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SENATE BILL 22-157

BY SENATOR(S) Holbert and Fenberg, Coram, Danielson, Jaquez Lewis, Lee, Moreno, Pettersen, Priola, Zenzinger;
also REPRESENTATIVE(S) Hooton and Van Winkle, Amabile, Bernett, Carver, Gray, Jodeh, Lindsay, Pico, Ricks, Valdez A., Will.

CONCERNING THE ENFORCEMENT OF LAWS RELATING TO UNFAIR BUSINESS PRACTICES COMMITTED BY REGULATED PERSONS.

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

SECTION 1. In Colorado Revised Statutes, **add** 6-1-116 as follows:

6-1-116. Investigation of unfair business practices by regulated persons - district attorney requests for records from licensing authorities - interagency agreements with attorney general - legislative declaration - definitions. (1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

(a) FEDERAL AND STATE CONSUMER PROTECTION AND UNFAIR TRADE LAWS, SUCH AS THOSE PROHIBITING UNFAIR OR DECEPTIVE TRADE PRACTICES, PRICE FIXING, AND MONOPOLIZATION, EXIST TO PROTECT

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

CONSUMERS AGAINST UNFAIR BUSINESS PRACTICES THAT UNDERMINE FAIR COMPETITION, A THRIVING SMALL BUSINESS SECTOR, AND CONSUMERS' RIGHTS TO MAKE INFORMED ECONOMIC DECISIONS;

(b) DISTRICT ATTORNEYS AND THE ATTORNEY GENERAL ARE TASKED WITH, AND HAVE THE EXPERTISE NEEDED FOR, ENFORCING CONSUMER PROTECTION LAWS IN THE STATE;

(c) A LICENSING AUTHORITY MIGHT HAVE INFORMATION RELEVANT TO A COMPLAINT ALLEGING THAT A PERSON THAT THE LICENSING AUTHORITY REGULATES HAS COMMITTED UNFAIR OR DECEPTIVE TRADE PRACTICES; AND

(d) THEREFORE, IT BEST SERVES THE CONSUMER PROTECTION INTERESTS OF THE STATE TO ALLOW A LICENSING AUTHORITY TO SHARE WITH A DISTRICT ATTORNEY OR THE ATTORNEY GENERAL INFORMATION REGARDING A REGULATED PERSON, WHICH INFORMATION MAY BE RELEVANT TO A CONSUMER PROTECTION INVESTIGATION OF THE REGULATED PERSON.

(2) (a) UPON RECEIVING A COMPLAINT ALLEGING A VIOLATION OF THE CONSUMER PROTECTION LAWS SET FORTH IN THIS ARTICLE 1, A DISTRICT ATTORNEY MAY REQUEST RECORDS FROM A LICENSING AUTHORITY REGARDING A PERSON THAT IS THE SUBJECT OF THE COMPLAINT IF THE COMPLAINT ALLEGES THAT:

(I) THE COMPLAINANT SUFFERED DAMAGES IN AN AMOUNT OF AT LEAST TWENTY THOUSAND DOLLARS AND THE DISTRICT ATTORNEY DETERMINES THE AMOUNT OF DAMAGES ALLEGED APPEARS TO BE A REASONABLE AMOUNT IN RELATION TO THE ALLEGED CONDUCT FORMING THE BASIS OF THE COMPLAINT; OR

(II) TWO OR MORE PERSONS REGULATED BY THE LICENSING AUTHORITY JOINTLY ENGAGED IN CONDUCT THAT FORMS THE BASIS OF THE COMPLAINT.

(b) NOTWITHSTANDING ANY OTHER PROVISION OF LAW THAT MAY PROHIBIT A LICENSING AUTHORITY FROM COMPLYING WITH THIS SUBSECTION (2), TO FACILITATE THE DISTRICT ATTORNEY'S INVESTIGATION INTO AND ENFORCEMENT OF THE COMPLAINT, A LICENSING AUTHORITY SHALL PROVIDE THE DISTRICT ATTORNEY WITH COPIES OF, OR ACCESS TO INSPECT, THE RECORDS REQUESTED IF THE LICENSING AUTHORITY HAS ALREADY

DETERMINED IT WILL NOT TAKE ACTION AGAINST THE REGULATED PERSON OR PERSONS.

(c) THIS SUBSECTION (2) DOES NOT APPLY TO A PERSON REGULATED BY A BOARD OR COMMISSION.

(3) IN ADDITION TO THE COSTS AND ATTORNEY FEES THAT THE REGULATED PERSON OR PERSONS COMPLAINED OF ARE ENTITLED TO RECOVER FROM THE COMPLAINANT PURSUANT TO SECTION 6-1-113 (3), IF A COURT DETERMINES THAT THE COMPLAINT IS FRIVOLOUS, GROUNDLESS, AND WAS FILED IN BAD FAITH, OR IF THE REGULATED PERSON OR PERSONS PREVAIL OR SUBSTANTIALLY PREVAIL IN THE MATTER, THE COURT'S ORDER MAY ALSO REQUIRE THE COMPLAINANT TO PAY THE REGULATED PERSON'S OR PERSONS' COSTS INCURRED, ACTUAL DAMAGES SUSTAINED, AND REASONABLE ATTORNEY FEES INCURRED IN RELATION TO:

(a) THE DISTRICT ATTORNEY'S OR ATTORNEY GENERAL'S INVESTIGATION OF THE MATTER; AND

(b) THE LICENSING AUTHORITY'S INVESTIGATION OF A COMPLAINT AGAINST THE REGULATED PERSON OR PERSONS IF THE COURT DETERMINES THAT THE TWO COMPLAINTS WERE FILED BY THE SAME COMPLAINANT AND IN REGARD TO THE SAME MATTER.

(4) SUBJECT TO APPROVAL BY THE HEAD OF AN EXECUTIVE DEPARTMENT, A STATE LICENSING AUTHORITY WITHIN THE DEPARTMENT MAY ENTER INTO AN INTERAGENCY AGREEMENT WITH THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S DESIGNEE FOR THE REFERRAL OF ANY COMPLAINT THAT APPEARS TO ALLEGE A VIOLATION OF THIS ARTICLE 1 OR ARTICLE 2 OR 4 OF THIS TITLE 6. THE INTERAGENCY AGREEMENT MAY PROVIDE FOR REFERRALS OF COMPLAINTS, INFORMATION SHARING, CONFIDENTIALITY REQUIREMENTS, AND OTHER TERMS THAT FACILITATE THE INVESTIGATION AND ENFORCEMENT OF COMPLAINTS ALLEGING VIOLATIONS OF CONSUMER PROTECTION OR UNFAIR TRADE LAWS.

(5) ANY COPIES OF RECORDS THAT A LICENSING AUTHORITY SENDS TO A DISTRICT ATTORNEY, THE ATTORNEY GENERAL, OR THE ATTORNEY GENERAL'S DESIGNEE PURSUANT TO THIS SECTION ARE RECORDS OF THE INVESTIGATION OF A PROSECUTING ATTORNEY PURSUANT TO SECTION 24-72-204 (2)(a)(I) AND ARE NOT SUBJECT TO THE RIGHT OF INSPECTION

UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24.

(6) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DISTRICT ATTORNEY" INCLUDES THE DISTRICT ATTORNEY AND THE CHIEF DEPUTY DISTRICT ATTORNEYS, SPECIAL DEPUTY DISTRICT ATTORNEYS, DEPUTY DISTRICT ATTORNEYS, AND ASSISTANT DISTRICT ATTORNEYS THAT THE DISTRICT ATTORNEY APPOINTS PURSUANT TO PART 2 OF ARTICLE 1 OF TITLE 20.

(b) "LICENSING AUTHORITY" MEANS A STATE LICENSING AUTHORITY OR A LOCAL LICENSING AUTHORITY.

(c) "LOCAL LICENSING AUTHORITY" MEANS THE GOVERNING BODY OF A STATUTORY OR HOME RULE MUNICIPALITY, COUNTY, OR CITY AND COUNTY THAT IS AUTHORIZED TO ISSUE OR APPROVE A LOCAL LICENSE TO A REGULATED PERSON OR FOR AN ACTIVITY.

(d) (I) "STATE LICENSING AUTHORITY" MEANS A DEPARTMENT OR DIVISION OF THE STATE THAT IS AUTHORIZED TO ISSUE TO OR APPROVE A STATE LICENSE FOR A REGULATED PERSON, WHICH STATE LICENSE ONLY AUTHORIZES THE LICENSEE TO PERFORM ACTIVITIES AT SPECIFIC PREMISES.

(II) "STATE LICENSING AUTHORITY" DOES NOT INCLUDE ANY BOARD OR COMMISSION.

SECTION 2. In Colorado Revised Statutes, 24-31-101, **amend** (1)(p) and (1)(q); and **add** (1)(r) as follows:

24-31-101. Powers and duties of attorney general. (1) The attorney general:

(p) May bring a civil action to enforce the provisions of section 24-31-113; **and**

(q) May bring a civil action to enforce the provisions of section 24-31-307 (2) or a criminal action to enforce the provisions of section 24-31-307 (3); **AND**

(r) MAY ENTER INTO INTERAGENCY AGREEMENTS PURSUANT TO SECTION 6-1-116 (4).

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in

November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Steve Fenberg
PRESIDENT OF
THE SENATE

Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO