

First Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 19-1043.01 Yelana Love x2295

HOUSE BILL 19-1289

HOUSE SPONSORSHIP

Weissman,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

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 AND
105 PROHIBITING CERTAIN TERMS IN STANDARD FORM CONTRACTS.

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

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.

violations of the "Colorado Consumer Protection Act" (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, 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), (1)(lll), (1)(mmm), 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;

1 (o) Knowingly OR RECKLESSLY fails to identify flood-damaged or
2 water-damaged goods as to such damages;

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

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

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

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

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

17 (kkk) ENGAGES IN ANY UNFAIR, UNCONSCIONABLE, ABUSIVE, OR
18 DECEPTIVE ACT OR PRACTICE;

19 (III) ENGAGES IN ANY CONDUCT THAT CREATES A LIKELIHOOD OF
20 CONFUSION OR MISUNDERSTANDING;

21 (mmm) OFFERS, OR INDUCES OR ATTEMPTS TO INDUCE ANOTHER
22 PARTY TO ENTER INTO, A STANDARD FORM CONTRACT CONTAINING ONE OR
23 MORE OF THE TERMS DECLARED VOID IN SECTION 6-1-1201.

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

27 **SECTION 2.** In Colorado Revised Statutes, 6-1-112, **amend**

1 (1)(a) and (1)(c); and **add** (2) as follows:

2 **6-1-112. Civil penalties.** (1) The attorney general or a district
3 attorney may bring a civil action on behalf of the state to seek the
4 imposition of civil penalties as follows:

5 (a) Any person who violates or causes another to violate any
6 provision of this ~~article~~ ARTICLE 1 shall forfeit and pay to the general fund
7 of this state a civil penalty of not more than ~~two~~ TWENTY thousand dollars
8 for each such violation. For purposes of this ~~paragraph (a)~~ SUBSECTION
9 (1)(a), a violation of any provision shall constitute a separate violation
10 with respect to each consumer or transaction involved. ~~except that the~~
11 ~~maximum civil penalty shall not exceed five hundred thousand dollars for~~
12 ~~any related series of violations.~~

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

20 (2) A FINE OR PENALTY RECEIVED BY THE STATE UNDER THIS
21 ARTICLE 1 IS A DAMAGE AWARD.

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

24 **6-1-113. Damages.** (2) Except in a class action or a case brought
25 for a violation of section 6-1-709, AND NOTWITHSTANDING ANY OTHER
26 LAW, any person who, in a private civil action, is found to have engaged
27 in or caused another to engage in any deceptive trade practice listed in

1 this ~~article shall be~~ ARTICLE 1 IS liable in an amount equal to the sum of:

2 (a) The greater of:

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

7 **SECTION 4.** In Colorado Revised Statutes, **add** part 12 to article
8 1 of title 6 as follows:

9 PART 12

10 STANDARD FORM CONTRACTS

11 **6-1-1201. Terms in standard form contracts - definitions.**

12 (1) AS USED IN THIS SECTION:

13 (a) "CONSUMER" MEANS AN INDIVIDUAL, PARTNERSHIP,
14 ASSOCIATION, OR CORPORATION THAT OBTAINS, MAINTAINS, USES,
15 PURCHASES, LEASES, OR HAS LEGAL OR PRACTICAL RESPONSIBILITY FOR
16 GOODS, SERVICES, OR REAL OR PERSONAL PROPERTY USED PRIMARILY FOR
17 PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

18 (b) "EMPLOYEE" MEANS:

19 (I) ANY PERSON DESCRIBED IN SECTION 8-4-101 (5); OR

20 (II) ANY PERSON WHO IS NOT CLASSIFIED BY A BUSINESS AS AN
21 EMPLOYEE BUT WHO CLAIMS TO BE AN EMPLOYEE AND WHOSE CLAIMS
22 AGAINST THE PURPORTED EMPLOYER RELATE TO THIS ALLEGED
23 MISCLASSIFICATION.

24 (c) "STANDARD FORM CONTRACT" MEANS A WRITING IN WHICH THE
25 TERMS AND CONDITIONS STATED IN THE WRITING ARE SET BY ONE OR MORE
26 OF THE PARTIES, AND THE CONSUMER OR EMPLOYEE PARTY OR PARTIES
27 HAVE LITTLE OR NO ABILITY TO NEGOTIATE THE WRITING'S MATERIAL

1 TERMS AT THE TIME THE WRITING IS EXECUTED OR BECOMES
2 ENFORCEABLE, REGARDLESS OF WHETHER THE PARTY MAY NEGOTIATE
3 LIMITED TERMS WITHIN THE WRITING, IF THE WRITING AFFECTS THE
4 CONSUMER'S OR EMPLOYEE'S INTEREST IN:

- 5 (I) GOODS OR SERVICES;
- 6 (II) REAL OR PERSONAL PROPERTY; OR
- 7 (III) EMPLOYMENT.

8 (2) IN ORDER TO PROMOTE THE EFFICIENT ADMINISTRATION OF
9 JUSTICE, THE FOLLOWING CONTRACTUAL TERMS ARE NEVER ENFORCEABLE
10 AND ARE HEREBY DECLARED VOID AS AGAINST PUBLIC POLICY WHEN
11 INCLUDED IN A STANDARD FORM CONTRACT:

12 (a) A REQUIREMENT THAT THE CONSUMER OR EMPLOYEE PARTY
13 ADJUDICATE A CLAIM ARISING IN COLORADO IN A LOCATION THAT IS MORE
14 THAN ONE HUNDRED MILES FROM WHERE THE CONSUMER OR EMPLOYEE
15 PARTY RESIDES OR WHERE THE CONTRACT WAS EXECUTED;

16 (b) A PRECONDITION TO INITIATING A LEGAL PROCEEDING THAT:
17 (I) WAIVES THE CONSUMER OR EMPLOYEE PARTY'S RIGHT TO
18 CLAIMS OR DAMAGES RESULTING FROM A FAILURE TO COMPLY WITH THE
19 PRECONDITION; OR

20 (II) PREVENTS OR IS REASONABLY LIKELY TO PREVENT THE
21 CONSUMER OR EMPLOYEE PARTY FROM ASSERTING A LEGAL CLAIM FOR A
22 PERIOD OF MORE THAN SIXTY DAYS;

23 (c) A REQUIREMENT THAT A PARTY TO THE CONTRACT BE
24 ALLOWED TO UNILATERALLY SELECT THE INDIVIDUAL OR ENTITY WHO
25 WILL RESOLVE DISPUTES BETWEEN THE PARTIES;

26 (d) A TERM THAT ATTEMPTS TO AWARD OR LIMIT COSTS OR FEES
27 IN A MANNER THAT IS INCONSISTENT WITH COLORADO LAW OR

1 CONTROLLING CASE LAW; OR

2 (e) A COST-SHIFTING, FEE-SHIFTING, OR LOSER PAYS TERM, UNLESS
3 IT APPLIES ONLY TO A CLAIM THAT IS GROUNDLESS, FRIVOLOUS, OR MADE
4 IN BAD FAITH.

5 (3) THE LIST IN SUBSECTION (2) OF THIS SECTION IS NOT
6 EXHAUSTIVE. A TERM IN A STANDARD FORM CONTRACT THAT IS NOT
7 LISTED IN SUBSECTION (2) OF THIS SECTION MAY BE FOUND
8 UNENFORCEABLE OR VOID AS AGAINST PUBLIC POLICY PURSUANT TO
9 COMMON LAW.

10 (4) IN ORDERING A REMEDY FOR AN UNENFORCEABLE TERM IN A
11 STANDARD FORM CONTRACT, A COURT MAY:

12 (a) REFUSE TO ENFORCE THE ENTIRE CONTRACT OR THE SPECIFIC
13 PART, CLAUSE, OR PROVISION CONTAINING THE TERM;

14 (b) ENFORCE THE CONTRACT, INCLUDING THE SPECIFIC PART,
15 CLAUSE, OR PROVISION CONTAINING THE TERM, WHILE SEVERING ONLY THE
16 ILLEGAL OR UNENFORCEABLE TERM; OR

17 (c) LIMIT THE APPLICATION OF THE ILLEGAL OR UNENFORCEABLE
18 TERM OR THE PART, CLAUSE, OR PROVISION CONTAINING THAT TERM TO
19 AVOID ANY ILLEGAL OR UNENFORCEABLE RESULT.

20 (5) IN ORDERING A REMEDY UNDER SUBSECTION (4) OF THIS
21 SECTION, A COURT SHALL CONSIDER THE FOLLOWING FACTORS:

22 (a) WHETHER SEVERING THE TERM AND ENFORCING THE CONTRACT
23 IN ITS ABSENCE:

24 (I) CREATES AN INCENTIVE FOR CONTRACT DRAFTERS TO INCLUDE
25 ILLEGAL OR UNENFORCEABLE TERMS IN STANDARD FORM CONTRACTS; OR

26 (II) REMOVES IN WHOLE OR IN PART THE INCENTIVE FOR CONTRACT
27 DRAFTERS TO DRAFT ENFORCEABLE STANDARD FORM CONTRACTS THAT DO

1 NOT INCLUDE SUCH TERMS;

2 (b) WHETHER INCLUSION OF AN UNENFORCEABLE TERM MIGHT
3 DETER THE CONSUMER OR EMPLOYEE PARTY FROM ASSERTING THE
4 PARTY'S RIGHTS UNDER THE CONTRACT OR MIGHT DETER THE CONSUMER
5 OR EMPLOYEE PARTY FROM CHALLENGING THE ENFORCEMENT OF THE
6 ILLEGAL OR UNENFORCEABLE TERM;

7 (c) WHETHER THE CONTRACT DRAFTING PARTY ACTED IN BAD
8 FAITH, FOR EXAMPLE BY INCLUDING A TERM THAT WAS, AT THE TIME THE
9 CONTRACT WAS EXECUTED OR BECAME ENFORCEABLE, ILLEGAL OR
10 UNENFORCEABLE UNDER ESTABLISHED PRECEDENT; AND

11 (d) THE INTENT OF THE PARTIES ENTERING INTO THE STANDARD
12 FORM CONTRACT.

13 (6) EXCEPT WHEN A MORE SPECIFIC STATUTE DIRECTS OTHERWISE,
14 WHERE A STANDARD FORM CONTRACT PROVIDES FOR AN AWARD OF
15 ATTORNEY FEES OR LITIGATION EXPENSES TO ONE OR MORE PARTIES TO A
16 CONTRACT, THAT PROVISION IN THE STANDARD FORM CONTRACT SHALL BE
17 CONSTRUED AS AWARDING SUCH FEES AND EXPENSES TO THE PREVAILING
18 PARTY AS A MATTER OF RIGHT, AND WHERE MORE THAN ONE SUCH
19 PROVISION EXISTS IN A STANDARD FORM CONTRACT, EACH PROVISION
20 MUST RELATE TO THE ISSUE OVER WHICH THE PARTY OR PARTIES
21 PREVAILED.

22 (7) WHERE AN ACTION HAS BEEN VOLUNTARILY DISMISSED OR
23 DISMISSED PURSUANT TO A SETTLEMENT OF THE CASE, THERE SHALL BE NO
24 PREVAILING PARTY FOR PURPOSES OF THIS SECTION.

25 (8) FOR ANY STANDARD FORM CONTRACT, THERE IS A REBUTTABLE
26 PRESUMPTION THAT THE CONSUMER OR EMPLOYEE PARTY'S RIGHT TO OPT
27 OUT OF THE STANDARD FORM CONTRACT OR ANY OF ITS PROVISIONS DOES

1 NOT BEAR ON WHETHER THE CONTRACT IS ENFORCEABLE.

2 **SECTION 5. Applicability.** Sections 1, 2, and 4 of this act apply
3 to civil actions filed on or after the effective date of this act. Section 3 of
4 this act applies to judgments entered into on or after the effective date of
5 this act.

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