

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

REENGROSSED

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

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

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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.** ■■■

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
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, 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.