

CHAPTER 272

CONSUMER AND COMMERCIAL TRANSACTIONS

SENATE BILL 93-165

BY SENATORS Lacy, Casey, Rizzuto, and Thiebaut;
also REPRESENTATIVES Adkins, Allen, DeGette, Friednash, Hagedorn, Knox, Rupert, Thiebaut, and Tucker.

AN ACT**CONCERNING PROTECTIONS AGAINST UNFAIR BUSINESS PRACTICES.**

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

SECTION 1. 6-1-105 (1) (t) (VI) and (1) (y), Colorado Revised Statutes, 1992 Repl. Vol., are amended, and the said 6-1-105 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

6-1-105. Deceptive trade practices. (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

(t) Engages in one or more of the following activities in connection with the advertisement or sale of a membership in a health club:

(VI) Sells any membership contract, the actual or financial duration of which, including any option to renew, is longer than twenty-four months; except that a person does not engage in a deceptive trade practice when such person sells any membership contract the actual ~~and~~ OR financial duration of which is not longer than thirty-six months with a buyer's option to renew annually thereafter if:

(A) The health club has been in operation in this state more than two years; and

(B) The health club maintains a bond with a corporate surety from a company authorized to do business in this state or other security acceptable to and approved by the attorney general; and

(C) The aggregate amount of the bond is one hundred thousand dollars for each club location; and

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

(D) The bond is payable to the state for the benefit of any buyer injured in the event the health club goes out of business prior to the expiration of the buyer's membership contract; and

(E) The bond is maintained for so long as the health club has any membership contracts in place and outstanding, the specified term for which exceeds twenty-four months; and

(F) The bond is not cancelled, revoked, or terminated except after notice to, and with the written consent of, the attorney general at least forty-five days in advance of such cancellation, revocation, or termination; and

(G) The annual renewal option for continued membership contained in the membership contract is not automatic but requires that the buyer affirmatively accept the renewal option by notice in writing to the person selling the membership contract for reasonable consideration on or before the expiration of each contract term, but not more than six months prior to the expiration of any contract term; and

(H) The health club elects to cancel, revoke, or terminate the bond, it shall post a notice of such action, in twenty-four-point bold face type, to its customers, on the front door of such health club.

(y) Fails, in connection with any solicitation, ORAL OR WRITTEN, to clearly and prominently disclose immediately adjacent to OR AFTER the description of any item or prize to be received by any person the actual retail value of each item or prize to be awarded. For the purposes of this paragraph (y), the actual retail value is the price at which substantial sales of the item were made in the person's trade area OR IN THE TRADE AREA IN WHICH THE ITEM OR PRIZE IS TO BE RECEIVED within the last ninety days or, if no substantial sales were made, the actual cost of the item or prize to the person on whose behalf any contest or promotion is conducted; except that, whenever the actual cost of the item to the provider is less than fifteen dollars per item, a disclosure that "actual cost to the provider is less than fifteen dollars" may be made in lieu of disclosure of actual cost. The provisions of this paragraph (y) shall not apply to a promotion which is ~~only for magazines, periodicals, books, records, audio tapes, compact disks, or videos, when the recipient of any promotional merchandise has the right to review the merchandise without obligation for at least seven days and the right to obtain a full refund for the return of undamaged merchandise~~ SOLICITING THE SALE OF A NEWSPAPER, MAGAZINE, OR PERIODICAL OF GENERAL CIRCULATION, OR TO A PROMOTION SOLICITING THE SALE OF BOOKS, RECORDS, AUDIO TAPES, COMPACT DISCS, OR VIDEOS WHEN THE PROMOTER ALLOWS THE PURCHASER TO REVIEW THE MERCHANDISE WITHOUT OBLIGATION FOR AT LEAST SEVEN DAYS AND PROVIDES A FULL REFUND WITHIN THIRTY DAYS AFTER THE RECEIPT OF THE RETURNED MERCHANDISE OR WHEN A MEMBERSHIP CLUB OPERATION IS IN CONFORMITY WITH RULES AND REGULATIONS OF THE FEDERAL TRADE COMMISSION CONTAINED IN 16 C.F.R. 425.

(hh) VIOLATES ANY PROVISION OF ARTICLE 16 OF THIS TITLE;

(ii) FAILS TO DISCLOSE IN WRITING, PRIOR TO SALE, TO THE PURCHASER THAT A MOTOR VEHICLE IS A SALVAGE VEHICLE, AS DEFINED IN SECTION 42-6-102 (10.6),

C.R.S., THAT A VEHICLE WAS REPURCHASED BY OR RETURNED TO THE MANUFACTURER FROM A PREVIOUS OWNER FOR INABILITY TO CONFORM THE MOTOR VEHICLE TO THE MANUFACTURER'S WARRANTY IN ACCORDANCE WITH ARTICLE 12 OF TITLE 42, C.R.S., OR WITH ANY OTHER STATE OR FEDERAL MOTOR VEHICLE WARRANTY LAW, OR KNOWINGLY FAILS TO DISCLOSE, IN WRITING, PRIOR TO SALE, TO THE PURCHASER THAT A MOTOR VEHICLE HAS SUSTAINED MATERIAL DAMAGE AT ANY ONE TIME FROM ANY ONE INCIDENT;

(jj) REPRESENTS TO ANY PERSON THAT SUCH PERSON HAS WON OR IS ELIGIBLE TO WIN ANY AWARD, PRIZE, OR THING OF VALUE AS THE RESULT OF A CONTEST, PROMOTION, SWEEPSTAKES, OR DRAWING, OR THAT SUCH PERSON WILL RECEIVE OR IS ELIGIBLE TO RECEIVE FREE GOODS, SERVICES, OR PROPERTY, UNLESS, AT THE TIME OF THE REPRESENTATION, THE PERSON HAS THE PRESENT ABILITY TO SUPPLY SUCH AWARD, PRIZE, OR THING OF VALUE;

(kk) VIOLATES ANY PROVISION OF ARTICLE 6 OF THIS TITLE;

(ll) KNOWINGLY MAKES A FALSE REPRESENTATION AS TO THE RESULTS OF A RADON TEST OR THE NEED FOR RADON MITIGATION.

SECTION 2. The introductory portion to 6-1-105.5 (2) and 6-1-105.5 (2) (e) (I) and (2) (i), Colorado Revised Statutes, 1992 Repl. Vol., are amended to read:

6-1-105.5. Hearing aid dealers - deceptive trade practices. (2) In addition to any other deceptive trade practices under section 6-1-105, a hearing aid dealer engages in a deceptive trade practice when ~~he~~ SUCH DEALER:

(e) Fails to provide a thirty-day rescission period with the following terms:

(I) The buyer shall have the right to cancel the purchase for any reason ~~within~~ BEFORE THE EXPIRATION OF the trial period ~~after receiving the hearing aid~~ by giving or mailing written notice of cancellation to the seller.

(i) Makes a false or misleading statement of fact concerning goods or services ~~which would lead a reasonable person to conclude that the dealer intended to deter or prevent~~ OR THE BUYER'S RIGHT TO CANCEL WITH THE INTENTION OR EFFECT OF DETERRING OR PREVENTING the buyer from exercising the buyer's right to cancel;

SECTION 3. 6-1-302 (1) (b) (I), Colorado Revised Statutes, 1992 Repl. Vol., as enacted by House Bill 93-1144, enacted at the First Regular Session of the Fifty-ninth General Assembly, is amended to read:

6-1-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Commercial telephone seller" or "seller" means a person who, in the course of such person's business, vocation, or occupation, on the person's own behalf or on behalf of another person, causes or attempts to cause a commercial telephone solicitation to be made; except that "commercial telephone seller" or "seller" does not include the following:

(b) (I) A person soliciting the sale of any newspaper, magazine, or other periodical

~~if the solicitation is authorized in writing by or on behalf of the publisher and the sale may be canceled by the purchaser at any time without further obligation~~ OF GENERAL CIRCULATION IF SUCH SALES CONSTITUTE A MAJORITY OF SUCH PERSON'S BUSINESS AND BUSINESS REVENUES; or

SECTION 4. 6-4-111 (1), Colorado Revised Statutes, 1992 Repl. Vol., is amended to read:

6-4-111. Enforcement by the attorney general. (1) ~~The attorney general may bring a civil action on behalf of any governmental or public entity, with the written consent of such entity, to prevent and restrain violations of this article~~ THE ATTORNEY GENERAL SHALL HAVE THE AUTHORITY TO INSTITUTE ACTIONS OR PROCEEDINGS TO PREVENT OR RESTRAIN VIOLATIONS OF THIS ARTICLE.

SECTION 5. 6-4-112 (1), Colorado Revised Statutes, 1992 Repl. Vol., is amended to read:

6-4-112. Civil penalties. (1) The attorney general may bring a civil action on behalf of the state to seek the imposition of a civil penalty for any violation of this article. The court, upon finding a violation of this article, shall impose a civil penalty to be paid to the general fund of the state in an amount not to exceed one hundred thousand dollars for each such violation; except that the election by the attorney general to seek a civil penalty shall preclude the attorney general from filing criminal charges against the person assessed a civil penalty based upon the same conduct or from pursuing an action against such person for damages pursuant to section 6-4-111 (2) ~~(a)~~ AND (3).

SECTION 6. 6-6-101, Colorado Revised Statutes, 1992 Repl. Vol., is amended to read:

6-6-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Unsolicited goods" means contractual obligations or other tangible or intangible property OR SERVICES delivered to a person who has not ordered, solicited, or agreed to purchase them, but shall not include tangible or intangible goods OR SERVICES which are misdirected, misdelivered, or offered in good faith in substitution for goods solicited by the recipient.

SECTION 7. 6-6-103, Colorado Revised Statutes, 1992 Repl. Vol., is amended to read:

6-6-103. Collections prohibited - penalty. No sender of any unsolicited goods shall mail to any recipient of such unsolicited goods a bill for such unsolicited goods or any dunning communications. Violation of this section shall constitute a class 2 petty offense, and, upon conviction thereof, the violator shall be punished by a fine of not more than two hundred fifty dollars. VIOLATION OF THIS SECTION SHALL ALSO CONSTITUTE A DECEPTIVE TRADE PRACTICE IN VIOLATION OF THE "COLORADO CONSUMER PROTECTION ACT", ARTICLE 1 OF THIS TITLE, AND SHALL BE SUBJECT TO REMEDIES OR PENALTIES, OR BOTH, PURSUANT THERETO.

SECTION 8. 6-16-111, Colorado Revised Statutes, 1992 Repl. Vol., is amended

BY THE ADDITION OF A NEW SUBSECTION to read:

6-16-111. Violations. (5) VIOLATION OF ANY PROVISION OF THIS ARTICLE ALSO SHALL CONSTITUTE A DECEPTIVE TRADE PRACTICE IN VIOLATION OF THE "COLORADO CONSUMER PROTECTION ACT", ARTICLE 1 OF THIS TITLE, AND SHALL BE SUBJECT TO REMEDIES OR PENALTIES, OR BOTH, PURSUANT THERETO.

SECTION 9. Effective date - applicability. This act shall take effect July 1, 1993, and shall apply to acts committed on or after said date.

SECTION 10. 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