

First Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 25-0554.01 Jennifer Berman x3286

SENATE BILL 25-157

SENATE SPONSORSHIP

Weissman and Gonzales J., Cutter, Jodeh, Kipp, Kolker

HOUSE SPONSORSHIP

Mabrey and Titone, Bacon, Brown, Froelich, Garcia, Lindsay, Mauro, Rutinel, Sirota, Story, Velasco, Willford, Zokaie

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 CONCERNING REDUCING BURDENS TO ENFORCEMENT OF LAWS
102 PROHIBITING DECEPTIVE 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 establishes that certain evidence that a person has engaged in an unfair or deceptive trade practice constitutes a significant impact to the public. The bill also clarifies that a deceptive trade practice claim cannot be based solely on a claim that a person breached a contract or engaged in negligence or on a claim for damages based on the rendering of professional services, unless the claim for damages involves an

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

allegation of a material misrepresentation of fact, a failure to disclose material information, or an action that cannot be characterized as providing advice, judgment, or opinion.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) For more than 100 years, it has been the policy of the United
5 States and of the state of Colorado to promote honest competition among
6 businesses and to discourage unfair competition;

7 (b) In 1914, Congress passed the "Federal Trade Commission
8 Act", 15 U.S.C. sec. 41 et seq., to prohibit "unfair methods of competition
9 in commerce";

10 (c) The "Federal Trade Commission Act" has been continually
11 updated as the economy has evolved and currently prohibits "[u]nfair
12 methods of competition in or affecting commerce, and unfair or deceptive
13 acts or practices in or affecting commerce";

14 (d) In 1915, the Colorado general assembly passed legislation
15 prohibiting "untrue, deceptive, or misleading" advertising, as codified in
16 C.L. 1921 sec. 6942;

17 (e) In 1969, the Colorado general assembly passed the "Colorado
18 Consumer Protection Act", the first modern consumer protection law to
19 prohibit "deceptive trade practices" and to protect consumers from unfair,
20 unconscionable, and deceptive acts or practices;

21 (f) In 1998, in *Hall v. Walter*, 969 P.2d 224, 234 (Colo. 1998), the
22 Colorado supreme court limited the application of the "Colorado
23 Consumer Protection Act", part 1 of article 1 of title 6, Colorado Revised
24 Statutes, by holding that an injured individual or business must prove that

1 an unfair, unconscionable, or deceptive act or practice "significantly
2 impacts the public", placing a requirement on injured individuals or
3 businesses to prove circumstances far outside their own knowledge or
4 control;

5 (g) The requirement that an injured individual or business prove
6 that an unfair or deceptive trade practice "significantly impacts the
7 public" is nowhere to be found in the text of the "Colorado Consumer
8 Protection Act";

9 (h) According to the most recent 50-state survey from the National
10 Consumer Law Center, Colorado is one of only 7 states that curtail their
11 consumer protection laws with this type of "significantly impacts the
12 public" limitation;

13 (i) According to the federal trade commission, Colorado ranks
14 above the national average for reports of consumer fraud per capita, with
15 the fifteenth highest reporting numbers; and

16 (j) By clarifying actions brought under the "Colorado Consumer
17 Protection Act", Colorado can join the overwhelming majority of other
18 states that do not impose comparable barriers to consumer protection
19 claims and, thereby, better promote honest competition among businesses,
20 discourage unfair competition, and protect consumers.

21 **SECTION 2.** In Colorado Revised Statutes, 6-1-113, **add** (5) and
22 (6) as follows:

23 **6-1-113. Civil actions - damages - other relief - class actions.**

24 (5) IN AN ACTION COMMENCED UNDER THIS SECTION, A PERSON OTHER
25 THAN A PERSON AUTHORIZED TO BRING SUIT UNDER SECTION 6-1-103 MAY
26 ESTABLISH THAT AN UNFAIR OR A DECEPTIVE ACT OR PRACTICE
27 SIGNIFICANTLY IMPACTS THE PUBLIC BECAUSE THE ACT OR PRACTICE:

1 (a) VIOLATES A PROVISION OF THIS TITLE 6 THAT IS A DECEPTIVE
2 TRADE PRACTICE; OR

3 (b) INJURED, HAD THE CAPACITY TO INJURE, OR HAS THE CAPACITY
4 TO INJURE OTHER PERSONS.

5 (6) IN AN ACTION COMMENCED UNDER THIS SECTION:

6 (a) A BREACH OF CONTRACT CLAIM, WITHOUT AN ALLEGATION OF
7 ADDITIONAL CONDUCT, DOES NOT CONSTITUTE A CLAIM THAT A PERSON
8 ENGAGED IN A DECEPTIVE TRADE PRACTICE;

9 (b) A CLAIM OF NEGLIGENCE, WITHOUT AN ALLEGATION OF
10 ADDITIONAL CONDUCT, DOES NOT CONSTITUTE A CLAIM THAT A PERSON
11 ENGAGED IN A DECEPTIVE TRADE PRACTICE; AND

12 (c) A CLAIM FOR DAMAGES BASED ON THE RENDERING OF A
13 PROFESSIONAL SERVICE, THE ESSENCE OF WHICH SERVICE IS PROVIDING
14 ADVICE, JUDGMENT, OPINION, OR SIMILAR PROFESSIONAL SKILL, WITHOUT
15 AN ALLEGATION OF ADDITIONAL CONDUCT, DOES NOT CONSTITUTE A
16 CLAIM THAT A PERSON ENGAGED IN A DECEPTIVE TRADE PRACTICE;
17 EXCEPT THAT THIS SUBSECTION (6)(c) DOES NOT APPLY TO:

18 (I) AN EXPRESS MISREPRESENTATION OF A MATERIAL FACT THAT
19 CANNOT BE CHARACTERIZED AS PROVIDING ADVICE, JUDGMENT, OR
20 OPINION;

21 (II) A FAILURE TO DISCLOSE INFORMATION CONCERNING GOODS OR
22 SERVICES, WHICH INFORMATION WAS KNOWN AT THE TIME OF THE
23 TRANSACTION, IF SUCH FAILURE TO DISCLOSE THE INFORMATION WAS
24 INTENDED TO INDUCE THE CONSUMER INTO A TRANSACTION THAT THE
25 CONSUMER WOULD NOT HAVE ENTERED INTO HAD THE INFORMATION BEEN
26 DISCLOSED;

27 (III) AN ACTION OR COURSE OF ACTION THAT CANNOT BE

1 CHARACTERIZED AS PROVIDING ADVICE, JUDGMENT, OR OPINION; OR

2 (IV) A BREACH OF AN EXPRESS WARRANTY THAT CANNOT BE
3 CHARACTERIZED AS PROVIDING ADVICE, JUDGMENT, OR OPINION.

4 **SECTION 3. Safety clause.** The general assembly finds,
5 determines, and declares that this act is necessary for the immediate
6 preservation of the public peace, health, or safety or for appropriations for
7 the support and maintenance of the departments of the state and state
8 institutions.