

**First Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO**

**ENGROSSED**

*This Version Includes All Amendments Adopted  
on Second Reading in the House of Introduction*

LLS NO. 19-1043.01 Yelana Love x2295

**HOUSE BILL 19-1289**

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**HOUSE SPONSORSHIP**

**Weissman,**

**SENATE SPONSORSHIP**

**Foote,**

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**House Committees**  
Judiciary

**Senate Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING THE CREATION OF ADDITIONAL PROTECTIONS IN THE**  
102            **COLORADO CONSUMER CODE, AND, IN CONNECTION**  
103            **THEREWITH, ENABLING ENFORCEMENT OF THE "COLORADO**  
104            **CONSUMER PROTECTION ACT" FOR RECKLESS ACTS.**

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**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:

!        Adds "recklessly" as a culpable mental state for certain violations of the "Colorado Consumer Protection Act"

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.

HOUSE  
Amended 2nd Reading  
April 12, 2019

- (Act) so that a person violates certain provisions of the Act by acting knowingly or recklessly;
- ! Increases the potential penalty for a violation of the Act brought by the attorney general or a district attorney from \$2,000 to \$20,000 per violation and from \$10,000 to \$50,000 per violation committed against an elderly person;
  - ! Specifies the calculation of potential damage awards in a private civil action for violations of the Act; and
  - ! Specifies certain terms that are prohibited in standard form contracts.

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

2           **SECTION 1.** In Colorado Revised Statutes, 6-1-105, **amend**  
3 (1)(a), (1)(b), (1)(c), (1)(e), (1)(o), (1)(ll), (1)(hhh), and (1)(iii); and **add**  
4 (1)(kkk) and (4) as follows:

5           **6-1-105. Unfair or deceptive trade practices.** (1) A person  
6 engages in a deceptive trade practice when, in the course of the person's  
7 business, vocation, or occupation, the person:

8           (a) Knowingly OR RECKLESSLY passes off goods, services, or  
9 property as those of another;

10           (b) Knowingly OR RECKLESSLY makes a false representation as to  
11 the source, sponsorship, approval, or certification of goods, services, or  
12 property;

13           (c) Knowingly OR RECKLESSLY makes a false representation as to  
14 affiliation, connection, or association with or certification by another;

15           (e) Knowingly OR RECKLESSLY makes a false representation as to  
16 the characteristics, ingredients, uses, benefits, alterations, or quantities of  
17 goods, food, services, or property or a false representation as to the  
18 sponsorship, approval, status, affiliation, or connection of a person  
19 therewith;

20           (o) Knowingly OR RECKLESSLY fails to identify flood-damaged or

1 water-damaged goods as to such damages;

2 (ll) Knowingly OR RECKLESSLY makes a false representation as to  
3 the results of a radon test or the need for radon mitigation;

4 (hhh) Knowingly OR RECKLESSLY represents that hemp, hemp oil,  
5 or any derivative of a hemp plant constitutes retail marijuana or medical  
6 marijuana unless it fully satisfies the definition of such products pursuant  
7 to section 44-12-103 (22) or section 44-11-104 (11);

8 (iii) Knowingly OR RECKLESSLY enters into, or attempts to  
9 enforce, an agreement regarding the recovery of an overbid on foreclosed  
10 property if the agreement concerns the recovery of funds in the possession  
11 of:

12 (I) A public trustee prior to transfer of the funds to the state  
13 treasurer under section 38-38-111; ~~C.R.S.~~; or

14 (II) The state treasurer and does not meet the requirements for  
15 such an agreement as specified in section 38-13-128.5; ~~C.R.S.~~;

16 (kkk) KNOWINGLY OR RECKLESSLY ENGAGES IN ANY UNFAIR,  
17 UNCONSCIONABLE, DECEPTIVE, DELIBERATELY MISLEADING, FALSE, OR  
18 FRAUDULENT ACT OR PRACTICE.

19 (4) STANDING TO BRING AN ACTION UNDER THIS ARTICLE 1 DOES  
20 NOT REQUIRE PROOF THAT A DECEPTIVE TRADE PRACTICE HAS A  
21 SIGNIFICANT PUBLIC IMPACT.

22 **SECTION 2.** In Colorado Revised Statutes, 6-1-112, **amend**  
23 (1)(a) and (1)(c); and **add** (2) as follows:

24 **6-1-112. Civil penalties.** (1) The attorney general or a district  
25 attorney may bring a civil action on behalf of the state to seek the  
26 imposition of civil penalties as follows:

27 (a) Any person who violates or causes another to violate any

1 provision of this ~~article~~ ARTICLE 1 shall forfeit and pay to the general fund  
2 of this state a civil penalty of not more than ~~two~~ TWENTY thousand dollars  
3 for each such violation. For purposes of this ~~paragraph (a)~~ SUBSECTION  
4 (1)(a), a violation of any provision shall constitute a separate violation  
5 with respect to each consumer or transaction involved. ~~except that the~~  
6 ~~maximum civil penalty shall not exceed five hundred thousand dollars for~~  
7 ~~any related series of violations.~~

8 (c) Any person who violates or causes another to violate any  
9 provision of this ~~article~~ ARTICLE 1, where such violation was committed  
10 against an elderly person, shall forfeit and pay to the general fund of the  
11 state a civil penalty of not more than ~~ten~~ FIFTY thousand dollars for each  
12 such violation. For purposes of this ~~paragraph (c)~~ SUBSECTION (1)(c), a  
13 violation of any provision of this ~~article shall constitute~~ ARTICLE 1 IS a  
14 separate violation with respect to each elderly person involved.

15 (2) ~~FOR ACCOUNTING PURPOSES, A~~ FINE OR PENALTY RECEIVED  
16 BY THE STATE UNDER THIS ARTICLE 1 IS A DAMAGE AWARD.

17 **SECTION 3.** In Colorado Revised Statutes, 6-1-113, **amend** (2)  
18 introductory portion and (2)(a)(I) as follows:

19 **6-1-113. Damages.** (2) Except in a class action or a case brought  
20 for a violation of section 6-1-709, AND NOTWITHSTANDING ANY OTHER  
21 LAW, any person who, in a private civil action, is found to have engaged  
22 in or caused another to engage in any deceptive trade practice listed in  
23 this ~~article shall be~~ ARTICLE 1 IS liable in an amount equal to the sum of:

24 (a) The greater of:

25 (I) The amount of actual damages sustained, INCLUDING  
26 PREJUDGMENT INTEREST OF EITHER EIGHT PERCENT PER YEAR OR AT THE  
27 RATE PROVIDED IN SECTION 13-21-101, WHICHEVER IS GREATER, FROM

1 THE DATE THE CLAIM UNDER THIS ARTICLE 1 ACCRUED; or

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**SECTION 4. Applicability.** Sections 1 and 2 of this act apply to civil actions filed on or after the effective date of this act. Section 3 of this act applies to judgments entered into on or after the effective date of this act.

**SECTION 5. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.