

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0806.01 Thomas Morris x4218

HOUSE BILL 18-1154

HOUSE SPONSORSHIP

Hooton,

SENATE SPONSORSHIP

(None),

House Committees
Finance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING CONSUMER PROTECTIONS RELATING TO A SOLICITATION
102 TO PROVIDE A COPY OF A PUBLIC RECORD FOR A FEE.

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://leg.colorado.gov>.)

The bill requires a person who solicits a fee for providing a copy of a record held by a governmental entity to:

- ! Give a copy of the document that will be used for the solicitation to each county clerk and recorder where the solicitation is to be distributed if the solicitation is addressed to a real property owner and the record to be

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

- provided is a deed;
- ! Not charge a fee of more than 4 times the amount charged by the state agency or local government that has custody of the record for a copy of the same record; and
- ! Include specified disclosures on the document used for the solicitation, not make the document appear to have been issued by a state agency or local government, and not make the document appear to impose a legal duty on the individual being solicited.

The attorney general and the appropriate district attorney may bring an action for a violation. The court may order a refund and a penalty, for a first violation, of not more than \$100 for each solicitation document distributed in violation of the bill and not more than \$200 for each solicitation document for subsequent violations. Title insurance companies are excluded from the bill.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 6-1-728 as
3 follows:

4 **6-1-728. Solicitation of fee for a public record - definitions.**

5 (1) AS USED IN THIS SECTION:

6 (a) "LOCAL GOVERNMENT" MEANS A POLITICAL SUBDIVISION OF
7 THIS STATE, A SPECIAL PURPOSE DISTRICT IN THIS STATE, AN
8 INSTRUMENTALITY OR CORPORATION OF SUCH A POLITICAL SUBDIVISION
9 OR SPECIAL PURPOSE DISTRICT, OR A COMBINATION OR SUBUNIT OF ANY OF
10 THEM.

11 (b) "RECORD" MEANS ANY MATERIAL ON WHICH WRITTEN, DRAWN,
12 PRINTED, SPOKEN, VISUAL, OR ELECTROMAGNETIC INFORMATION IS
13 RECORDED OR PRESERVED, REGARDLESS OF PHYSICAL FORM OR
14 CHARACTERISTICS, THAT HAS BEEN CREATED OR IS BEING KEPT BY A
15 LOCAL GOVERNMENT OR A STATE AGENCY.

16 (c) "SOLICIT" OR "SOLICITATION" MEANS TO DIRECTLY ADVERTISE
17 OR MARKET THROUGH WRITING OR GRAPHICS AND VIA MAIL, TELEFAX, OR

1 ELECTRONIC MAIL TO AN INDIVIDUALLY IDENTIFIED PERSON, RESIDENCE,
2 OR BUSINESS LOCATION. "SOLICIT" AND "SOLICITATION" DO NOT INCLUDE
3 ANY OF THE FOLLOWING:

4 (I) COMMUNICATING THROUGH A MASS ADVERTISEMENT,
5 INCLUDING A CATALOG, A RADIO OR TELEVISION BROADCAST, OR A
6 WEBSITE;

7 (II) COMMUNICATING VIA TELEPHONE, MAIL, OR ELECTRONIC
8 COMMUNICATION, IF INITIATED BY A CONSUMER; OR

9 (III) ADVERTISING AND MARKETING TO THOSE WITH WHOM THE
10 SOLICITOR HAS A PREEXISTING BUSINESS RELATIONSHIP.

11 (d) "STATE AGENCY" MEANS ANY OFFICE, DEPARTMENT, OR
12 INDEPENDENT AGENCY IN THE EXECUTIVE BRANCH OF COLORADO STATE
13 GOVERNMENT, THE GENERAL ASSEMBLY, OR THE COURTS.

14 (2) A PERSON WHO SOLICITS A FEE FOR PROVIDING A COPY OF A
15 RECORD SHALL:

16 (a) NOT LESS THAN FIFTEEN DAYS BEFORE DISTRIBUTING A
17 SOLICITATION, FURNISH A COPY OF THE DOCUMENT THAT WILL BE USED
18 FOR THE SOLICITATION TO EACH COUNTY CLERK AND RECORDER WHERE
19 THE SOLICITATION IS TO BE DISTRIBUTED IF THE SOLICITATION IS
20 ADDRESSED TO A REAL PROPERTY OWNER AND THE RECORD TO BE
21 PROVIDED IS A DEED;

22 (b) NOT CHARGE A FEE OF MORE THAN FOUR TIMES THE AMOUNT
23 CHARGED BY THE STATE AGENCY OR LOCAL GOVERNMENT THAT HAS
24 CUSTODY OF THE RECORD FOR A COPY OF THE SAME RECORD; AND

25 (c) (I) STATE ON THE TOP OF THE DOCUMENT USED FOR THE
26 SOLICITATION, IN AT LEAST TWENTY-FOUR-POINT TYPE:

27 (A) THAT THE SOLICITATION IS NOT FROM A STATE AGENCY OR

1 LOCAL GOVERNMENT;

2 (B) THAT NO ACTION IS LEGALLY REQUIRED OF THE PERSON BEING
3 SOLICITED;

4 (C) THE FEE FOR, OR THE COST OF, OBTAINING A COPY OF THE
5 RECORD FROM THE STATE AGENCY OR LOCAL GOVERNMENT THAT HAS
6 CUSTODY OF THE RECORD;

7 (D) THE INFORMATION NECESSARY TO CONTACT THE STATE
8 AGENCY OR LOCAL GOVERNMENT THAT HAS CUSTODY OF THE RECORD;
9 AND

10 (E) THE NAME AND PHYSICAL ADDRESS OF THE PERSON SOLICITING
11 THE FEE.

12 (II) THE DOCUMENT USED FOR A SOLICITATION MUST NOT BE IN A
13 FORM OR USE DEADLINE DATES OR OTHER LANGUAGE THAT MAKES THE
14 DOCUMENT APPEAR TO BE A DOCUMENT ISSUED BY A STATE AGENCY OR
15 LOCAL GOVERNMENT OR THAT APPEARS TO IMPOSE A LEGAL DUTY ON THE
16 INDIVIDUAL BEING SOLICITED.

17 (3) THE ATTORNEY GENERAL MAY BRING AN ACTION OR REQUEST
18 THAT A DISTRICT ATTORNEY BRING AN ACTION AGAINST ANY PERSON WHO
19 VIOLATES THIS SECTION. THE COURT MAY ORDER THE PERSON WHO
20 VIOLATES THIS SECTION TO REFUND ALL MONEY PAID TO THE VIOLATOR
21 AND TO PAY A FINE, FOR A FIRST VIOLATION, OF NOT MORE THAN ONE
22 HUNDRED DOLLARS FOR EACH SOLICITATION DOCUMENT DISTRIBUTED IN
23 VIOLATION OF THIS SECTION, AND NOT MORE THAN TWO HUNDRED
24 DOLLARS FOR EACH SOLICITATION DOCUMENT DISTRIBUTED IN VIOLATION
25 OF THIS SECTION SUBSEQUENT TO THE FIRST VIOLATION.

26 (4) THIS SECTION DOES NOT APPLY TO A TITLE INSURANCE
27 COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE OR ITS AUTHORIZED

1 AGENT.

2 **SECTION 2. Act subject to petition - effective date -**
3 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
4 the expiration of the ninety-day period after final adjournment of the
5 general assembly (August 8, 2018, if adjournment sine die is on May 9,
6 2018); except that, if a referendum petition is filed pursuant to section 1
7 (3) of article V of the state constitution against this act or an item, section,
8 or part of this act within such period, then the act, item, section, or part
9 will not take effect unless approved by the people at the general election
10 to be held in November 2018 and, in such case, will take effect on the
11 date of the official declaration of the vote thereon by the governor.
12 (2) This act applies to conduct occurring on or after the applicable
13 effective date of this act.