

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0666.01 Ed DeCecco x4216

SENATE BILL 16-117

SENATE SPONSORSHIP

Sonnenberg,

HOUSE SPONSORSHIP

(None),

Senate Committees
Finance

House Committees

A BILL FOR AN ACT

101 CONCERNING A LIMITATION ON A STATE AGENCY'S AUTHORITY TO
102 IMPOSE A FINE.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

For purposes of the bill, a "discretionary fine" means a penalty in an amount set by a state agency that is capped in law at \$1,000 or more or that has no statutory cap. A state agency is prohibited from imposing a discretionary fine unless:

- ! The state agency provides written notice of the violation of the state law or rule to the violator; and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

! The violator fails to cure the violation on or before the 20th business day after receipt of the written notice of the violation.

The bill also establishes a maximum amount of a discretionary fine, notwithstanding any specific provision of law to the contrary. But this maximum only applies if a violator provides the state agency with the requested information that allows the state agency to determine the maximum amount.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 79.3 to
3 title 24 as follows:

4 **ARTICLE 79.3**

5 **Fines Imposed by State Agencies - Limitations**

6 **24-79.3-101. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
7 CONTEXT OTHERWISE REQUIRES:

8 (1) "BUSINESS DAY" MEANS ANY CALENDAR DAY EXCLUDING
9 SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS.

10 (2) "DISCRETIONARY FINE" MEANS A PENALTY THAT:

11 (a) IS IMPOSED BY A STATE AGENCY ON A NATURAL PERSON,
12 BUSINESS ENTITY, OR POLITICAL SUBDIVISION FOR A VIOLATION OF A STATE
13 LAW OR A STATE AGENCY RULE;

14 (b) HAS A MAXIMUM PENALTY THAT IS GREATER THAN OR EQUAL
15 TO ONE THOUSAND DOLLARS PER VIOLATION OR THAT DOES NOT HAVE A
16 MAXIMUM AMOUNT SET IN STATE LAW; AND

17 (c) IS NOT A CRIMINAL PENALTY.

18 (3) "STATE AGENCY" MEANS ANY BOARD, BUREAU, COMMISSION,
19 DEPARTMENT, INSTITUTION, DIVISION, SECTION, OR OFFICER OF THE STATE
20 IN THE EXECUTIVE BRANCH.

21 **24-79.3-102. State agencies - fines - limitations.** (1) A STATE

1 AGENCY SHALL NOT IMPOSE A DISCRETIONARY FINE, UNLESS:

2 (a) THE STATE AGENCY PROVIDES WRITTEN NOTICE OF THE
3 VIOLATION OF THE STATE LAW OR RULE TO THE VIOLATOR; AND

4 (b) THE VIOLATOR FAILS TO CURE THE VIOLATION ON OR BEFORE
5 THE TWENTIETH BUSINESS DAY AFTER RECEIPT OF THE WRITTEN NOTICE OF
6 THE VIOLATION.

7 (2) (a) EXCEPT AS SET FORTH IN PARAGRAPH (c) OF THIS
8 SUBSECTION (2), AND NOTWITHSTANDING ANY SPECIFIC PROVISION OF LAW
9 TO THE CONTRARY, A STATE AGENCY SHALL NOT IMPOSE A DISCRETIONARY
10 FINE THAT EXCEEDS:

11 (I) FOR A NATURAL PERSON, TEN PERCENT OF THE TAXABLE
12 INCOME REPORTED ON HIS OR HER LAST STATE INCOME TAX RETURN,
13 REGARDLESS OF WHETHER IT IS A SINGLE OR JOINT RETURN;

14 (II) FOR A BUSINESS ENTITY, TEN PERCENT OF THE OPERATING
15 REVENUE REPORTED ON ITS INCOME STATEMENT FOR THE LAST FISCAL
16 YEAR; OR

17 (III) FOR A POLITICAL SUBDIVISION, TEN PERCENT OF ITS TAX
18 REVENUE FOR THE PRIOR FISCAL YEAR.

19 (b) THE MAXIMUM DISCRETIONARY FINE ALLOWED UNDER
20 PARAGRAPH (a) OF THIS SUBSECTION (2) DOES NOT INCLUDE ANY
21 DELINQUENCY CHARGES.

22 (c) IF A VIOLATION HAS NOT BEEN CURED DURING THE PERIOD SET
23 FORTH IN PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, A STATE
24 AGENCY MAY REQUEST A VIOLATOR TO PROVIDE INFORMATION TO ALLOW
25 THE STATE AGENCY TO DETERMINE THE MAXIMUM ALLOWABLE FINE
26 UNDER PARAGRAPH (a) OF THIS SUBSECTION (2). FOR THE LIMIT TO APPLY,
27 THE VIOLATOR MUST PROVIDE THE STATE AGENCY WITH THE REQUESTED

1 INFORMATION ON OR BEFORE THE TWENTIETH DAY AFTER RECEIPT OF THE
2 REQUEST. IF THE VIOLATOR FAILS TO PROVIDE THE REQUESTED
3 INFORMATION, THEN PARAGRAPH (a) OF THIS SUBSECTION (2) DOES NOT
4 APPLY.

5 **SECTION 2. Act subject to petition - effective date.** This act
6 takes effect at 12:01 a.m. on the day following the expiration of the
7 ninety-day period after final adjournment of the general assembly (August
8 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
9 referendum petition is filed pursuant to section 1 (3) of article V of the
10 state constitution against this act or an item, section, or part of this act
11 within such period, then the act, item, section, or part will not take effect
12 unless approved by the people at the general election to be held in
13 November 2016 and, in such case, will take effect on the date of the
14 official declaration of the vote thereon by the governor.