

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0961.01 Bart Miller x2173

SENATE BILL 16-116

SENATE SPONSORSHIP

Johnston,

HOUSE SPONSORSHIP

(None),

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING THE CREATION OF A DECEPTIVE TRADE PRACTICE UNDER
102 THE "COLORADO CONSUMER PROTECTION ACT" FOR A
103 PRIVATE CUSTODIAN OF CRIMINAL JUSTICE RECORDS TO FAIL TO
104 REMOVE A SEALED CRIMINAL JUSTICE RECORD FROM THE
105 CUSTODIAN'S DATABASE AFTER RECEIVING NOTICE OF A COURT
106 ORDER SEALING THAT CRIMINAL JUSTICE RECORD.

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/bills summaries>.)

The bill makes it a deceptive trade practice under the "Colorado

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.

Consumer Protection Act" for a private custodian of criminal justice records to knowingly fail to remove sealed criminal justice records from the private custodian's database after receiving a copy of a court order sealing those criminal justice records. The bill requires that whenever a court enters an order sealing criminal justice records, the court must provide to the petitioner a set of standard written instructions developed by the judicial department containing contact information for each private custodian of criminal justice records and explaining the process for providing notice of the sealing of criminal justice records to private custodians of those records.

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

2 **SECTION 1.** In Colorado Revised Statutes, 6-1-102, **add** (6.5)
3 as follows:

4 **6-1-102. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (6.5) "PRIVATE CUSTODIAN" HAS THE SAME MEANING AS DEFINED
7 IN SECTION 24-72-302 (11), C.R.S.

8 **SECTION 2.** In Colorado Revised Statutes, 6-1-105, **add** (1) (iii)
9 as follows:

10 **6-1-105. Deceptive trade practices.** (1) A person engages in a
11 deceptive trade practice when, in the course of the person's business,
12 vocation, or occupation, the person:

13 (iii) KNOWINGLY VIOLATES SECTION 24-72-702 (1) (c) OR
14 24-72-703 (10), C.R.S., AS A PRIVATE CUSTODIAN, BY FAILING TO REMOVE
15 FROM THE PRIVATE CUSTODIAN'S DATABASE SEALED CRIMINAL JUSTICE
16 RECORDS AFTER RECEIVING A COPY OF A COURT ORDER SEALING THOSE
17 CRIMINAL JUSTICE RECORDS.

18 **SECTION 3.** In Colorado Revised Statutes, 24-72-702, **amend**
19 (1) (c) as follows:

20 **24-72-702. Sealing of arrest and criminal records other than**

1 **convictions.** (1) (c) (I) Any order entered pursuant to paragraph (b) of
2 this subsection (1) must be directed to every custodian who may have
3 custody of any part of the arrest and criminal records information that is
4 the subject of the order. Whenever a court enters an order sealing criminal
5 records pursuant to paragraph (b) of this subsection (1), the petitioner
6 shall provide the Colorado bureau of investigation and every custodian of
7 such records with a copy of the order. The petitioner shall provide a
8 private custodian with a copy of the order and send the private custodian
9 an electronic notification of the order.

10 (II) WHENEVER A COURT ENTERS AN ORDER SEALING CRIMINAL
11 RECORDS PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1), THE
12 COURT SHALL PROVIDE TO EACH PETITIONER A SET OF STANDARD, WRITTEN
13 INSTRUCTIONS DEVELOPED BY THE JUDICIAL DEPARTMENT CONTAINING
14 CONTACT INFORMATION FOR EACH PRIVATE CUSTODIAN AND EXPLAINING
15 THE PROCESS FOR PROVIDING PRIVATE CUSTODIANS A COPY OF THE ORDER
16 AND AN ELECTRONIC NOTIFICATION OF THE ORDER AS REQUIRED BY THIS
17 PARAGRAPH (c). ON AND AFTER THE EFFECTIVE DATE OF THIS
18 SUBPARAGRAPH (II), EACH PRIVATE CUSTODIAN SHALL PROVIDE CONTACT
19 INFORMATION TO THE JUDICIAL DEPARTMENT IN THE FORM REQUIRED BY
20 THE JUDICIAL DEPARTMENT.

21 (III) Each private custodian that receives a copy of the order from
22 the petitioner shall remove the records that are subject to an order from
23 its database. Thereafter, the court may issue an order sealing the civil case
24 in which the records were sealed.

25 **SECTION 4.** In Colorado Revised Statutes, 24-72-703, **add** (10)
26 as follows:

27 **24-72-703. Sealing criminal conviction records - advisements**

1 **- discovery - order applicability - general provisions.** (10) (a) ANY
2 ORDER ENTERED PURSUANT TO THIS SECTION MUST BE DIRECTED TO EVERY
3 CUSTODIAN WHO MAY HAVE CUSTODY OF ANY PART OF THE CONVICTION
4 RECORDS INFORMATION THAT IS THE SUBJECT OF THE ORDER. WHENEVER
5 A COURT ENTERS AN ORDER SEALING CONVICTION RECORDS PURSUANT TO
6 THIS SECTION, THE PETITIONER SHALL PROVIDE TO THE COLORADO
7 BUREAU OF INVESTIGATION AND TO EVERY CUSTODIAN OF SUCH RECORDS
8 A COPY OF THE ORDER. IN ADDITION, THE PETITIONER SHALL SEND EACH
9 PRIVATE CUSTODIAN AN ELECTRONIC NOTIFICATION OF THE ORDER. ON
10 AND AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (a), EACH PRIVATE
11 CUSTODIAN SHALL PROVIDE CONTACT INFORMATION TO THE JUDICIAL
12 DEPARTMENT IN THE FORM REQUIRED BY THE JUDICIAL DEPARTMENT.

13 (b) WHENEVER A COURT ENTERS AN ORDER SEALING CONVICTION
14 RECORDS PURSUANT TO THIS SECTION, THE COURT SHALL PROVIDE TO
15 EACH PETITIONER A SET OF STANDARD, WRITTEN INSTRUCTIONS
16 DEVELOPED BY THE JUDICIAL DEPARTMENT CONTAINING CONTACT
17 INFORMATION FOR EACH PRIVATE CUSTODIAN AND EXPLAINING THE
18 PROCESS FOR PROVIDING PRIVATE CUSTODIANS A COPY OF THE ORDER AND
19 AN ELECTRONIC NOTIFICATION OF THE ORDER AS REQUIRED BY THIS
20 SUBSECTION (10). EACH PRIVATE CUSTODIAN THAT RECEIVES A COPY OF
21 THE ORDER FROM THE PETITIONER SHALL REMOVE THE RECORDS THAT ARE
22 SUBJECT TO AN ORDER FROM ITS DATABASE. THEREAFTER, THE COURT
23 MAY ISSUE AN ORDER SEALING THE CIVIL CASE IN WHICH THE RECORDS
24 WERE SEALED.

25 **SECTION 5. Act subject to petition - effective date -**
26 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
27 the expiration of the ninety-day period after final adjournment of the

1 general assembly (August 10, 2016, if adjournment sine die is on May 11,
2 2016); except that, if a referendum petition is filed pursuant to section 1
3 (3) of article V of the state constitution against this act or an item, section,
4 or part of this act within such period, then the act, item, section, or part
5 will not take effect unless approved by the people at the general election
6 to be held in November 2016 and, in such case, will take effect on the
7 date of the official declaration of the vote thereon by the governor.

8 (2) This act applies to acts of private custodians of criminal justice
9 records on or after the applicable effective date of this act.