator announced on October 5 that she would continue to accept comments until October 7, 2020.

1) Effects on collections industry and creditors

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[14] *Measuring Household Experiences during the Coronavirus Pandemic – Colo. Weeks 15 and 16* , U.S. CENSUS BUREAU (last reviewed October 21, 2020), https://www.census.gov/data-tools/demo/hhp/#/ [https://www.census.gov].

[15] *Measuring Household Experiences during the Coronavirus Pandemic – Colo. Week 9* , U.S. CENSUS BUREAU (last reviewed October 14, 2020), https://www.census.gov/data/experimental-data-products/household-pulse-survey.html [https://www.census.gov].

[16] *Measuring Household Experiences during the Coronavirus Pandemic – Colo. Weeks 15 and 16*, U.S. CENSUS BUREAU (last reviewed October 21, 2020), https://www.census.gov/data-tools/demo/hhp/#/ [https://www.census.gov].

[17] *Measuring Household Experiences during the Coronavirus Pandemic – Colo. Weeks 15 and 16*, U.S. CENSUS BUREAU (last reviewed October 21, 2020), https://www.census.gov/data-tools/demo/hhp/#/ [https://www.census.gov]. Other data supports this finding. For example, up to 42.1% of Colorado residents report taking on debt to meet everyday spending needs, where Colorado ranks second behind only the District of Columbia. Devon Delfino, *States Where Residents Rely Most on Debt to Make Ends Meet,* LENDING TREE (September 17, 2020), https://www.lendingtree.com/debt-consolidation/debt-to-make-ends-meet-study/ [https://www.lendingtree.com].

SB-211 requires the Administrator to determine whether an extension is necessary "to preserve and prioritize the resources of state and local agencies or to protect Colorado residents from economic hardship as a result of the disaster emergency caused by COVID-19." The Administrator believes it is a reasonable interpretation of "protect Colorado residents from economic hardship as a result of the disaster emergency caused by COVID-19" to consider the effect of the SB-211 limitations on extraordinary collections on collection agencies and firms, and on creditors, to the extent that those effects may affect "Colorado residents" and their experience of economic hardship.

The Administrator received differing comments on the effect of SB-211 on collection agencies and firms. One commenter said that out of 120 wage garnishments prepared by the commenter's firm since June 30, 2020, only 7 consumers raised a hardship under SB-211's notice to stop the garnishment, less than 6%. On the other hand, other commenters said SB-211 and COVID-19 caused the commenters' firm to lay off employees. One commenter said that that commenter's firm had more than 9% decrease in collections and 47% loss of revenue through September 2020, due to additional filing fees, employee output time and decreased collections resulting from COVID-19 and SB-211. The commenter stated that they have an ethical duty to represent clients by filing wage garnishments to collect judgment money due. Another commenter reported that their clients have at least $85,000 of unpaid parking violations that they are waiting to file and thousands of dollars in unpaid judgments they are waiting to enforce.

Collections industry commenters also said that they were already offering protections like those provided in SB-211 prior to its passage and would continue to do so whether or not the Administrator extended the limitations on extraordinary collections. A trade association for collection agencies said that SB-211 was "a fair and reasonable approach to assist consumers that were adversely affect by the Covid-19 Virus," but recommended that it was no longer necessary.

Commenters representing the collections industry also expressed concern for the effect of SB-211 on creditors. Commenters highlighted the need for small businesses, including frontline medical providers, to rely on money received through collections to stay open. A representative of a Chapter 7 bankruptcy trustee said the impact on bankruptcy proceedings had been low.

Reporting by ProPublica indicates that certain large debt buyers have posted record profits during the pandemic, due in large part to the CARES Act, which provided economic stimulus checks, unemployment benefits, and a pause on student loan payments, so some consumers responded to collectors' calls and were able to make payments.[18] The reporting also indicates that nationally, one large debt buyer has resumed filing law suits, but is not seeking garnishment orders, but

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[18] Paul Kiel & Jeff Ernsthausen, *Debt Collectors Have Made a Fortune this-Year. Now They're Coming-for-More, PROPUBLICA* https://www.propublica.org/article/debt-collectors-have-made-a-fortune-this-year-now-theyre-coming-for-more [https://www.propublica.org].

another large debt buyer has stopped garnishing from bank accounts but is seeking to garnish wages.

According to the Household Pulse Survey, while most people used the stimulus payments to buy food and other essentials, about 25% used at least some of the money to pay down debts.[19] Similarly, a working paper by the National Bureau of Economic Research published in August found that American households said they spent 40% of their checks on average, with 30 percent going into savings and another 30% going toward debt payments.[20] In Colorado, more than 13% in the Household Pulse Survey said they used or mostly used the stimulus payments to pay off debt.[21]

2) Effects on consumers

Commenters who represent consumers in collections suits said there was ongoing need for the protections of SB-211. They reported that the process to pause extraordinary collections measures provided by SB-211 was working for consumers who needed the protections, had brought relief to numerous consumers suffering hardship due to COVID-19, and the need for protections was ongoing because their clients were continuing to experience economic hardships due to COVID-19. Commenters noted that the COVID-19 crisis has had a disproportionate effect on lower income individuals and many of these individuals face continuing uncertainty on whether or when their jobs, including in the food and restaurant, public transportation (including Uber/Lyft), and retail sectors, will return. Others may face job loss due to the continuing pandemic and the uncertainty in the economy.

Consumer representative commenters noted that their clients who availed themselves of the protections of SB-211 were able to negotiate with creditors to reach mutually beneficial settlements. Debt collection industry commenters noted they were always willing to negotiate with consumers. Consumer representative commenters noted that clients had difficulty reaching creditors' collections attorneys and collections agencies were unwilling to enter into reasonable payment arrangements and would instead proceed to garnish wages or bank accounts. Commenters who represent consumers reported clients had difficulty reaching the attorney or person with authority to arrange a payment plan, getting stuck instead communicating with collection agency representatives who had limited authority and were not obligated to communicate settlement information. Consumer representatives reported that the protections of SB-211 had increased collectors' incentive to reach settlements that benefitted both the consumer and creditor. Debt collection industry commenters also questioned whether some consumers who were

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[19] *Receipt and Use of Stimulus Payments in the Time of the Covid-19 Pandemic,* BUREAU OF LABOR STATISTICS (August 2020), https://www.bls.gov/opub/btn/volume-9/receipt-and-use-of-stimulus-payments-in-the-time-of-the-covid-19-pandemic.htm [https://www.bls.gov].

[20] Yeganeh Torbati, *Trump, Congress pursue second round of $1,200 stimulus checks in effort to revive huge federal aid program, THE WASHINGTON POST* (October 9, 2020) https://www.washingtonpost.com/business/2020/10/09/covid-second-stimulus-checks [https://www.washingtonpost.com].

[21] *Week 9 Household Pulse Survey – Stimulus Table* , U.S. CENSUS BUREAU (last reviewed October 14, 2020), https://www.census.gov/data/tables/2020/demo/hhp/hhp9.html [https://www.census.gov].

availing themselves of SB-211's protections were suffering hardship due to COVID-19.

3) HB19-1189 provisions

HB19-1198 went into effect on October 1, 2020. HB19-1198 increased the amount of disposable earning protected from garnishment from either 25% of the individual's disposable weekly earnings or the amount by which an individual's disposable earnings for a week exceed 30 times the state or federal minimum wage, whichever is less, to 20% of the individual's disposable weekly earnings 40 times the amount by which an individual's disposable earnings for a week exceed the state or federal minimum wage. HB19-1198 also deducts from an individual's disposable earnings subject to garnishment the cost of any health insurance that is provided by the individual's employer and voluntarily withheld from the individual's earnings. Finally, HB19-1198 creates an exemption that would permit individuals to prove that the amount of their pay subject to garnishment should be further reduced or eliminated altogether if the individual can establish that such reductions are necessary to support the individual or the individual's family.

Industry commenters said that the protections of HB19-1198 were sufficient and no extension of SB-211 was necessary. Commenters who represent consumers noted that their clients would need to establish that they are entitled to a greater exemption for wages through evidence presented to the court. HB19-1189 places the burden of raising and proving entitlement to the exemption on consumers. They must show to the court that their earnings, together with other income received by their family, are "insufficient to pay the actual and necessary living expenses of the judgment debtor or the judgment debtor and judgment debtor's family based upon proof of such expenses incurred during the sixty days prior to the hearing." 13-54-104(2)(a)(I)(D), C.R.S. "[T]he living expenses the court must consider include, but are not limited to, the following: Rent or mortgage; utilities; food and household supplies; medical and dental expenses; child care; clothing; education; transportation; and maintenance, alimony, or child support." *Id.*

Commenters who represent consumers noted that attending a court hearing and providing evidence could be a significant burden to their clients, even as the courts have transitioned to offering remote hearings, which can still present challenges for consumers with limited or no access to the technology required. Consumer representatives noted that consumers, most who will appear pro se, will need to gather evidence of income and expenses. Commenters representing consumers reported that gathering the documentation of income and living expenses required for the court to consider is a significant burden during the pandemic. SB-211 permits consumers to notify the judgment creditor that they are experiencing hardship from COVID-19 with a phone call or in writing and does not require the consumer to provide documentation. This structure resembles the

CARES Act forbearance protections, which similarly do not require consumers to provide documentation.[22]

The Administrator notes that the legislature layered the protections of SB-211 on top of the protections of HB19-1198 for the month of October 2020. The protections of HB19-1198 are permanent and reflect a legislative judgment that the amounts protected from garnishment and the process to protect additional wages needed to be adjusted for consumers. The protections of HB19-1198 necessarily are not designed to specifically address the current economic hardships of the pandemic, which the legislature could not have foreseen in 2019. Indeed, the legislative declaration in SB-211 provided, "[e]xisting regulations may not adequately protect consumers in the context of a declared disaster emergency and may not be sufficient to prevent the further economic harm caused by extraordinary collection actions. It is therefore necessary to provide additional protections to Colorado consumers."

A comment from Senators Julie Gonzalez and Faith Winter and Representative Leslie Herod noted that SB-211 was enacted to preserve governmental resources and protect the health and safety of individuals involved in the debt collections process, including court officials and defendants. One commenter noted that state resources will be consumed if consumers must rely on the HB19-1198 judicial process to protect wages from garnishment when they are suffering from economic hardship due to COVID-19.

III. Conclusion

The Administrator concludes that, taken together, the economic indicators generally show improvement since the worst weeks of the pandemic in late March and April 2020, but remain overall similar to late June when the legislature determined the limitations on extraordinary collections actions in SB-211 were necessary. Consumers who experienced and are experiencing hardship due to SB-211 have used the protections provided by SB-211 to suspend the involuntary disablement of their property through extraordinary collections. The Administrator recognizes that some Colorado residents may experience economic harm from the extension of SB-211's protections because debt collectors and firms will suspend extraordinary collections for judgment debtors who respond to the SB-211 notice because they are experiencing hardship due to COVID-19. Collection agencies and firms employ Colorado residents who may lose their jobs. Creditors, including Colorado small businesses, who rely on collections may also have to cut hours or lay off Colorado residents. But having considered the economic indicators for Colorado residents and the public comments received from representatives from the collections industry, consumers, and creditors, the Administrator concludes that extension of the requirements of sections (4) and (5) of SB-211 until February 1,

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[22] See, e.g., *CARES Act Forbearance Fact Sheet for Borrowers with FHA, VA, or USDA Loans,* https://benefits.va.gov/HOMELOANS/documents/docs/borrowers_cares_factsheet.pdf#:~:text=Relief%2C%20and%20Economic%20Security%20Act%20%28CARES%20Act%29%20Mortgage,that%20you%20are%20suffering%20from%20such%20a%20hardship. [https://va.gov].

2021 is necessary "to protect Colorado residents from economic hardship as a result of the disaster emergency caused by COVID-19."

The Administrator also finds that extending the requirements of sections (4) and (5) of SB-211 until February 1, 2021 will preserve and prioritize the resources of state and local agencies as a result of the disaster emergency caused by COVID-19. The courts in Colorado continue to operate on a limited and/or remote basis due to the pandemic. Extending SB-211's protections, rather than requiring Colorado residents suffering economic hardship due to COVID-19 to rely on HB19-1189's brand new judicial processes to prove entitlement to the exemption, will preserve judicial resources. Settlements reached by consumers and collection agencies and firms as a result of SB-211 that avoid the need for additional court proceedings or filings of writs of garnishments or other extraordinary collections actions preserves judicial resources, as well as garnishee and collections resources.