

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

REVISED

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

LLS NO. 19-1043.01 Yelana Love x2295

HOUSE BILL 19-1289

HOUSE SPONSORSHIP

Weissman, Arndt, Buentello, Cutter, Duran, Esgar, Exum, Froelich, Galindo, Gonzales-Gutierrez, Hooton, Jackson, Jaquez Lewis, Kennedy, Kipp, Lontine, Michaelson Jenet, Roberts, Sirota, Snyder, Sullivan, Tipper, Titone, Valdez A.

SENATE SPONSORSHIP

Foote and Gonzales,

House Committees
Judiciary

Senate Committees
Judiciary

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.**

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.

SENATE
Amended 2nd Reading
April 30, 2019

HOUSE
3rd Reading Unamended
April 16, 2019

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.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend 6-1-103** as
3 **follows:**

4 **6-1-103. Attorney general and district attorneys concurrently**
5 **responsible for enforcement.** The attorney general and the district
6 **attorneys of the several judicial districts of this state are concurrently**
7 **responsible for the enforcement of this ~~article~~ ARTICLE 1. Until the**
8 **Colorado supreme court adopts a venue provision relating to this ~~article~~**
9 **ARTICLE 1, actions instituted pursuant to this article may be brought in the**
10 **county where an alleged deceptive trade practice occurred or where any**
11 **portion of a transaction involving an alleged deceptive trade practice**
12 **occurred, or in the county where the principal place of business of any**
13 **defendant is located, or in the county in which any defendant resides. AN**
14 **ACTION UNDER THIS ARTICLE 1 BROUGHT BY THE ATTORNEY GENERAL OR**
15 **A DISTRICT ATTORNEY DOES NOT REQUIRE PROOF THAT A DECEPTIVE**
16 **TRADE PRACTICE HAS A SIGNIFICANT PUBLIC IMPACT.**

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

20 **6-1-105. Unfair or deceptive trade practices.** (1) A person

1 engages in a deceptive trade practice when, in the course of the person's
2 business, vocation, or occupation, the person:

3 (a) EITHER knowingly OR RECKLESSLY passes off goods, services,
4 or property as those of another;

5 (b) EITHER knowingly OR RECKLESSLY makes a false
6 representation as to the source, sponsorship, approval, or certification of
7 goods, services, or property;

8 (c) EITHER knowingly OR RECKLESSLY makes a false
9 representation as to affiliation, connection, or association with or
10 certification by another;

11 (e) EITHER knowingly OR RECKLESSLY makes a false
12 representation as to the characteristics, ingredients, uses, benefits,
13 alterations, or quantities of goods, food, services, or property or a false
14 representation as to the sponsorship, approval, status, affiliation, or
15 connection of a person therewith;

16 (o) EITHER knowingly OR RECKLESSLY fails to identify
17 flood-damaged or water-damaged goods as to such damages;

18 (ll) EITHER knowingly OR RECKLESSLY makes a false
19 representation as to the results of a radon test or the need for radon
20 mitigation;

21 (hhh) EITHER knowingly OR RECKLESSLY represents that hemp,
22 hemp oil, or any derivative of a hemp plant constitutes retail marijuana or
23 medical marijuana unless it fully satisfies the definition of such products
24 pursuant to section 44-12-103 (22) or section 44-11-104 (11);

25 (iii) EITHER knowingly OR RECKLESSLY enters into, or attempts to
26 enforce, an agreement regarding the recovery of an overbid on foreclosed
27 property if the agreement concerns the recovery of funds in the possession

1 of:

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

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

6 (kkk) EITHER KNOWINGLY OR RECKLESSLY ENGAGES IN ANY
7 UNFAIR, UNCONSCIONABLE, DECEPTIVE, DELIBERATELY MISLEADING,
8 FALSE, OR FRAUDULENT ACT OR PRACTICE.

9

10 (4) FOR PURPOSES OF THIS SECTION, "RECKLESSLY" MEANS A
11 RECKLESS DISREGARD FOR THE TRUTH OR FALSITY OF A STATEMENT OR
12 ADVERTISEMENT.

13 **SECTION 3.** In Colorado Revised Statutes, 6-1-112, **amend**
14 (1)(a) and (1)(c); and **add** (2) as follows:

15 **6-1-112. Civil penalties.** (1) The attorney general or a district
16 attorney may bring a civil action on behalf of the state to seek the
17 imposition of civil penalties as follows:

18 (a) Any person who violates or causes another to violate any
19 provision of this ~~article~~ ARTICLE 1 shall forfeit and pay to the general fund
20 of this state a civil penalty of not more than ~~two~~ TWENTY thousand dollars
21 for each such violation. For purposes of this ~~paragraph (a)~~ SUBSECTION
22 (1)(a), a violation of any provision shall constitute a separate violation
23 with respect to each consumer or transaction involved. ~~except that the~~
24 ~~maximum civil penalty shall not exceed five hundred thousand dollars for~~
25 ~~any related series of violations.~~

26 (c) Any person who violates or causes another to violate any
27 provision of this ~~article~~ ARTICLE 1, where such violation was committed

1 against an elderly person, shall forfeit and pay to the general fund of the
2 state a civil penalty of not more than ten FIFTY thousand dollars for each
3 such violation. For purposes of this ~~paragraph (c)~~ SUBSECTION (1)(c), a
4 violation of any provision of this ~~article shall constitute~~ ARTICLE 1 IS a
5 separate violation with respect to each elderly person involved.

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

8 **SECTION 4.** In Colorado Revised Statutes, 6-1-113, **amend** (2)
9 introductory portion, (2)(a)(I), and (3) as follows:

10 **6-1-113. Damages.** (2) Except in a class action or a case brought
11 for a violation of section 6-1-709, AND NOTWITHSTANDING ANY OTHER
12 LAW, any person who, in a private civil action, is found to have engaged
13 in or caused another to engage in any deceptive trade practice listed in
14 this ~~article shall be~~ ARTICLE 1 IS liable in an amount equal to the sum of:

15 (a) The greater of:

16 (I) The amount of actual damages sustained, INCLUDING
17 PREJUDGMENT INTEREST OF EITHER EIGHT PERCENT PER YEAR OR AT THE
18 RATE PROVIDED IN SECTION 13-21-101, WHICHEVER IS GREATER, FROM
19 THE DATE THE CLAIM UNDER THIS ARTICLE 1 ACCRUED; or

20 (3) Any person who brings an action under this article ARTICLE 1
21 that is found by the court to be FRIVOLOUS, LACKING FACTUAL SUPPORT
22 OR LEGAL BASIS, groundless and in bad faith, or for the purpose of
23 harassment shall be liable to the defendant for the costs of the action
24 together with reasonable attorney fees as determined by the court.

25

26 **SECTION 5. Applicability.** Sections 2 and 3 of this act apply to
27 civil actions filed on or after the effective date of this act. Section 4 of

1 this act applies to judgments entered into on or after the effective date of
2 this act.

3 **SECTION 6. Safety clause.** The general assembly hereby finds,
4 determines, and declares that this act is necessary for the immediate
5 preservation of the public peace, health, and safety.