

**Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 22-0038.01 Jennifer Berman x3286

SENATE BILL 22-157

SENATE SPONSORSHIP

Holbert and Fenberg,

HOUSE SPONSORSHIP

Hooton and Van Winkle,

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

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

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 authorizes a district attorney or a deputy or assistant district attorney, in investigating a complaint alleging a violation of consumer protection laws, to request records from a state or local licensing authority (licensing authority) for information regarding a person that the licensing authority regulates (regulated person) and that is the subject of the complaint if the complaint alleges:

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.

- The complainant suffered damages in an amount of at least \$20,000 and the district attorney determines the amount alleged appears to be reasonable in relation to the alleged conduct forming the basis of the complaint; or
- Two or more regulated persons jointly engaged in conduct that forms the basis of the complaint.

The licensing authority shall share with, and allow inspection of its records by, the district attorney upon receipt of such request if the licensing authority has already determined not to take action against the regulated person or persons.

Additionally, the bill authorizes a state licensing authority, subject to approval by the head of the executive department in which the state licensing authority is located, to enter into an interagency agreement with the attorney general or the attorney general's designee for the referral of complaints alleging violations of consumer protection laws.

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

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

4 **6-1-116. Investigation of unfair business practices by**
 5 **regulated persons - district attorney requests for records from**
 6 **licensing authorities - interagency agreements with attorney general**
 7 **- legislative declaration - definitions.** (1) THE GENERAL ASSEMBLY
 8 HEREBY FINDS, DETERMINES, AND DECLARES THAT:

9 (a) FEDERAL AND STATE CONSUMER PROTECTION AND UNFAIR
 10 TRADE LAWS, SUCH AS THOSE PROHIBITING UNFAIR OR DECEPTIVE TRADE
 11 PRACTICES, PRICE FIXING, AND MONOPOLIZATION, EXIST TO PROTECT
 12 CONSUMERS AGAINST UNFAIR BUSINESS PRACTICES THAT UNDERMINE FAIR
 13 COMPETITION, A THRIVING SMALL BUSINESS SECTOR, AND CONSUMERS'
 14 RIGHTS TO MAKE INFORMED ECONOMIC DECISIONS;

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

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

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

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

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

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

24 (b) NOTWITHSTANDING ANY OTHER PROVISION OF LAW THAT MAY
25 PROHIBIT A LICENSING AUTHORITY FROM COMPLYING WITH THIS
26 SUBSECTION (2), TO FACILITATE THE DISTRICT ATTORNEY'S INVESTIGATION
27 INTO AND ENFORCEMENT OF THE COMPLAINT, A LICENSING AUTHORITY

1 SHALL PROVIDE THE DISTRICT ATTORNEY WITH COPIES OF, OR ACCESS TO
2 INSPECT, THE RECORDS REQUESTED IF THE LICENSING AUTHORITY HAS
3 ALREADY DETERMINED IT WILL NOT TAKE ACTION AGAINST THE
4 REGULATED PERSON OR PERSONS.

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

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

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

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

22 (4) SUBJECT TO APPROVAL BY THE HEAD OF AN EXECUTIVE
23 DEPARTMENT, A STATE LICENSING AUTHORITY WITHIN THE DEPARTMENT
24 MAY ENTER INTO AN INTERAGENCY AGREEMENT WITH THE ATTORNEY
25 GENERAL OR THE ATTORNEY GENERAL'S DESIGNEE FOR THE REFERRAL OF
26 ANY COMPLAINT THAT APPEARS TO ALLEGE A VIOLATION OF THIS ARTICLE
27 1 OR ARTICLE 2 OR 4 OF THIS TITLE 6. THE INTERAGENCY AGREEMENT MAY

1 PROVIDE FOR REFERRALS OF COMPLAINTS, INFORMATION SHARING,
2 CONFIDENTIALITY REQUIREMENTS, AND OTHER TERMS THAT FACILITATE
3 THE INVESTIGATION AND ENFORCEMENT OF COMPLAINTS ALLEGING
4 VIOLATIONS OF CONSUMER PROTECTION OR UNFAIR TRADE LAWS.

5 (5) ANY COPIES OF RECORDS THAT A LICENSING AUTHORITY SENDS
6 TO A DISTRICT ATTORNEY, THE ATTORNEY GENERAL, OR THE ATTORNEY
7 GENERAL'S DESIGNEE PURSUANT TO THIS SECTION ARE RECORDS OF THE
8 INVESTIGATION OF A PROSECUTING ATTORNEY PURSUANT TO SECTION
9 24-72-204 (2)(a)(I) AND ARE NOT SUBJECT TO THE RIGHT OF INSPECTION
10 UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF
11 TITLE 24.

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

14 (a) "DISTRICT ATTORNEY" INCLUDES THE DISTRICT ATTORNEY AND
15 THE CHIEF DEPUTY DISTRICT ATTORNEYS, SPECIAL DEPUTY DISTRICT
16 ATTORNEYS, DEPUTY DISTRICT ATTORNEYS, AND ASSISTANT DISTRICT
17 ATTORNEYS THAT THE DISTRICT ATTORNEY APPOINTS PURSUANT TO PART
18 2 OF ARTICLE 1 OF TITLE 20.

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

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

25 (d) (I) "STATE LICENSING AUTHORITY" MEANS A DEPARTMENT OR
26 DIVISION OF THE STATE THAT IS AUTHORIZED TO ISSUE TO OR APPROVE A
27 STATE LICENSE FOR A REGULATED PERSON OR FOR AN ACTIVITY.

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

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

5 **24-31-101. Powers and duties of attorney general.** (1) The
6 attorney general:

7 (p) May bring a civil action to enforce the provisions of section
8 24-31-113; ~~and~~

9 (q) May bring a civil action to enforce the provisions of section
10 24-31-307 (2) or a criminal action to enforce the provisions of section
11 24-31-307 (3); AND

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

14 **SECTION 3. Act subject to petition - effective date.** This act
15 takes effect at 12:01 a.m. on the day following the expiration of the
16 ninety-day period after final adjournment of the general assembly; except
17 that, if a referendum petition is filed pursuant to section 1 (3) of article V
18 of the state constitution against this act or an item, section, or part of this
19 act within such period, then the act, item, section, or part will not take
20 effect unless approved by the people at the general election to be held in
21 November 2022 and, in such case, will take effect on the date of the
22 official declaration of the vote thereon by the governor.