CHAPTER 316

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CONSUMER AND COMMERCIAL TRANSACTIONS

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HOUSE BILL 24-1324

BY REPRESENTATIVE(S) Clifford, Bird, deGruy Kennedy, Duran, Lindstedt, Mabrey, Rutinel, Sirota, Snyder, Weissman, Amabile, Ortiz, Parenti, Ricks;
also SENATOR(S) Liston and Hinrichsen, Priola, Roberts.

AN ACT

CONCERNING THE ATTORNEY GENERAL'S OVERSIGHT OF RESTRICTIVE EMPLOYMENT AGREEMENTS.

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

SECTION 1. In Colorado Revised Statutes, 5-1-301, **add** (11)(a.5) and (15)(a.5) as follows:

5-1-301. General definitions. In addition to definitions appearing in subsequent articles, as used in this code, unless the context otherwise requires:

(11) (a.5) "CONSUMER CREDIT SALE" INCLUDES THE RECOVERABLE EXPENSE OF EDUCATING AND TRAINING A WORKER PURSUANT TO SECTION 8-2-113 (3)(a).

(15) (a.5) "CONSUMER LOAN" INCLUDES THE RECOVERABLE EXPENSE OF EDUCATING AND TRAINING A WORKER PURSUANT TO SECTION 8-2-113 (3)(a).

SECTION 2. In Colorado Revised Statutes, 5-16-103, **add** (8)(a.5) as follows:

5-16-103. Definitions. As used in this article 16, unless the context otherwise requires:

(8) (a.5) "DEBT" INCLUDES THE RECOVERABLE EXPENSE OF EDUCATING AND TRAINING A WORKER PURSUANT TO SECTION 8-2-113 (3)(a).

SECTION 3. In Colorado Revised Statutes, 5-20-202, **amend** (4) and (5) as follows:

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Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

5-20-202. Definitions. As used in this part 2, unless the context otherwise requires:

(4) "Postsecondary educational institution" means an institution that provides postsecondary instruction, as defined in section 23-60-103 (3), INCLUDING AN EMPLOYER THAT PROVIDES EDUCATION AND TRAINING TO A WORKER WHERE THE EXPENSE OF THE EDUCATION AND TRAINING IS RECOVERABLE PURSUANT TO SECTION 8-2-113 (3)(a).

(5) "Postsecondary education expense" means any expense associated with a student's enrollment in, or attendance at, a postsecondary educational institution, INCLUDING AN EMPLOYER'S RECOVERABLE EXPENSE OF EDUCATING AND TRAINING A WORKER PURSUANT TO SECTION 8-2-113 (3)(a).

SECTION 4. In Colorado Revised Statutes, 5-20-203, **add** (8) as follows:

5-20-203. Registration of private education creditors - penalties - rules. (8) THE ADMINISTRATOR MAY WAIVE REGISTRATION FEES FOR:

(a) PRIVATE EDUCATION CREDITORS THAT MAKE, EXTEND, OR HOLD FEWER THAN FIVE PRIVATE EDUCATION CREDIT OBLIGATIONS IN THE YEAR STARTING SEPTEMBER 1 PRECEDING THE REGISTRATION; AND

(b) STATE OR LOCAL GOVERNMENTAL ENTITIES.

SECTION 5. In Colorado Revised Statutes, 8-2-113, **amend** (3)(a), (8)(a), and (8)(b); and **add** (8)(d) and (9) as follows:

8-2-113. Unlawful to intimidate worker - agreement not to compete - prohibition - exceptions - notice - rules - definitions. (3) The following covenants are not prohibited by subsection (2) of this section:

(a) A provision providing for an employer's recovery of the expense of educating and training a worker where the training is distinct from normal, on-the-job training AND SATISFIES ANY OTHER REQUIREMENTS ESTABLISHED BY THE ATTORNEY GENERAL, BY RULE, REGARDING THE TRANSFERABILITY OF THE TRAINING OR CREDENTIALING THAT IS AVAILABLE TO THE EMPLOYEE AS A RESULT OF THE TRAINING. The employer's recovery is limited to the reasonable costs of the training and decreases over the course of the two years subsequent to the training proportionately based on the number of months that have passed since the completion of the training, and the employer recovering for the costs of the training would not violate the FEDERAL "Fair Labor Standards Act of 1938", 29 U.S.C. sec. 201 et seq., or article 4 of this title 8; EXCEPT THAT A PUBLIC EMPLOYER'S RECOVERY OF THE COSTS OF THE TRAINING MAY DECREASE OVER A PERIOD LONGER THAN TWO YEARS.

(8) (a) An employer shall not enter into, present to a worker or prospective worker as a term of employment, or attempt to enforce any covenant not to compete that is void under this section.

(b) An employer that violates subsection (8)(a) of this section is liable for actual

damages and a penalty of five thousand dollars per worker or prospective worker harmed by the conduct. The attorney general and any worker or prospective worker harmed by an employer's conduct may bring an action for injunctive relief and to recover penalties. THE ATTORNEY GENERAL MAY RECOVER THREE TIMES THE AMOUNT OF ANY RECOVERY OR ATTEMPTED RECOVERY BY AN EMPLOYER IN VIOLATION OF SUBSECTION (3)(a) OF THIS SECTION. In addition to injunctive relief and the penalty allowed in this subsection (8)(b), a worker or prospective worker may recover actual damages, reasonable costs, and attorney fees in any private action brought under this section.

(d)   WHERE THE ATTORNEY GENERAL HAS BROUGHT AN ACTION UNDER SUBSECTION (2), (3), (4), (6), OR (8)(a) OF THIS SECTION AND HAS RECOVERED ACTUAL DAMAGES, PENALTIES, OR INJUNCTIVE RELIEF PURSUANT TO SUBSECTION (8)(b) OF THIS SECTION, A WORKER OR PROSPECTIVE WORKER IS PRECLUDED FROM RECOVERING THE ACTUAL DAMAGES, PENALTIES, OR INJUNCTIVE RELIEF THAT WAS RECOVERED IN THE ATTORNEY GENERAL'S ACTION.

(9) (a)   THE ATTORNEY GENERAL MAY ENFORCE SUBSECTIONS (2), (3), (4), (6), AND (8)(a) OF THIS SECTION.

(b)   THE ATTORNEY GENERAL MAY PROMULGATE RULES NECESSARY TO IMPLEMENT AND ENFORCE SUBSECTION (3)(a) OF THIS SECTION.

SECTION 6. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 31, 2024