

CHAPTER 243

**CONSUMER AND COMMERCIAL TRANSACTIONS**

SENATE BILL 93-224

BY SENATORS Rizzuto, Bishop, Wattenberg, Pastore, Peterson, Mares, and Ruddick;  
also REPRESENTATIVES Foster, Acquafresca, Chlouber, Fleming, George, Gordon, T. Hernandez, and Taylor.

**AN ACT**

CONCERNING ENFORCEMENT OF THE "UNFAIR PRACTICES ACT".

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

**SECTION 1.** 6-2-105 (1), Colorado Revised Statutes, 1992 Repl. Vol., is amended to read:

**6-2-105. Unlawful to sell below cost.** (1) (a) It is unlawful for any person, partnership, firm, corporation, joint stock company, or other association engaged in business within this state to sell, offer for sale, or advertise for sale any article or product or service or output of a service trade for less than the cost thereof to such vendor, or give, offer to give, or advertise the intent to give away any article or product or service or output of a service trade for the purpose of injuring competitors and destroying competition. A vendor who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be subject to the penalties provided in section 6-2-116.

(b) IT IS UNLAWFUL FOR ANY PERSON, PARTNERSHIP, FIRM, CORPORATION, JOINT STOCK COMPANY, OR OTHER ASSOCIATION ENGAGED IN BUSINESS WITHIN THIS STATE TO ENGAGE IN A PATTERN OF SELLING, OFFERING FOR SALE, OR ADVERTISING FOR SALE MOTOR FUEL FOR LESS THAN THE COST THEREOF TO SUCH VENDOR, WHEN SUCH PATTERN HAS THE EFFECT OF INJURING ONE OR MORE COMPETITORS OR DESTROYING COMPETITION. A VENDOR WHO VIOLATES THIS PARAGRAPH (b) IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION THEREOF, SHALL BE SUBJECT TO THE PENALTIES PROVIDED IN SECTION 6-2-116.

**SECTION 2.** Article 2 of title 6, Colorado Revised Statutes, 1992 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

**6-2-111.5. Civil discovery requests.** (1) WHEN THE ATTORNEY GENERAL HAS REASONABLE CAUSE TO BELIEVE THAT ANY PERSON, PARTNERSHIP, FIRM, CORPORATION, JOINT STOCK COMPANY, OR OTHER ASSOCIATION HAS ENGAGED IN OR IS ENGAGING IN A VIOLATION OF ANY PROVISION OF THIS ARTICLE, THE ATTORNEY GENERAL MAY:

(a) REQUEST SUCH PERSON TO FILE A STATEMENT OR REPORT IN WRITING, UNDER OATH OR OTHERWISE, ON FORMS PRESCRIBED BY THE ATTORNEY GENERAL, OR TO ANSWER IN WRITING, UNDER OATH OR OTHERWISE, ANY QUESTIONS PROPOUNDED BY THE ATTORNEY GENERAL AS TO ALL FACTS AND CIRCUMSTANCES REASONABLY RELATED TO THE ALLEGED VIOLATION, AND TO PROVIDE ANY OTHER DATA AND INFORMATION THE ATTORNEY GENERAL REASONABLY DEEMS TO BE NECESSARY;

(b) ISSUE SUBPOENAS TO REQUIRE THE ATTENDANCE OF WITNESSES OR THE PRODUCTION OF RELEVANT DOCUMENTS, ADMINISTER OATHS, CONDUCT HEARINGS IN AID OF AN INVESTIGATION OR INQUIRY, AND PRESCRIBE SUCH FORMS AND PROMULGATE SUCH RULES AS MAY REASONABLY BE DEEMED TO BE NECESSARY TO ADMINISTER THE PROVISIONS OF THIS ARTICLE; AND

(c) MAKE TRUE COPIES, AT THE EXPENSE OF THE ATTORNEY GENERAL, OF ANY DOCUMENTS EXAMINED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1), WHICH COPIES MAY BE OFFERED INTO EVIDENCE IN LIEU OF THE ORIGINALS THEREOF IN ANY CIVIL ACTION BROUGHT PURSUANT TO THIS ARTICLE. THE PERSON PRODUCING THE DOCUMENTS MAY REQUIRE THAT THE ATTORNEY GENERAL MAKE COPIES OF THE DOCUMENTS. IF THE ATTORNEY GENERAL DETERMINES THE USE OF ORIGINALS IS NECESSARY, THE ATTORNEY GENERAL SHALL PAY TO HAVE COPIES OF THOSE DOCUMENTS MADE FOR USE BY THE PERSON PRODUCING THE DOCUMENTS.

(2) SERVICE OF ANY REQUEST OR SUBPOENA SHALL BE MADE IN THE MANNER PRESCRIBED BY LAW.

(3) ANY WRITTEN RESPONSE, TESTIMONY, OR DOCUMENTS OBTAINED BY THE ATTORNEY GENERAL PURSUANT TO THIS SECTION OR ANY INFORMATION DERIVED DIRECTLY OR INDIRECTLY FROM SUCH WRITTEN RESPONSE, TESTIMONY, OR DOCUMENTS SHALL NOT BE ADMISSIBLE IN EVIDENCE IN ANY CRIMINAL PROSECUTION AGAINST THE PERSON PROVIDING THE WRITTEN RESPONSE, TESTIMONY, OR DOCUMENTS. THE PROVISIONS OF THIS SUBSECTION (3) SHALL NOT BE CONSTRUED TO PREVENT ANY LAW ENFORCEMENT OFFICER HAVING AN INDEPENDENT BASIS THEREFOR FROM PRODUCING OR OBTAINING THE SAME OR SIMILAR FACTS, INFORMATION, OR EVIDENCE FOR USE IN ANY CRIMINAL PROSECUTION.

(4) NOTHING IN THIS SECTION SHALL PROHIBIT THE ATTORNEY GENERAL FROM DISCLOSING INFORMATION OBTAINED PURSUANT TO THIS SECTION TO ANY OTHER LAW ENFORCEMENT AGENCY OR DEPARTMENT OF ANY GOVERNMENTAL OR PUBLIC ENTITY OF THIS OR ANY OTHER STATE OR TO THE FEDERAL GOVERNMENT IF SUCH OTHER LAW ENFORCEMENT AGENCY OR DEPARTMENT EXECUTES AN AGREEMENT THAT SUCH INFORMATION WILL REMAIN CONFIDENTIAL AND WILL NOT BE USED IN ANY CRIMINAL PROSECUTION AGAINST THE PERSON PROVIDING THE WRITTEN RESPONSE, TESTIMONY, OR DOCUMENTS.

(5) IF ANY PERSON FAILS TO APPEAR OR FAILS TO COOPERATE WITH ANY INVESTIGATION OR INQUIRY PURSUANT TO A REQUEST OR SUBPOENA ISSUED PURSUANT TO THIS SECTION, THE ATTORNEY GENERAL MAY APPLY TO ANY DISTRICT COURT FOR AN APPROPRIATE ORDER TO EFFECT THE PURPOSES OF THIS SECTION. THE APPLICATION SHALL STATE THAT THERE IS REASONABLE CAUSE TO BELIEVE THAT THE ORDER APPLIED FOR IS NECESSARY TO INVESTIGATE, PROSECUTE, OR TERMINATE A VIOLATION OF THIS ARTICLE. IF THE COURT IS SATISFIED THAT REASONABLE CAUSE EXISTS, THE COURT MAY:

(a) REQUIRE THE ATTENDANCE OF OR THE PRODUCTION OF DOCUMENTS BY SUCH PERSON, OR BOTH;

(b) ASSESS A CIVIL PENALTY OF UP TO FIVE THOUSAND DOLLARS FOR SUCH FAILURE TO APPEAR AND ANSWER QUESTIONS, WRITTEN OR OTHERWISE, OR SUCH FAILURE TO PRODUCE DOCUMENTS UNLESS THE COURT FINDS THAT THE FAILURE TO APPEAR, TO ANSWER QUESTIONS, OR TO PRODUCE DOCUMENTS WAS SUBSTANTIALLY JUSTIFIED OR THAT OTHER CIRCUMSTANCES MAKE AN ASSESSMENT OF A CIVIL PENALTY UNJUST;

(c) AWARD THE ATTORNEY GENERAL REASONABLE COSTS AND ATTORNEY FEES IN MAKING THIS APPLICATION UNLESS THE COURT FINDS THAT THE FAILURE TO APPEAR, TO ANSWER QUESTIONS, OR TO PRODUCE DOCUMENTS WAS SUBSTANTIALLY JUSTIFIED OR THAT OTHER CIRCUMSTANCES MAKE AN AWARD OF COSTS AND ATTORNEY FEES UNJUST;

(d) ENTER ANY PROTECTIVE ORDER AS PROVIDED FOR IN THE COLORADO RULES OF CIVIL PROCEDURE;

(e) GRANT SUCH OTHER OR FURTHER RELIEF AS MAY BE NECESSARY TO OBTAIN COMPLIANCE BY SUCH PERSON.

**SECTION 3. Effective date - applicability.** This act shall take effect July 1, 1993, and shall apply to acts committed or occurring on or after said date.

**SECTION 4. 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.

Approved: June 6, 1993