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.

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

SECTION 1. In Colorado Revised Statutes, amend 6-1-103 as follows:

6-1-103. Attorney general and district attorneys concurrently responsible for enforcement. The attorney general and the district attorneys of the several judicial districts of this state are concurrently responsible for the enforcement of this article ARTICLE 1. Until the Colorado supreme court adopts a venue provision relating to this article ARTICLE 1, actions instituted pursuant to this article may be brought in the county where an alleged deceptive trade practice occurred or where any portion of a transaction involving an alleged deceptive trade practice occurred, or in the county where the principal place of business of any defendant is located, or in the county in which any defendant resides. AN ACTION UNDER THIS ARTICLE 1 BROUGHT BY THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY DOES NOT REQUIRE PROOF THAT A DECEPTIVE TRADE PRACTICE HAS A SIGNIFICANT PUBLIC IMPACT.

SECTION 2. 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) **Either knowingly** OR **recklessly** passes off goods, services, or property as those of another;

(b) **Either knowingly** OR **recklessly** makes a false representation as to the source, sponsorship, approval, or certification of goods, services, or property;

(c) **Either knowingly** OR **recklessly** makes a false representation as to affiliation, connection, or association with or certification by another;

(e) **Either 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) **Either knowingly** OR **recklessly** fails to identify flood-damaged or water-damaged goods as to such damages;

(ll) **Either knowingly** OR **recklessly** makes a false representation as to the results of a radon test or the need for radon mitigation;

(hhh) **Either 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) **Either 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.;

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

(4) FOR PURPOSES OF THIS SECTION, "RECKLESSLY" MEANS A RECKLESS DISREGARD FOR THE TRUTH OR FALSITY OF A STATEMENT OR ADVERTISEMENT.

SECTION 3. 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 ARTICLE 1 IS 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 4. In Colorado Revised Statutes, 6-1-113, amend (2)
introductory portion, (2)(a)(I), and (3) 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
THE DATE THE CLAIM UNDER THIS ARTICLE 1 ACCRUED; or

(3) Any person who brings an action under this article ARTICLE 1
that is found by the court to be FRIVOLOUS, LACKING FACTUAL SUPPORT
OR LEGAL BASIS, groundless and in bad faith, or for the purpose of
harassment shall be liable to the defendant for the costs of the action
together with reasonable attorney fees as determined by the court.

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

SECTION 6. 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.