A BILL FOR AN ACT

Concerning the creation of additional protections in the Colorado Consumer Code, and, in connection therewith, enabling enforcement of the "Colorado 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"
(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.

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

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

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

(a) Knowingly OR RECKLESSLY passes off goods, services, or property as those of another;

(b) Knowingly OR RECKLESSLY makes a false representation as to the source, sponsorship, approval, or certification of goods, services, or property;

(c) Knowingly OR RECKLESSLY makes a false representation as to affiliation, connection, or association with or certification by another;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6-1-113. Damages. (2) Except in a class action or a case brought for a violation of section 6-1-709, AND NOTWITHSTANDING ANY OTHER LAW, any person who, in a private civil action, is found to have engaged in or caused another to engage in any deceptive trade practice listed in this article shall be ARTICLE 1 IS LIABLE IN AN AMOUNT EQUAL TO THE SUM OF:

(a) The greater of:

(I) The amount of actual damages sustained, INCLUDING PREJUDGMENT INTEREST OF EITHER EIGHT PERCENT PER YEAR OR AT THE RATE PROVIDED IN SECTION 13-21-101, WHICHEVER IS GREATER, FROM
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.