Colorado Revised Statutes 2018

TITLE 6

CONSUMER AND COMMERCIAL AFFAIRS

FAIR TRADE AND RESTRAINT OF TRADE

ARTICLE 1

Colorado Consumer Protection Act

Law reviews: For article, "The Colorado Consumer Protection Act: An Update", see 29 Colo. Law. 37 (Jan. 2000); for article, "The Law of Trade Secrecy and Covenants Not to Compete in Colorado - Part I", see 30 Colo. Law. 7 (April 2001); for article, "The Limitations of the Colorado Consumer Protection Act in Insurance Bad Faith Litigation", see 34 Colo. Law. 75 (Nov. 2005); for article, "Managing Risks Associated With Attorney Advertising", see 36 Colo. Law. 63 (April 2007); for comment, "Opening the Door: Crow v. Tull and the Application of the Colorado Consumer Protection Act to Attorneys", 79 U. Colo. L. Rev. 295 (2008).

PART 1

CONSUMER PROTECTION - GENERAL

Law reviews: For article, "The Showpiece Homes Decision: From Caveat Emptor to Insurer Beware?", see 31 Colo. Law. 73 (April 2002).

6-1-101. Short title. This article shall be known and may be cited as the "Colorado Consumer Protection Act".

Source: L. 69: p. 376, § 13. **C.R.S. 1963:** § 55-5-13.

6-1-102. Definitions. As used in this article 1, unless the context otherwise requires:

(1) "Advertisement" includes the attempt by publication, dissemination, solicitation, or circulation, visual, oral, or written, to induce directly or indirectly any person to enter into any obligation or to acquire any title or interest in any property.

(2) "Article" means a product as distinguished from a trademark, label, or distinctive dress in packaging.

(2.5) "Business day" means any calendar day except Sunday, New Year's day, the third Monday in January observed as the birthday of Dr. Martin Luther King, Jr., Washington-Lincoln day, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving, and Christmas.

(2.7) "Buyers' club" means any person engaged in advertising or selling memberships that provide an exclusive right to members to purchase goods, food, services, or property at purported discount prices.

(3) "Certification mark" means a mark used in connection with the goods or services of a person other than the certifier to indicate geographic origin, material, mode of manufacture, quality, accuracy, or other characteristics of the goods or services or to indicate that the work or labor on the goods or services was performed by members of a union or other organization.

(4) "Collective mark" means a mark used by members of a cooperative, association, or other collective group or organization to identify goods or services and distinguish them from those of others, or to indicate membership in the collective group or organization.

(4.1) "Dance studio" means any person engaged in the advertisement or sale of dance studio services.

(4.2) "Dance studio services" means instruction, training, or assistance in dancing; the use of dance studio facilities; membership in any group, club, or association formed by a dance studio; and participation in dance competitions, dance showcases, trips, tours, parties, and other organized events and related travel arrangements.

(4.3) "Discount health plan" means a program evidenced by a membership agreement, contract, card, certificate, device, or mechanism, which offers health care services, as defined in section 10-16-102 (33), C.R.S., or related products including, but not limited to, prescription drugs and medical equipment, at purported discounted rates from health care providers advertised as participating in the program. A "discount health plan" does not include a program in which a participating provider has agreed, as a condition of his or her participation in the program, to negotiate the prices to be charged for his or her services directly with consumers in the program and the provider is not required to offer discounted prices for his or her services as part of the program.

(4.4) "Elderly person" means a person sixty years of age or older.

(4.5) "Food" means any raw, cooked, or processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or part for human consumption.

(4.6) "Health club" means an establishment which provides health club services or facilities which purport to improve or maintain the user's physical condition or appearance through exercise. The term may include, but shall not be limited to, a spa, exercise club, exercise gym, health studio, or playing courts. The term shall not apply to any of the following:

(a) Any establishment operated by a nonprofit organization or public or private school, college, or university;

(b) Any establishment operated by the federal government, the state of Colorado, or any of the state's political subdivisions;

(c) Any establishment which does not provide health club services or facilities as its primary purpose or business; or

(d) Health care facilities licensed or certified by the department of public health and environment pursuant to its authority under section 25-1.5-103, C.R.S.

(4.7) "Health club facilities" means equipment, physical structures, and other tangible property utilized by a health club to conduct its business. The term may include, but shall not be limited to, saunas, whirlpool baths, gymnasiums, running tracks, playing courts, swimming pools, shower areas, and exercise equipment.

(4.8) "Health club services" means services, privileges, or rights offered for sale or provided by a health club.

(4.9) "Manufactured home" shall have the same meaning as set forth in section 42-1-102 (106)(b), C.R.S.

(5) "Mark" means a word, name, symbol, device, or any combination thereof in any form or arrangement.

(5.5) "Motor vehicle" has the same meaning as set forth in section 44-20-102.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, unincorporated association, or two or more thereof having a joint or common interest, or any other legal or commercial entity.

(7) "Promoting a pyramid promotional scheme" means inducing one or more other persons to become participants, or attempting to so induce, or assisting another in promoting a pyramid promotional scheme by means of references or otherwise.

(8) "Property" means any real or personal property, or both real and personal property, intangible property, or services.

(9) "Pyramid promotional scheme" means any program utilizing a pyramid or chain process by which a participant in the program gives a valuable consideration in excess of fifty dollars for the opportunity or right to receive compensation or other things of value in return for inducing other persons to become participants for the purpose of gaining new participants in the program. Ordinary sales of goods or services to persons who are not purchasing in order to participate in such a scheme are not within this definition.

(9.5) "Resale time share" means a time share, including all or substantially all ownership, rights, or interests associated with the time share:

(a) That has been acquired previously for personal, family, or household use; and

(b) (I) That is owned by a Colorado resident; or

(II) The accommodations and other facilities of which are available for use through the time share and are primarily located in Colorado.

(10) "Sale" means any sale, offer for sale, or attempt to sell any real or personal property for any consideration.

(11) "Service mark" means a mark used by a person to identify services and to distinguish them from the services of others.

(11.2) Repealed.

(11.5) "Time share" means a time share estate, as defined in section 38-33-110 (5), C.R.S., a time share use, as defined in section 12-61-401 (4), C.R.S., or any campground or recreational membership which does not constitute the transfer of an interest in real property.

(11.7) (a) "Time share resale entity" means any person who, either directly or indirectly, engages in a time share resale service.

(b) "Time share resale entity" does not include:

(I) The developer, association of time share owners, or other person responsible for managing or operating the plan or arrangement by which the rights or interests associated with a resale time share are utilized, but only to the extent the resale time share is part of an existing plan or arrangement managed by that developer, association, or person;

(II) Attorneys, title agents, title companies, or escrow companies providing closing, settlement, or other transaction services as long as the services are provided in the normal course of business in supporting a conveyance of title or in issuing title insurance products in a time

share resale transaction. To the extent the attorney, title agent, title company, or escrow company is engaged in providing services or products that are outside the normal course of business in supporting a conveyance of title or in issuing title insurance products or has an affiliated business arrangement with a party to a time share resale transaction, this exemption does not apply; or

(III) Real estate brokers operating within the scope of activities specified in section 12-61-101 (2), C.R.S., with respect to a time share resale transaction as long as the real estate broker does not collect a fee in advance. To the extent a real estate broker is engaged in activities outside the scope of activities specified in section 12-61-101 (2), C.R.S., collects an advance fee, or has an affiliated business arrangement with a party to a time share resale transaction, this exemption does not apply.

(11.8) "Time share resale service" means any of the following activities, engaged in directly or indirectly and for consideration, regardless of whether performed in person, by mail, by telephone, or by any other mode of internet or electronic communication, unless performed by a person or entity that, pursuant to paragraph (b) of subsection (11.7) of this section, is exempted:

(a) The sale, rental, listing, or advertising of, or an offer to sell, rent, list, or advertise, any resale time share;

(b) The purchase or offer to purchase any resale time share;

(c) The transfer or offer to assist in the transfer of any resale time share; or

(d) The invalidation or an offer to invalidate the purchase or ownership of any resale time share or the purchase of any time share resale service.

(11.9) (a) "Time share resale transfer agreement" means a contract between a time share resale entity and the owner of a resale time share in which the time share resale entity agrees to transfer, or offers to assist in the transfer, of all or substantially all of the rights or interests in a resale time share on behalf of the owner of the resale time share.

(b) (I) "Time share resale transfer agreement" does not include a contract to sell, rent, list, advertise, purchase, or transfer a resale time share if the owner of the resale time share:

(A) Upon entering the contract, reasonably expects to receive consideration in exchange for the resale time share; and

(B) Upon the actual sale, rental, or transfer of the time share, receives consideration.

(II) For purposes of this subsection (11.9), a transfer of the resale time share does not, by itself, constitute consideration.

(12) "Trademark" means a mark used by a person to identify goods and to distinguish them from the goods of others.

(13) "Trade name" means a word, name, symbol, device, or any combination thereof in any form or arrangement used by a person to identify his business, vocation, or occupation, and to distinguish it from the business, vocation, or occupation of others.

(13.5) "Unavoidable delay" means inclement weather and other events outside the control of the buyer or seller.

(14) "Used motor vehicle" shall have the same meaning as set forth in section 42-6-201 (8), C.R.S.

Source: L. 69: p. 371, § 1. **C.R.S. 1963:** § 55-5-1. **L. 73:** p. 619, § 1. **L. 84:** (4.5) and (11.5) added, pp. 289, 290, §§ 1, 1, effective July 1. **L. 85:** (4.6) to (4.8) added, p. 306, § 1,

effective June 1. **L. 87:** (2.5) added and (9), (10), and (11.5) amended, p. 356, § 1, effective July 1. **L. 88:** (4.2) and (4.3) added, p. 341, § 1, effective July 1. **L. 90:** (2.7) and (11.2) added, p. 380, § 1, effective July 1. **L. 92:** (5.5) and (14) added, p. 1835, § 1, effective April 29. **L. 93:** (11.2) repealed, p. 943, § 1, effective July 1. **L. 94:** (4.6)(d) amended, p. 2721, § 310, effective July 1. **L. 98:** (4.9) and (13.5) added, p. 746, § 1, effective August 5. **L. 2000:** (2.7) amended, p. 244, § 1, effective March 30; (4.4) added, p. 1107, § 1, effective August 2. **L. 2003:** (4.6)(d) amended, p. 699, § 3, effective July 1. **L. 2004:** (4.1) added and (4.2) and (4.3) amended, p. 967, § 7, effective May 21. **L. 2013:** (4.3) amended (HB 13-1266), ch. 217, p. 984, § 37, effective May 13; (9.5), (11.7), (11.8), and (11.9) added, (SB 13-182), ch. 166, p. 539, § 1, effective August 7. **L. 2017:** IP and (5.5) amended, (SB 17-240), ch. 395, p. 2063, § 43, effective July 1. **L. 2018:** (5.5) amended, (SB 18-030), ch. 7, p. 138, § 5, effective October 1.

Cross references: For the "Colorado Charitable Solicitations Act", see article 16 of this title.

6-1-103. Attorney general and district attorneys concurrently responsible for enforcement. The attorney general and the district attorneys of the several judicial districts of this state are concurrently responsible for the enforcement of this article. Until the Colorado supreme court adopts a venue provision relating to this article, actions instituted pursuant to this article may be brought in the county where an alleged deceptive trade practice occurred or where any portion of a transaction involving an alleged deceptive trade practice occurred, or in the county where the principal place of business of any defendant is located, or in the county in which any defendant resides.

Source: L. 69: p. 376, § 11. **C.R.S. 1963:** § 55-5-11. **L. 73:** p. 620, § 4. **L. 77:** Entire section R&RE, p. 348, § 1, effective July 1. **L. 87:** Entire section amended, p. 357, § 2, effective July 1.

6-1-104. Cooperative reporting. The district attorneys may cooperate in a statewide reporting system by receiving, on forms provided by the attorney general, complaints from persons concerning deceptive trade practices listed in section 6-1-105 and part 7 of this article and transmitting such complaints to the attorney general.

Source: L. 69: p. 376, § 10. **C.R.S. 1963:** § 55-5-10. **L. 73:** p. 619, § 3. **L. 77:** Entire section R&RE, p. 348, § 2, effective July 1. **L. 86:** Entire section amended, p. 445, § 2, effective April 17. **L. 99:** Entire section amended, p. 652, § 4, effective May 18.

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

(a) Knowingly passes off goods, services, or property as those of another;

(b) Knowingly makes a false representation as to the source, sponsorship, approval, or certification of goods, services, or property;

(c) Knowingly makes a false representation as to affiliation, connection, or association with or certification by another;

(d) Uses deceptive representations or designations of geographic origin in connection with goods or services;

(e) Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith;

(f) Represents that goods are original or new if he knows or should know that they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;

(g) Represents that goods, food, services, or property are of a particular standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another;

(h) Disparages the goods, services, property, or business of another by false or misleading representation of fact;

(i) Advertises goods, services, or property with intent not to sell them as advertised;

(j) Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(k) Advertises under the guise of obtaining sales personnel when in fact the purpose is to first sell a product or service to the sales personnel applicant;

(l) Makes false or misleading statements of fact concerning the price of goods, services, or property or the reasons for, existence of, or amounts of price reductions;

(m) Fails to deliver to the customer at the time of an installment sale of goods or services a written order, contract, or receipt setting forth the name and address of the seller, the name and address of the organization which he represents, and all of the terms and conditions of the sale, including a description of the goods or services, stated in readable, clear, and unambiguous language;

(n) Employs "bait and switch" advertising, which is advertising accompanied by an effort to sell goods, services, or property other than those advertised or on terms other than those advertised and which is also accompanied by one or more of the following practices:

(I) Refusal to show the goods or property advertised or to offer the services advertised;

(II) Disparagement in any respect of the advertised goods, property, or services or the terms of sale;

(III) Requiring tie-in sales or other undisclosed conditions to be met prior to selling the advertised goods, property, or services;

(IV) Refusal to take orders for the goods, property, or services advertised for delivery within a reasonable time;

(V) Showing or demonstrating defective goods, property, or services which are unusable or impractical for the purposes set forth in the advertisement;

(VI) Accepting a deposit for the goods, property, or services and subsequently switching the purchase order to higher-priced goods, property, or services; or

(VII) Failure to make deliveries of the goods, property, or services within a reasonable time or to make a refund therefor;

(o) Knowingly fails to identify flood-damaged or water-damaged goods as to such damages;

(p) Solicits door-to-door as a seller, unless the seller, within thirty seconds after beginning the conversation, identifies himself or herself, whom he or she represents, and the purpose of the call;

(p.3) to (p.7) Repealed.

(q) Contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes any pyramid promotional scheme;

(r) Advertises or otherwise represents that goods or services are guaranteed without clearly and conspicuously disclosing the nature and extent of the guarantee, any material conditions or limitations in the guarantee which are imposed by the guarantor, the manner in which the guarantor will perform, and the identity of such guarantor. Any representation that goods or services are "guaranteed for life" or have a "lifetime guarantee" shall contain, in addition to the other requirements of this paragraph (r), a conspicuous disclosure of the meaning of "life" or "lifetime" as used in such representation (whether that of the purchaser, the goods or services, or otherwise). Guarantees shall not be used which under normal conditions could not be practically fulfilled or which are for such a period of time or are otherwise of such a nature as to have the capacity and tendency of misleading purchasers or prospective purchasers into believing that the goods or services so guaranteed have a greater degree of serviceability, durability, or performance capability in actual use than is true in fact. The provisions of this paragraph (r) apply not only to guarantees but also to warranties, to disclaimer of warranties, to purported guarantees and warranties, and to any promise or representation in the nature of a guarantee or warranty; however, such provisions do not apply to any reference to a guarantee in a slogan or advertisement so long as there is no guarantee or warranty of specific merchandise or other property.

(s) and (t) Repealed.

(u) Fails to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction;

(v) Disburses funds in connection with a real estate transaction in violation of section 38-35-125 (2), C.R.S.;

(w) Repealed.

(x) Violates sections 6-1-203 to 6-1-206 or part 7 of this article 1;

(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 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 CFR 425.

(z) Refuses or fails to obtain all governmental licenses or permits required to perform the services or to sell the goods, food, services, or property as agreed to or contracted for with a consumer;

(aa) Fails, in connection with the issuing, making, providing, selling, or offering to sell of a motor vehicle service contract, to comply with the provisions of article 11 of title 42, C.R.S.;

(bb) Repealed.

(cc) Engages in any commercial telephone solicitation which constitutes an unlawful telemarketing practice as defined in section 6-1-304;

(dd) Repealed.

(ee) Intentionally violates any provision of article 10 of title 5, C.R.S.;

(ee.5) to (ff) Repealed.

(gg) Fails to disclose or misrepresents to another person, a secured creditor, or an assignee by whom such person is retained to repossess personal property whether such person is bonded in accordance with section 4-9-629, C.R.S., or fails to file such bond with the attorney general;

(hh) Violates any provision of article 16 of this title;

(ii) Repealed.

(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;

(mm) Violates section 35-27-113 (3)(e), (3)(f), or (3)(i), C.R.S.;

(nn) Repealed.

(oo) Fails to comply with the provisions of section 35-80-108 (1)(a), (1)(b), or (2)(f), C.R.S.;

(pp) Violates article 9 of title 42, C.R.S.;

(qq) Repealed.

(rr) Violates the provisions of part 8 of this article;

(ss) Violates any provision of part 33 of article 32 of title 24, C.R.S., that applies to the installation of manufactured homes;

(tt) Violates any provision of part 9 of this article;

(uu) Violates section 38-40-105, C.R.S.;

(vv) Violates section 24-21-523 (1)(f) or (1)(i) or 24-21-525 (3), (4), or (5);

(ww) Violates any provision of section 6-1-702;

(xx) Violates any provision of part 11 of this article;

(yy) Repealed.

(zz) Violates any provision of section 6-1-717;

(aaa) Violates any provision of section 12-61-904.5, C.R.S.;

(bbb) Violates any provision of section 12-61-905.5, C.R.S.;

(ccc) Violates the provisions of section 6-1-722;

(ddd) Violates section 6-1-724;

(eee) Violates section 6-1-701;

(fff) Violates section 6-1-723;

(ggg) Violates section 6-1-725;

(hhh) Knowingly represents that hemp, hemp oil, or any derivative of a hemp plant constitutes retail marijuana or medical marijuana unless it fully satisfies the definition of such products pursuant to section 44-12-103 (22) or section 44-11-104 (11);

(iii) Knowingly enters into, or attempts to enforce, an agreement regarding the recovery of an overbid on foreclosed property if the agreement concerns the recovery of funds in the possession of:

(I) A public trustee prior to transfer of the funds to the state treasurer under section 38-38-111, C.R.S.; or

(II) The state treasurer and does not meet the requirements for such an agreement as specified in section 38-13-128.5, C.R.S.;

(jjj) Violates section 6-1-726.

(2) Evidence that a person has engaged in a deceptive trade practice shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

(3) The deceptive trade practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable at common law or under other statutes of this state.

Source: L. 69: p. 372, § 2. **C.R.S. 1963:** § 55-5-2. **L. 71:** p. 580, § 1. **L. 73:** p. 619, § 2. **L. 75:** (1)(r) added, p. 259, § 1, effective July 1. **L. 84:** (1)(e) and (1)(g) amended and (1)(s) added, pp. 289, 290, §§ 2, 2, effective July 1. **L. 85:** (1)(t) added, p. 307, § 2, effective June 1. **L. 87:** (1)(a), (1)(b), (1)(e), (1)(g) to (1)(i), and (1)(l) amended and (1)(s)(V) and (1)(u) added, p. 357, §§ 3, 4, effective July 1. **L. 88:** (1)(n) amended and (1)(v) and (1)(w) added, pp. 341, 1260, §§ 2, 2, effective July 1. **L. 89:** (1)(s)(V) repealed and (1)(y), (1)(z), and (1)(aa) added, pp. 360, 357, §§ 4, 1, effective July 7; (1)(x) added, p. 363, § 2, effective January 1, 1990. **L. 90:** (1)(ee) added, p. 378, § 2, effective April 20; (1)(t)(VI) amended and (1)(bb) to (1)(dd) added, p. 380, § 2, effective July 1. **L. 91:** (1)(t)(VI) amended and (1)(t)(VII) added, p. 329, § 1, effective May 16; (1)(dd)(I) amended and (1)(dd)(I.5) added, p. 331, § 1, effective June 8. **L. 92:** IP(1) amended and (1)(ff) added, p. 1835, § 2, effective April 29; IP(1) amended and (1)(gg) added, p. 247, § 2, effective June 1. **L. 93:** (1)(t)(VI) and (1)(y) amended and (1)(hh) to (1)(ll) added, p. 1571, § 1, effective July 1; (1)(cc) amended, p. 943, § 2, effective July 1; (1)(mm) added, p. 1022, § 3, effective July 1. **L. 94:** (1)(nn) added, p. 759, § 1, effective April 20; (1)(ee.5) added, p. 94, § 1, effective July 1; (1)(oo) added, p. 1311, § 10, effective July 1; (1)(aa) and (1)(ii) amended, p. 2544, § 14, effective January 1, 1995. **L. 96:** (1)(p) amended and (1)(p.3) and (1)(ee.7) added, pp. 787, 1787, §§ 1, 1, effective July 1. **L. 97:** (1)(pp) added, p. 865, § 13, effective May 21; (1)(p.5) and (1)(p.7) added, p. 500, § 1, effective July 1; (1)(ee.8) added, p. 406, § 1, July 1. **L. 98:** (1)(qq) added, p. 746, § 2, effective August 5. **L. 99:** (1)(p.3), (1)(p.5), (1)(p.7), (1)(s), (1)(t), (1)(w), (1)(bb), (1)(dd), (1)(ee.5), (1)(ee.7), (1)(ee.8), (1)(ff), (1)(ii), and (1)(qq) repealed and (1)(x) amended, pp. 655, 652, §§ 14, 3, effective May 18; (1)(qq) amended, p. 897, § 2, effective October 1. **L. 2000:** (1)(rr) added, p. 867, § 2, effective August 2; (1)(nn)(II) added by revision, pp. 2, 3, §§ 1, 6; (1)(ss) added, p. 1162, § 3, effective July 1, 2001. **L. 2001:** (1)(gg) amended, p. 1445, § 37, effective July 1; (1)(tt) added, p. 1461, § 2, effective August 8. **L. 2002:** (1)(uu) added, p. 1602, § 3, effective June 7. **L. 2003:** (1)(ss) amended, p.

550, § 3, effective March 5. **L. 2004:** (1)(vv) added, p. 181, § 2, effective July 1; (1)(ww) added, p. 407, § 2, effective August 4. **L. 2006:** (1)(xx) added, p. 1344, § 2, effective May 30. **L. 2007:** (1)(zz) added, p. 1728, § 5, effective June 1; (1)(aaa) and (1)(bbb) added, p. 1723, § 10, effective June 1; (1)(yy) added, p. 809, § 1, effective July 1. **L. 2010:** (1)(ccc) added, (SB 10-155), ch. 180, p. 648, § 2, effective August 11. **L. 2013:** (1)(eee) added, (SB 13-228), ch. 271, p. 1425, § 2, effective May 24; (IP)(1) amended and (1)(ddd) added, (SB 13-215), ch. 399, p. 2335, § 2, effective June 5. **L. 2014:** (1)(fff) and (1)(ggg) added, (HB 14-1037), ch. 358, p. 1681, § 2, effective August 6. **L. 2015:** (1)(hhh) added, (SB 15-014), ch. 199, p. 688, § 7, effective May 18; (1)(yy) repealed, (SB 15-264), ch. 259, p. 941, § 7, effective August 5. **L. 2016:** (1)(jjj) added, (HB 16-1335), ch. 246, p. 1015, § 2, effective July 1; (1)(bbb) amended, (HB 16-1306), ch. 117, p. 331, § 1, effective August 10; (1)(iii) added, (HB 16-1090), ch. 97, p. 276, § 2, effective August 10. **L. 2017:** (1)(vv) amended, (SB 17-132), ch. 207, p. 808, § 4, effective July 1, 2018. **L. 2018:** (1)(x) amended, (SB 18-100), ch. 36, p. 392, § 1, effective August 8; (1)(hhh) amended, (HB 18-1023), ch. 55, p. 584, § 4, effective October 1.

Editor's note: (1) Subsection (1)(dd)(I)(F) provided for the repeal of subsection (1)(dd)(I)(F), effective July 1, 1994. (See L. 91, p. 331.) Subsection (1)(nn)(II) provided for the repeal of subsection (1)(nn), effective July 1, 2001. (See L. 2000, p. 3.)

(2) (a) Subsections (1)(p.3), (1)(p.5), (1)(p.7), (1)(s), (1)(t), (1)(w), (1)(bb), (1)(dd), (1)(ee.5), (1)(ee.7), (1)(ee.8), (1)(ff), (1)(ii), and (1)(qq) were repealed and relocated in 1999 to part 7 of this article.

(b) Subsection (1)(qq) as amended by House Bill 99-1270 was harmonized with Senate Bill 99-143 and relocated to § 6-1-709, effective October 1, 1999.

(3) Subsection (1)(ww) was originally lettered as (1)(vv) in House Bill 04-1125, but has been relettered on revision for ease of location.

(4) Section 8(1) of Senate Bill 17-132 was amended by section 121 of Senate Bill 17-294 to change the effective date of Senate Bill 17-132 from August 9, 2017, to July 1, 2018.

(5) Section 8(2) of chapter 207 (SB 17-132), Session Laws of Colorado 2017, provides that the act changing this section applies to conduct occurring on or after July 1, 2018.

Cross references: For the legislative declaration in HB 16-1090, see section 1 of chapter 97, Session Laws of Colorado 2016.

6-1-105.5. Hearing aid dealers - deceptive trade practices. (Repealed)

Source: L. 86: Entire section added, p. 443, § 1, effective April 17. **L. 87:** (2)(e)(III) amended, p. 358, § 5, effective July 1. **L. 88:** (2)(e)(II) amended, p. 343, § 3, effective July 1. **L. 92:** (1)(a), (1)(b), (2)(a), (2)(b), (2)(c), IP(2)(d), (2)(e), and (2)(f) amended and (1)(a.5), (1)(e), (2)(i), and (2)(j) added, pp. 228, 231, §§ 1, 2, effective July 1. **L. 93:** IP(2), (2)(e)(I), and (2)(i), amended, p. 1573, § 2, effective July 1. **L. 95.** IP(2) and (2)(e) amended and (3) added, p. 1331, § 2, effective July 1. **L. 99:** Entire section repealed, p. 655, § 14, effective May 18.

6-1-106. Exclusions. (1) This article does not apply to:

(a) Conduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency;

(b) Publishers, including outdoor advertising media, advertising agencies, broadcasters, or printers engaged in the dissemination of information or reproduction of printed or pictorial matter who publish, broadcast, or reproduce material without knowledge of its deceptive character; or

(c) Actions or appeals pending on or before July 1, 1969.

(2) This article shall not be interpreted to apply to the use by a person of any service mark, trademark, certification mark, collective mark, trade name, or other trade identification which was used and not abandoned prior to July 1, 1969, if the use was in good faith and is otherwise lawful except for the provisions of this article.

Source: L. 69: p. 373, § 3. **C.R.S. 1963:** § 55-5-3.

6-1-107. Powers of attorney general and district attorneys. (1) When the attorney general or a district attorney has reasonable cause to believe that any person, whether in this state or elsewhere, has engaged in or is engaging in any deceptive trade practice listed in section 6-1-105 or part 7 of this article, the attorney general or district attorney may:

(a) Request such person to file a statement or report in writing under oath or otherwise, on forms prescribed by him, as to all facts and circumstances concerning the sale or advertisement of property by such person and any other data and information he deems necessary;

(b) Examine under oath any person in connection with the sale or advertisement of any property;

(c) Examine any property or sample thereof, record, book, document, account, or paper he deems necessary;

(d) Make true copies, at the expense of the attorney general or district attorney, of any record, book, document, account, or paper examined pursuant to paragraph (c) of this subsection (1), which copies may be offered into evidence in lieu of the originals thereof in actions brought pursuant to sections 6-1-109 and 6-1-110; and

(e) Pursuant to any order of any district court, impound any sample of property which is material to such deceptive trade practice and retain the same in his possession until completion of all proceedings undertaken under this article. An order shall not be issued pursuant to this paragraph (e) without full opportunity given to the accused to be heard and unless the attorney general or district attorney has proven by clear and convincing evidence that the business activities of the person to whom an order is directed will not be impaired thereby.

(2) Nothing in subsection (1) of this section shall be construed to allow a district attorney to enforce the provisions of this article beyond the territorial limits of his judicial district, unless the alleged deceptive trade practice or any portion of a transaction involving an alleged deceptive trade practice occurred in said district attorney's judicial district, or unless the principal place of business of any defendant is located in said district attorney's district, or unless any defendant resides in said district attorney's judicial district.

Source: L. 69: p. 373, § 4. **C.R.S. 1963:** § 55-5-4. **L. 77:** IP(1), (1)(d), and (1)(e) amended and (2) added, p. 348, § 3, effective July 1. **L. 86:** IP(1) amended, p. 445, § 3, effective April 17. **L. 87:** (2) amended, p. 358, § 6, effective July 1. **L. 99:** IP(1) amended, p. 653, § 5,

effective May 18. **L. 2013:** IP(1) amended, (SB 13-248), ch. 270, p. 1417, § 1, effective July 1. **L. 2017:** IP(1) amended, (HB 17-1023), ch. 64, p. 204, § 2, effective March 20.

6-1-108. Subpoenas - hearings - rules. (1) When the attorney general or a district attorney has reasonable cause to believe that a person, whether in this state or elsewhere, has engaged in or is engaging in a deceptive trade practice listed in section 6-1-105 or part 7 of this article 1, the attorney general or a district attorney, in addition to other powers conferred upon him or her by this article 1, may issue subpoenas to require the attendance of witnesses or the production of documents, administer oaths, conduct hearings in aid of any investigation or inquiry, and prescribe such forms and promulgate such rules as may be necessary to administer the provisions of this article 1.

(2) Service of any notice or subpoena may be made in the manner prescribed by law or as provided in rule 4 of the Colorado rules of civil procedure.

(3) (a) If the records of a person who has been issued a subpoena are located outside this state, the person shall either:

(I) Make them available to the attorney general or district attorney at a convenient location within this state; or

(II) Pay the reasonable and necessary expenses for the attorney general or district attorney, or his or her designee, to examine the records at the place where they are maintained.

(b) The attorney general or district attorney may designate representatives, including comparable officials of the state in which the records are located, to inspect the records on behalf of the attorney general or district attorney.

Source: L. 69: p. 374, § 5. **C.R.S. 1963:** § 55-5-5. **L. 77:** (1) amended, p. 349, § 4, effective July 1. **L. 2013:** (3) added, (SB 13-248), ch. 270, p. 1417, § 2, effective July 1. **L. 2016:** (1) amended, (HB 16-1094), ch. 94, p. 264, § 3, effective August 10. **L. 2017:** (1) and (2) amended, (HB 17-1023), ch. 64, p. 204, § 1, effective March 20.

Cross references: For service of subpoena, see C.R.C.P. 45(c).

6-1-109. Remedies. (1) If any person fails to cooperate with any investigation pursuant to section 6-1-107 or fails to obey any subpoena pursuant to section 6-1-108, the attorney general or a district attorney may apply to the appropriate district court for an appropriate order to effect the purposes of this article 1. The application shall state that there are reasonable grounds to believe that the order applied for is necessary to investigate a deceptive trade practice as defined in this article 1. If the court is satisfied that reasonable grounds exist, the court in its order may:

(a) Grant injunctive relief restraining the sale or advertisement of any property by such person;

(b) Require the attendance of or the production of documents by such person, or both;

(c) Grant such other or further relief as may be necessary to obtain compliance by such person.

Source: L. 69: p. 374, § 6. **C.R.S. 1963:** § 55-5-6. **L. 77:** IP(1) amended, p. 349, § 5, effective July 1. **L. 2018:** IP(1) amended, (HB 18-1028), ch. 42, p. 467, § 1, effective March 15.

6-1-110. Restraining orders - injunctions - assurances of discontinuance. (1) Whenever the attorney general or a district attorney has cause to believe that a person has engaged in or is engaging in any deceptive trade practice listed in section 6-1-105 or part 7 of this article, the attorney general or district attorney may apply for and obtain, in an action in the appropriate district court of this state, a temporary restraining order or injunction, or both, pursuant to the Colorado rules of civil procedure, prohibiting such person from continuing such practices, or engaging therein, or doing any act in furtherance thereof. The court may make such orders or judgments as may be necessary to prevent the use or employment by such person of any such deceptive trade practice or which may be necessary to completely compensate or restore to the original position of any person injured by means of any such practice or to prevent any unjust enrichment by any person through the use or employment of any deceptive trade practice.

(2) Where the attorney general or a district attorney has authority to institute a civil action or other proceeding pursuant to the provisions of this article, the attorney general or district attorney may accept, in lieu thereof or as a part thereof, an assurance of discontinuance of any deceptive trade practice listed in section 6-1-105 or part 7 of this article. Such assurance may include a stipulation for the voluntary payment by the alleged violator of the costs of investigation and any action or proceeding by the attorney general or a district attorney and any amount necessary to restore to any person any money or property that may have been acquired by such alleged violator by means of any such deceptive trade practice. Any such assurance of discontinuance accepted by the attorney general or a district attorney and any such stipulation filed with the court as a part of any such action or proceeding shall be a matter of public record unless the attorney general or the district attorney determines, at his or her discretion, that it will be confidential to the parties to the action or proceeding and to the court and its employees. Upon the filing of a civil action by the attorney general or a district attorney alleging that a confidential assurance of discontinuance or stipulation accepted pursuant to this subsection (2) has been violated, said assurance of discontinuance or stipulation shall thereupon be deemed a public record and open to inspection by any person. Proof by a preponderance of the evidence of a violation of any such assurance or stipulation shall constitute prima facie evidence of a deceptive trade practice for the purposes of any civil action or proceeding brought thereafter by the attorney general or a district attorney, whether a new action or a subsequent motion or petition in any pending action or proceeding.

(3) When the attorney general or a district attorney shows by a preponderance of evidence that a mortgage broker, mortgage originator, mortgage lender, mortgage loan applicant, real estate broker, real estate agent, real estate appraiser, or closing agent, other than a person who provides closing or settlement services subject to regulation by the division of insurance, has continued to participate in the origination of mortgage loans in violation of section 38-40-105, C.R.S., after having been previously enjoined from practices in violation of such section, the attorney general or district attorney may, in addition to any other remedies, apply for and obtain, in the court that has previously issued an injunction, a further injunction against continuing to participate in the business of originating mortgage loans for up to five years.

(4) In addition to any other remedy available under this section, when the attorney general or district attorney has cause to believe that a person has engaged in or is engaging in a deceptive trade practice described in section 6-1-720, the attorney general or district attorney may apply for and obtain, in an action in the appropriate district court of this state, an order

forfeiting any tickets obtained, or the proceeds from the resale of any such tickets, in violation of section 6-1-720.

Source: L. 69: p. 374, § 7. **C.R.S. 1963:** § 55-5-7. **L. 77:** Entire section amended, p. 349, § 6, effective July 1. **L. 86:** Entire section amended, p. 446, § 4, effective April 17. **L. 87:** Entire section amended, p. 358, § 7, effective July 1. **L. 88:** (2) amended, p. 344, § 2, effective July 1. **L. 99:** Entire section amended, p. 653, § 6, effective May 18. **L. 2002:** (3) added, p. 1603, § 4, effective June 7. **L. 2007:** (3) amended, p. 1723, § 11, effective June 1. **L. 2008:** (4) added, p. 2230, § 2, effective July 1.

6-1-111. Information and evidence confidential and inadmissible - when. (1) Any testimony obtained by the attorney general or a district attorney pursuant to compulsory process under this article or any information derived directly or indirectly from such testimony shall not be admissible in evidence in any criminal prosecution against the person so compelled to testify. The provisions of this subsection (1) shall not be construed to prevent any law enforcement officer from independently producing or obtaining the same or similar facts, information, or evidence for use in any criminal prosecution.

(2) Subject to the provisions of section 6-1-110 (2), the records of investigations or intelligence information of the attorney general or a district attorney obtained under this article may be deemed public records available for inspection by the general public at the discretion of the attorney general or the district attorney. This subsection (2) shall not be construed to prevent the attorney general or a district attorney from issuing public statements describing or warning of any course of conduct or any conspiracy which constitutes a deceptive trade practice, whether on a local, statewide, regional, or nationwide basis.

Source: L. 69: p. 375, § 8. **C.R.S. 1963:** § 55-5-8. **L. 77:** Entire section amended, p. 350, § 7, effective July 1. **L. 81:** (1) amended, p. 401, § 1, effective April 30. **L. 88:** (2) amended, p. 344, § 5, effective July 1.

6-1-112. Civil penalties. (1) The attorney general or a district attorney may bring a civil action on behalf of the state to seek the imposition of civil penalties as follows:

(a) Any person who violates or causes another to violate any provision of this article shall forfeit and pay to the general fund of this state a civil penalty of not more than two thousand dollars for each such violation. For purposes of this paragraph (a), a violation of any provision shall constitute a separate violation with respect to each consumer or transaction involved; except that the maximum civil penalty shall not exceed five hundred thousand dollars for any related series of violations.

(b) Any person who violates or causes another to violate any court order or injunction issued pursuant to this article shall forfeit and pay to the general fund of this state a civil penalty of not more than ten thousand dollars for each such violation. For the purposes of this section, the court issuing the order or injunction shall retain jurisdiction, and the cause shall be continued. Upon violation, the attorney general or a district attorney may petition the court for the recovery of the civil penalty. Such civil penalty shall be in addition to any other penalty or remedy available for the enforcement of the provisions of this article and any court order or injunction.

(c) Any person who violates or causes another to violate any provision of this article, where such violation was committed against an elderly person, shall forfeit and pay to the general fund of the state a civil penalty of not more than ten thousand dollars for each such violation. For purposes of this paragraph (c), a violation of any provision of this article shall constitute a separate violation with respect to each elderly person involved.

(d) Any person who violates or causes another to violate the provisions of section 6-1-105 (1)(fff) by distributing, dispensing, displaying for sale, offering for sale, attempting to sell, or selling any product that is labeled as a "bath salt" or any other trademark if the product contains any amount of any cathinones, as defined in section 18-18-102 (3.5), C.R.S., shall forfeit and pay to the general fund of the state a civil penalty of not less than ten thousand dollars and not more than five hundred thousand dollars for each such violation; except that the person shall forfeit and pay to the general fund of the state a civil penalty of not less than twenty-five thousand dollars and not more than five hundred thousand dollars for each such violation if the person distributes, dispenses, displays for sale, offers for sale, attempts to sell, or sells the product to a minor under the age of eighteen and the person is at least eighteen years of age and at least two years older than the minor.

(e) Any person who violates or causes another to violate the provisions of section 6-1-105 (1)(ggg) by distributing, dispensing, displaying for sale, offering for sale, attempting to sell, or selling any product that contains any amount of any synthetic cannabinoid, as defined in section 18-18-102 (34.5), C.R.S., shall forfeit and pay to the general fund of the state a civil penalty of not less than ten thousand dollars and not more than five hundred thousand dollars for each violation; except that the person shall forfeit and pay to the general fund of the state a civil penalty of not less than twenty-five thousand dollars and not more than five hundred thousand dollars for each violation if the person distributes, dispenses, displays for sale, offers for sale, attempts to sell, or sells the product to a minor under the age of eighteen and the person is at least eighteen years of age and at least two years older than the minor.

(f) (I) Any person who violates section 6-16-111 (1)(a) to (1)(g) shall forfeit and pay a civil penalty of up to ten thousand dollars for each violation, with a cap of three million dollars for a related series of violations. In determining a civil penalty under this subsection (1)(f), the court shall adjust the limitations cap for inflation based on the cumulative annual adjustment for inflation for each full year since August 10, 2016. The adjustments made under this subsection (1)(f)(I) are rounded upward or downward to the nearest ten-dollar increment. As used in this subsection (1)(f)(I), "inflation" means the annual percentage change in the United States department of labor's bureau of labor statistics consumer price index for Denver-Aurora-Lakewood for all items paid by all urban consumers, or its applicable predecessor or successor index.

(II) Any civil penalty recovered under this paragraph (f) is paid to the attorney general and held as custodial money. The attorney general shall petition the district court having jurisdiction over the underlying civil enforcement action for approval to grant the custodial money to a charity in accordance with the cy pres doctrine within two years after receipt by the attorney general.

Source: L. 69: p. 376, § 9. **C.R.S. 1963:** § 55-5-9. **L. 77:** Entire section amended, p. 351, § 8, effective July 1. **L. 87:** Entire section amended, p. 359, § 8, effective July 1. **L. 2000:** (3) added, p. 1107, § 2, effective August 2. **L. 2009:** Entire section amended, (SB 09-054), ch. 138,

p. 596, § 1, effective August 5. **L. 2012:** (1)(d) added, (HB 12-1310), ch. 268, p. 1406, § 33, effective June 7. **L. 2014:** (1)(d) amended and (1)(e) added, (HB 14-1037), ch. 358, p. 1682, § 3, effective August 6. **L. 2016:** (1)(f) added, (HB 16-1129), ch. 262, p. 1075, § 1, effective August 10. **L. 2018:** (1)(f)(I) amended, (HB 18-1375), ch. 274, p. 1694, § 1, effective May 29.

6-1-113. Damages. (1) The provisions of this article shall be available in a civil action for any claim against any person who has engaged in or caused another to engage in any deceptive trade practice listed in this article. An action under this section shall be available to any person who:

(a) Is an actual or potential consumer of the defendant's goods, services, or property and is injured as a result of such deceptive trade practice, or is a residential subscriber, as defined in section 6-1-903 (9), who receives unlawful telephone solicitation, as defined in section 6-1-903 (10); or

(b) Is any successor in interest to an actual consumer who purchased the defendant's goods, services, or property; or

(c) In the course of the person's business or occupation, is injured as a result of such deceptive trade practice.

(2) Except in a class action or a case brought for a violation of section 6-1-709, any person who, in a private civil action, is found to have engaged in or caused another to engage in any deceptive trade practice listed in this article shall be liable in an amount equal to the sum of:

(a) The greater of:

(I) The amount of actual damages sustained; or

(II) Five hundred dollars; or

(III) Three times the amount of actual damages sustained, if it is established by clear and convincing evidence that such person engaged in bad faith conduct; plus

(b) In the case of any successful action to enforce said liability, the costs of the action together with reasonable attorney fees as determined by the court.

(2.3) As used in subsection (2) of this section, "bad faith conduct" means fraudulent, willful, knowing, or intentional conduct that causes injury.

(2.5) Notwithstanding the provisions of subsection (2) of this section, in the case of any violation of section 6-1-709, in addition to interest, costs of the action, and reasonable attorney fees as determined by the court, the prevailing party shall be entitled only to damages in an amount sufficient to refund moneys actually paid for a manufactured home not delivered in accordance with the provisions of section 6-1-709.

(2.7) Notwithstanding the provisions of subsection (2) of this section, in the case of any violation of section 6-1-105 (1)(ss), the court may award reasonable costs of the action and attorney fees and interest, and in addition, the prevailing party shall be entitled only to damages in an amount sufficient to refund moneys actually paid for the installation of a manufactured home not installed in accordance with the provisions of part 33 of article 32 of title 24, C.R.S., that apply to the installation of manufactured homes.

(3) Any person who brings an action under this article that is found by the court to be groundless and in bad faith or for the purpose of harassment shall be liable to the defendant for the costs of the action together with reasonable attorney fees as determined by the court.

(4) Costs and attorney fees shall be awarded to the attorney general or a district attorney in all actions where the attorney general or the district attorney successfully enforces this article.

Source: L. 69: p. 376, § 12. **C.R.S. 1963:** § 55-5-12. **L. 86:** Entire section amended, p. 446, § 5, effective April 17. **L. 87:** Entire section amended, p. 360, § 9, effective July 1. **L. 98:** IP(2) amended and (2.5) added, p. 748, § 3, effective August 5. **L. 99:** Entire section amended, p. 636, § 1, effective May 18. **L. 2000:** (2.7) added, p. 1162, § 4, effective July 1, 2001. **L. 2001:** (1)(a) amended, p. 1461, § 3, effective August 8. **L. 2003:** (2.7) amended, p. 550, § 4, effective March 5.

6-1-114. Criminal penalties. Upon a first conviction, any person who promotes a pyramid promotional scheme in this state or who violates article 5.5 of title 12, C.R.S., section 6-1-701, or section 6-1-717 is guilty of a class 1 misdemeanor, as defined in section 18-1.3-501, C.R.S., and, upon a second or subsequent conviction for a violation of article 5.5 of title 12, C.R.S., or section 6-1-701, is guilty of a class 6 felony, as defined in section 18-1.3-401, C.R.S.

Source: L. 73: p. 620, § 5. **C.R.S. 1963:** § 55-5-14. **L. 89:** Entire section amended, p. 820, § 2, effective July 1. **L. 92:** Entire section amended, p. 231, § 3, effective July 1. **L. 99:** Entire section amended, p. 654, § 7, effective May 18. **L. 2002:** Entire section amended, p. 1465, § 11, effective October 1. **L. 2007:** Entire section amended, p. 1728, § 6, effective June 1; entire section amended, p. 809, § 2, effective July 1. **L. 2008:** Entire section amended, p. 1879, § 6, effective August 5. **L. 2013:** Entire section amended, (SB 13-228), ch. 271, p. 1425, § 3, effective May 24; entire section amended, (SB 13-238), ch. 401, p. 2349, § 2, effective July 1.

Editor's note: (1) Amendments to this section by Senate Bill 07-208 and Senate Bill 07-085 were harmonized.

(2) Amendments to this section by Senate Bill 13-228 and Senate Bill 13-238 were harmonized.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

6-1-115. Limitations. All actions brought under this article must be commenced within three years after the date on which the false, misleading, or deceptive act or practice occurred or the date on which the last in a series of such acts or practices occurred or within three years after the consumer discovered or in the exercise of reasonable diligence should have discovered the occurrence of the false, misleading, or deceptive act or practice. The period of limitation provided in this section may be extended for a period of one year if the plaintiff proves that failure to timely commence the action was caused by the defendant engaging in conduct calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

Source: L. 87: Entire section added, p. 360, § 10, effective July 1.

PART 2

AUTO RENTAL CONTRACTS - COLLISION DAMAGE WAIVERS

6-1-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Collision damage waiver" means any contract or contractual provision, whether separate from or a part of a motor vehicle rental agreement, whereby the lessor agrees, for a charge, to waive any and all claims against the lessee for any damages to the rental motor vehicle during the term of the rental agreement.

(2) "Lessee" means any person or organization obtaining the use of a rental motor vehicle from a lessor under the terms of a rental agreement.

(3) "Lessor" means any person or organization in the business of providing rental motor vehicles to the public.

(4) "Private passenger type automobile or vehicle" means a motor vehicle of the private passenger or station wagon type, including passenger vans and minivans that are primarily for the transport of persons.

(5) "Rental agreement" means a written agreement setting forth the terms and conditions governing the use of a rental motor vehicle by a lessee for a period of less than one hundred eighty days.

(6) "Rental motor vehicle" means a private passenger type automobile or vehicle which, upon execution of a rental agreement, is made available to a lessee for its use.

Source: L. 89: Entire part added, p. 361, § 1, effective January 1, 1990.

6-1-202. Prohibited act. No lessor engaged in renting motor vehicles may sell to any lessee renting a motor vehicle in this state a collision damage waiver as part of the rental contract unless the lessor first gives the lessee written disclosure, as provided in section 6-1-203, of the terms and provisions of such waiver.

Source: L. 89: Entire part added, p. 361, § 1, effective January 1, 1990.

6-1-203. Collision damage waiver form - requirements - failure to comply. (1) Any collision damage waiver form shall conform to the following requirements:

(a) It shall be understandable and written in simple and readable plain language;

(b) The terms of such collision damage waiver, including, but not limited to, any conditions or exclusions applicable to the collision damage waiver, shall be prominently displayed;

(c) All restrictions, conditions, or provisions in, or endorsed on, the collision damage waiver shall be printed in type at least as large as brevier or ten-point type;

(d) The collision damage waiver shall include a statement of the total charge for the anticipated rental period or the anticipated total daily charge; and

(e) The agreement containing the collision damage waiver shall display the following notice on the face of the agreement, set apart and in bold-faced type, and in type at least as large as ten-point type:

NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A COLLISION DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE VEHICLE. YOU ARE ADVISED NOT TO SIGN THIS WAIVER IF YOU HAVE RENTAL VEHICLE COLLISION COVERAGE PROVIDED BY CERTAIN GOLD OR PLATINUM CREDIT CARDS OR COLLISION INSURANCE ON YOUR

OWN VEHICLE. BEFORE DECIDING WHETHER TO PURCHASE THE COLLISION DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN VEHICLE INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL VEHICLE AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS COLLISION DAMAGE WAIVER IS NOT MANDATORY AND MAY BE WAIVED.

(2) The failure by a lessor to comply with any provision of this section is a deceptive trade practice under the provisions of this article.

Source: L. 89: Entire part added, p. 362, § 1, effective January 1, 1990.

6-1-204. Prohibited exclusion. (1) No collision damage waiver subject to this part 2 shall contain an exclusion from the waiver for damages caused by the ordinary negligence of the lessee. Any such exclusion in violation of this section will be void and is a deceptive trade practice under this article. This section shall not be deemed to prohibit an exclusion from the waiver for damages caused by the lessee by:

(a) Willful and wanton conduct or misconduct;

(b) Intoxication by alcohol or use of controlled substances as defined in section 42-4-1301, C.R.S.;

(c) Participation in a speed contest;

(d) Carrying persons or property for hire, or pushing or towing anything;

(e) Use of the vehicle while committing a misdemeanor or felony or other criminal act;

(f) Use of the vehicle by an unauthorized driver, which includes any person not specifically authorized by the rental agreement;

(g) Supplying information which is false concerning the rental transaction with intent to defraud the lessor;

(h) Use of the vehicle outside the continental United States, unless specifically authorized by the rental agreement; and

(i) Any instance whereby, during the rental of such rental motor vehicle, the speedometer or odometer is tampered with or disconnected.

Source: L. 89: Entire part added, p. 362, § 1, effective January 1, 1990. **L. 94:** (1)(b) amended, p. 2544, § 15, effective January 1, 1995.

6-1-205. Information to be disclosed in advertisements for rental agreements for rental motor vehicles. In any advertisement to the public for a rental agreement for a rental motor vehicle that includes a rental rate, the lessor shall prominently disclose on the face of any such advertisement the daily charge of any collision damage waiver offered, a statement informing a prospective lessee that he or she should review his or her own automobile insurance coverage to determine if such coverage applies to the use of a rental motor vehicle, and a statement that a prospective lessee may also wish to determine whether his or her credit card or travel and entertainment card provides collision damage coverage for use of a rental motor vehicle or other such privilege of membership.

Source: L. 89: Entire part added, p. 363, § 1, effective January 1, 1990. **L. 2006:** Entire section amended, p. 427, § 1, effective August 7.

6-1-206. Additional mandatory charges - required disclosures - definitions. (1) If a motor vehicle rental company imposes additional mandatory charges, the rental company shall:

(a) Provide a good-faith estimate of the total charges for the entire rental, including all additional mandatory charges, whenever a quote is provided to a potential customer. The good-faith estimate may exclude mileage charges and charges for optional items that cannot be determined prior to completing a rental reservation based on the information provided by the potential customer.

(b) Disclose in the rental contract provided to the renter the total charges for the entire rental, including all additional mandatory charges. Total charges for the entire rental do not include any charges that cannot be determined at the time the rental commences.

(2) As used in this section:

(a) "Additional mandatory charge" means any separately stated charges that a motor vehicle rental company requires a renter to pay that specifically relate to the operation of a rental vehicle. "Additional mandatory charge" includes, but is not limited to, a customer facility charge, airport concession recovery fee, road safety program fee, vehicle license recovery fee, or any government imposed taxes or fees.

(b) "Motor vehicle" has the meaning set forth in section 12-6-102.

(c) "Motor vehicle rental company" has the meaning set forth in section 10-1-102.

(d) "Quote" means an estimated cost of rental provided by a motor vehicle rental company to a potential customer based on information provided by the customer, including potential dates of rental, location, or class of vehicle.

(e) "Vehicle license recovery fee" means a charge to recover costs incurred by a motor vehicle rental company to license, title, register, plate, or inspect a rental vehicle.

Source: L. 2018: Entire section added, (SB 18-100), ch. 36, p. 392, § 2, effective August 8.

PART 3

PREVENTION OF TELEMARKETING FRAUD

6-1-301. Legislative declaration. The general assembly hereby finds, determines, and declares that the use of telephones for commercial solicitation is rapidly increasing; that this form of communication offers unique benefits, but entails special risks and poses the potential for abuse; that the general assembly finds that the widespread practice of fraudulent and deceptive commercial telephone solicitation has caused substantial financial losses to thousands of consumers, and, particularly, elderly, homebound, and otherwise vulnerable consumers, and is a matter vitally affecting the public interest; and, therefore, that the general welfare of the public and the protection of the integrity of the telemarketing industry requires statutory regulation of the commercial use of telephones.

Source: L. 93: Entire part added, p. 944, § 3, effective July 1.

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:

(a) A person offering or selling a security as defined in section 11-51-201 (17), C.R.S., if:

(I) The security is either registered with the securities commissioner under section 11-51-303 or 11-51-304, C.R.S., exempt from registration under section 11-51-307, C.R.S., or the transaction in the security is exempt under section 11-51-308, C.R.S.; and

(II) The person is licensed by the securities commissioner as a broker-dealer as defined in section 11-51-201 (2), C.R.S., unless expressly excluded from such definition, or as a sales representative as defined in section 11-51-201 (14), C.R.S., unless expressly excluded from such definition, or such person is exempted from licensing under section 11-51-402, C.R.S.;

(b) (I) A person soliciting the sale of any newspaper, magazine, or other periodical of general circulation if such sales constitute a majority of such person's business and business revenues; or

(II) A person soliciting the sale of any book, record, audio tape, compact disc, or video if the person allows the purchaser to review the merchandise without obligation for at least seven days and provides a full refund for the return of undamaged merchandise within thirty days or if the person solicits such sale on behalf of a membership club operating in conformity with 16 CFR 425;

(c) A person making telephone calls to a residential customer for the sole purpose of polling or soliciting the expression of ideas, opinions, or votes, or a person soliciting solely for a political or religious cause or purpose;

(d) A paid solicitor or charitable organization that is required to and has complied with the registration, notice, and filing requirements of sections 6-16-104.6 and 6-16-104, respectively, or a person who is excluded from such notice and reporting requirements by section 6-16-103 (7);

(e) A supervised financial organization, as defined in section 5-1-301 (45), C.R.S., and its employees, when acting within the scope of their employment;

(f) A supervised lender, as defined in section 5-1-301 (46), C.R.S., and its employees, when acting within the scope of their employment;

(g) A person selling insurance, as defined in section 10-1-102 (12), C.R.S., in compliance with the requirements of title 10, C.R.S.;

(h) A person soliciting without the intent to complete and who does not in fact complete the sales transaction during the telephone solicitation or another telephone solicitation and who only completes the sales transaction at a later face-to-face meeting between the solicitor and the prospective purchaser, excluding a face-to-face meeting, the sole purpose of which is to collect the payment or deliver any item purchased, or a person soliciting a purchaser with whom the person has had a previous face-to-face meeting in the course of such person's business;

(i) Any governmental entity or employee thereof, acting in the employee's official capacity;

(j) A person soliciting telephone service, or licensed or franchised cable television service, which is billed and paid on a daily, weekly, or monthly basis and which can be canceled at any time without further obligation to the purchaser;

(k) A person or an affiliate of a person whose business is regulated by the public utilities commission;

(l) A person or an affiliate of a person whose business is regulated by the real estate commission;

(m) A person whose conduct is within the exclusive jurisdiction of the federal commodity futures trading commission as granted under the federal "Commodity Exchange Act", as amended;

(n) A seller of food for immediate consumption when the sale to one purchaser does not exceed three hundred dollars;

(o) A person who initially contacts the purchaser with a retail sales catalog requesting a telephone call response, when the person allows the purchaser to review the merchandise without obligation for at least seven days and provides a full refund for the return of undamaged merchandise within thirty days after receipt of the returned merchandise;

(p) An issuer or a subsidiary of an issuer that has a class of securities which is subject to section 12 of the federal "Securities Exchange Act of 1934", 15 U.S.C. sec. 78l, and which is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G), or (H) of subsection (g)(2) of that section;

(q) A person who has been operating for at least three years a retail business establishment in Colorado under the same name as that used in connection with the solicitation of sales by telephone if, on a continuing basis, the majority of the seller's business involves the purchaser receiving the seller's goods and services at the seller's business location;

(r) A person who has conducted business for at least three years under the same name and in the same state and offers potential purchasers satisfaction guaranteed by the sending of the product or providing the service and the purchaser has an unqualified right to review and return or cancel for at least thirty days;

(s) Any telephone marketing service company which provides telemarketing sales services under written contract to sellers and has been operating continuously for at least five years under the same business name and seventy-five percent or more of its services are performed on behalf of sellers exempt from this section. Nothing in this paragraph (s) shall be construed to exempt any seller that contracts with a telephone marketing service company for telemarketing sales services from the requirements set forth in section 6-1-303 or from the prohibitions set forth in section 6-1-304.

(t) A person soliciting business solely from business purchasers who have previously purchased identical or similar goods or services from the business enterprise on whose behalf the person is calling.

(2) "Commercial telephone solicitation" means:

(a) Unsolicited telephone calls to a person initiated by a commercial telephone seller or salesperson, or an automated dialing machine with or without a recorded message device, for the purpose of inducing the person to purchase or invest in goods, services, or property or offering an extension of credit; or

(b) Any other communication by a commercial telephone seller in which:

(I) A gift, award, or prize is offered and a telephone call response from the intended purchaser is invited; or

(II) A loan, credit card, or other extension of credit is offered to a purchaser who has not previously purchased from the person initiating the communication, and a telephone call response from the intended purchaser is invited; or

(III) A sale is to be completed or an agreement to purchase is to be entered into during the course of the telephone call response; or

(c) Any other communication by a commercial telephone seller which includes representations about the price, quality, or availability of goods, services, or property and which invites a response by telephone, including pay-per-call service calls, or which is followed by a telephone call to the intended purchaser by a salesperson.

(3) "Pay-per-call" means the use of a telephone number with a 900 prefix or any other prefix under which liability for the service or product provided attaches to the telephone bill of the individual calling such number.

(4) "Principal" means an owner, an officer of a corporation, a general partner of a partnership, the sole proprietor of a sole proprietorship, a trustee of a trust, or any other individual with similar supervisory functions with respect to any person.

(5) "Purchaser" means a person who receives or responds to a commercial telephone solicitation.

(6) "Salesperson" means any person employed or authorized by a commercial telephone seller to cause or attempt to cause a commercial telephone solicitation to be made.

(7) "Telephone sales transaction" means any payment of money by a purchaser in exchange for the promise of goods, services, property, or an extension of credit by a commercial telephone seller and includes all communications which precede such payment of money.

Source: L. 93: Entire part added, p. 944, § 3, effective July 1; (1)(b)(I) amended, p. 1573, § 3, effective July 1. **L. 97:** (1)(s) amended, p. 966, § 1, effective May 21. **L. 2000:** (1)(e) and (1)(f) amended, p. 1871, § 103, effective August 2. **L. 2001:** (1)(d) amended, p. 1250, § 9, effective May 9, 2002. **L. 2003:** (1)(g) amended, p. 613, § 2, effective July 1.

Cross references: For the federal "Commodity Exchange Act", see Pub.L. 74-675, codified at 7 U.S.C. § 1 et seq.

6-1-303. Registration of commercial telephone sellers. (1) No commercial telephone seller shall conduct business in this state without having registered with the attorney general at least ten days prior to the conduct of such business. Individual employees of the commercial telephone seller are not required to register. A commercial telephone seller conducts business in this state if the telephone solicitations of prospective purchasers are made from locations in this state or solicitation is made of prospective purchasers located in this state.

(2) A registration shall be effective for one year after the date of filing with the attorney general. Each application for registration or renewal thereof shall be accompanied by a filing fee, determined and collected by the attorney general, but such filing fee shall not exceed two hundred fifty dollars for an application for registration or one hundred dollars for an application for renewal.

(3) Whenever, prior to expiration of a commercial telephone seller's annual registration, there is a material change in the information required by subsection (5) of this section, the seller shall, within ten days, file an addendum updating the information with the attorney general.

(4) Each application for registration shall be in writing and shall contain such information regarding the conduct of the commercial telephone seller's business and the personnel conducting the business as is required by law. The application shall be submitted on a form provided by the attorney general and shall be verified by a declaration signed by each principal of the commercial telephone seller under penalty of perjury. The declaration shall specify the date and location of signing. The information submitted pursuant to this section shall be available for public inspection.

(5) Each application for registration or renewal pursuant to this section shall contain the following information:

(a) The name or names of the commercial telephone seller, including all names under which the commercial telephone seller is doing or intends to do business, if different from the name of the seller, and the name of any parent or affiliated organization;

(b) The seller's business form and the date and place of organization;

(c) The complete street addresses of all locations from which the commercial telephone seller is or will be conducting business, including a designation of the seller's principal business location;

(d) A listing of all telephone numbers, including pay-per-call numbers, to be used by the commercial telephone seller;

(e) The name, residential address, and position held by each principal of the commercial telephone seller and the names, residential addresses, and positions of those persons who have management responsibilities in connection with the commercial telephone seller's business activities;

(f) A description of the goods, services, property, or extension of credit the commercial telephone seller is offering for sale and a copy of all sales scripts the commercial telephone seller requires salespersons to use when soliciting prospective purchasers, or, if no sales script is required to be used, a description of the sales presentation;

(g) All rules, regulations, terms, restrictions, and conditions to receiving any prize, bonus, award, gift, or premium, if applicable, including a description of each prize, bonus, award, gift, or premium, and the actual or approximate odds of a purchaser's receiving such prize, bonus, award, gift, or premium;

(h) A copy or representative sample of all written materials the seller sends to any purchaser;

(i) Such additional information regarding the conduct of the commercial telephone seller's business and the personnel conducting the business as may reasonably be required by the attorney general.

Source: L. 93: Entire part added, p. 947, § 3, effective July 1.

6-1-304. Unlawful telemarketing practices. (1) A commercial telephone seller engages in an unlawful telemarketing practice when, in the course of any commercial telephone solicitation, the seller:

(a) Conducts business as a commercial telephone seller without having registered with the attorney general, as required by section 6-1-303;

(b) Fails to allow the purchaser in any telephone sales transaction to cancel any purchase or agreement to purchase goods, services, or property at any time before the expiration of three business days after the purchaser's receipt of such goods, services, or property by delivering or mailing to the commercial telephone seller written notice of cancellation. Notice of cancellation, if sent by mail, is deemed to be given as of the date the mailed notice was postmarked.

(c) Fails to refund all payments made by any purchaser in any telephone sales transaction within thirty days after the commercial telephone seller receives notice of cancellation from the purchaser; except that:

(I) If the purchaser has received goods or property from the commercial telephone seller, other than an item represented as free, the commercial telephone seller shall refund all payments made by the purchaser within thirty days after the commercial telephone seller's receipt of the returned goods or property;

(II) If the purchaser has received services, including those received during the course of a pay-per-call service call, which services cannot, by their nature, be returned, the commercial telephone seller is not required to refund payments to the purchaser;

(d) Fails to disclose to the purchaser during a telephone solicitation that the purchaser has the cancellation rights set forth in paragraph (b) of this subsection (1);

(e) Misrepresents to any person that the person has won a contest, sweepstakes, or drawing, or that the person will receive free goods, services, or property;

(f) Represents that the seller's goods, services, or property are "free" if the commercial telephone seller charges or collects a fee from the purchaser in exchange for providing or delivering such goods, services, or property;

(g) Makes any reference to the commercial telephone seller's compliance with this article to any purchaser without also disclosing that compliance with this article does not constitute approval by any governmental agency of the seller's marketing, advertisements, promotions, goods, or services;

(h) Engages in any deceptive trade practice defined in section 6-1-105 or part 7 of this article.

(2) Paragraphs (b) and (d) of subsection (1) of this section do not apply to a transaction in which the consumer obtains a full refund for the return of undamaged or unused goods or a cancellation of services by giving notice to the seller within seven days after receipt by the consumer and the seller processes the refund or cancellation within thirty days after receipt of the returned merchandise or the consumer's request for refund for services not performed or a pro rata refund for any services not yet performed for the consumer. The availability and terms of the return and refund privilege shall be disclosed to the consumer orally by telephone and in writing with any advertising or promotional material or with the delivery of the product or service. If a seller offers consumers an unconditional guarantee, a clear disclosure of such guarantee by using the words "satisfaction guaranteed", "free inspection", or "no-risk guarantee" satisfy the disclosure requirements of this subsection (2).

(3) The unlawful telemarketing practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable at common law or under other civil and criminal statutes of this state.

(4) (a) On or after September 1, 2005, a person commits an unlawful telemarketing practice if the person knowingly:

(I) Lists a cellular telephone number in a directory for a commercial purpose unless the person whose number has been listed has given affirmative consent, through written, oral, or electronic means, to such listing; or

(II) Uses a scanning device or other electronic means to identify a cellular telephone number and to make a commercial telephone solicitation to a cellular telephone.

(b) This subsection (4) shall not apply to a commercial telephone solicitation that is in relation to a preexisting commercial relationship between the person and the person who owns the cellular telephone.

Source: L. 93: Entire part added, p. 949, § 3, effective July 1. **L. 99:** (1)(h) amended, p. 654, § 8, effective May 18. **L. 2000:** (1)(c)(II) amended, p. 244, § 2, effective March 30. **L. 2005:** (4) added, p. 630, § 1, effective August 8.

6-1-305. Penalties. (1) In addition to the remedies available under sections 6-1-110, 6-1-112, and 6-1-113:

(a) Any person who, after receiving written notice of noncompliance from the attorney general or a district attorney, conducts business as a commercial telephone seller without having registered with the attorney general as required by section 6-1-303 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.;

(b) Any commercial telephone seller who knowingly engages in any unlawful telemarketing practice as defined in section 6-1-304 (1)(b) to (1)(h) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.;

(c) A person who engages in any unlawful telemarketing practice as defined in section 6-1-304 (4) shall be liable in a private civil action to the owner of the cellular telephone for consequential damages, court costs, attorney fees, and a penalty in the amount of at least three hundred dollars and not more than five hundred dollars for a first offense and at least five hundred dollars and not more than one thousand dollars for a second or subsequent offense.

Source: L. 93: Entire part added, p. 950, § 3, effective July 1. **L. 2002:** (1)(a) and (1)(b) amended, p. 1465, § 12, effective October 1. **L. 2005:** (1)(c) added, p. 630, § 2, effective August 8.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (1)(a) and (1)(b), see section 1 of chapter 318, Session Laws of Colorado 2002.

6-1-306. Repeal. (Repealed)

Source: L. 93: Entire part added, p. 951, § 3, effective July 1. **L. 96:** Entire section repealed, p. 788, § 2, effective July 1.

PART 4

WARRANTIES FOR ASSISTIVE TECHNOLOGY ACT

6-1-401. Legislative intent. (1) It is the intent of the general assembly to encourage and promote independent living and self-sufficiency for persons with disabilities and to reduce their need to rely on publicly funded supports. Of an estimated forty-nine million Americans with disabilities, approximately seventy percent of them are unemployed or underemployed. Having safe, reliable assistive technology represents a most essential need given the many barriers to independent living and self-sufficiency people with disabilities face.

(2) The goal of meeting this essential need can be furthered by assuring that assistive technology provided to persons with disabilities is of quality and is covered by adequate warranties to maintain their assistive technology in proper working condition, to assure availability of appropriate loaner replacement assistive technology while their own is being repaired, and to encourage manufacturers and dealers to cooperatively pool assistive technology resources for loaner purposes to assure availability without an undue burden.

(3) The general assembly finds and declares it is in the state's best interest to adopt this part 4.

Source: L. 97: Entire part added, p. 604, § 1, effective July 1.

6-1-402. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity in a wheelchair, including the cost of an alternative wheelchair, if a loaner, as that term is defined in subsection (8) of this section, was not offered to the consumer, or other assistive device or service for mobility assistance. "Collateral costs" shall not include the cost of hiring a personal assistant.

(2) "Consumer" means:

(a) A purchaser of a wheelchair, if the wheelchair was purchased from a wheelchair dealer or manufacturer for purposes other than resale;

(b) A person to whom a wheelchair is transferred for purposes other than resale, if such transfer occurs before the expiration of the express warranty applicable to such wheelchair;

(c) A person who may enforce the express warranty applicable to a wheelchair; or

(d) A person who leases a wheelchair from a wheelchair lessor under a written lease.

(3) "Dealer" means a person or entity that is in the business of selling wheelchairs or any agents of that person or entity. "Dealer" includes an alternative warranty service provider.

(4) (a) "Early termination cost" means any expense or obligation that a wheelchair lessor incurs as a result of:

(I) Terminating a written lease before the termination date set forth in the lease; and

(II) Returning the wheelchair to the manufacturer.

(b) "Early termination cost" includes any prepayment penalty under a finance arrangement.

(5) "Early termination savings" means any expense or obligation that a wheelchair lessor avoids as a result of performing the acts described in paragraph (a) of subsection (4) of this section. "Early termination savings" includes any interest charge that the wheelchair lessor would have paid to finance the wheelchair or, if the wheelchair lessor did not finance the wheelchair, the difference between the total amount the lessee was obligated to pay over the period of the lease term remaining after the early termination date and the present value of that amount on the early termination date.

(6) "Express warranty" means an express warranty as set forth in sections 4-2-313 and 4-2.5-210, C.R.S. An express warranty shall cover every part of a new wheelchair except the tires and batteries.

(7) "Lessor" means a person or entity that leases a wheelchair to a consumer or that holds the lessor's rights under a written lease or any agents of that person or entity.

(8) "Loaner" means a wheelchair that is provided to the consumer for use free of charge that is not required to have the functional capabilities equal to or greater than those of the original wheelchair but that meets the following conditions:

(a) It is in good working order;

(b) It performs at a minimum the most essential functions of the original wheelchair in light of the disabilities of the user;

(c) It is usable by the consumer given the consumer's impairments; and

(d) Any difference between the loaner and the original wheelchair does not create a threat to safety.

(9) "Manufacturer" means a person or entity that manufactures or assembles wheelchairs and any agents of that person or entity, including an importer, a distributor, an authorized servicer, a factory branch, a distributor branch, and warrantors of the manufacturer's wheelchairs. "Manufacturer" does not include a dealer.

(10) "Modular assembly" means a device added to the wheelchair base to accommodate the special needs of the consumer, such as seating systems, tilt or recline systems, and specially adapted control modules.

(11) "Nonconformity" means a defect that substantially impairs the use, reliability, value, or safety of a wheelchair and that is covered by an express warranty applicable to such wheelchair or a component of such wheelchair. "Nonconformity" does not include a defect that is the result of abuse, neglect, or the unauthorized modification or alteration of a wheelchair by a consumer.

(12) "Reasonable attempt to repair" means that one of the following has occurred within the term of an express warranty applicable to a new wheelchair or within one year after first delivery of a wheelchair to a consumer, whichever occurs earlier:

(a) The same nonconformity is subject to repair at least three times by the manufacturer, lessor, or any of the manufacturer's authorized dealers; or

(b) Because of a nonconformity, the wheelchair cannot be used by the consumer for an aggregate of at least thirty days or ten consecutive business days.

(13) "Replacement wheelchair" means a wheelchair of comparable quality, size, and function.

(14) "Selling dealer" means the entity that originally sold the wheelchair to the consumer and was involved in the design, assembly, fitting, and education of the consumer on the use and maintenance of the wheelchair.

(15) "Specialty control module" means the technologically advanced electronic device of limited availability that contains the signal and output circuitry for a power wheelchair designed and assembled for use by a specific individual with severe limitations who is unable to use a standard control module.

(16) "Standard wheelchair" means a wheelchair that has seat width and depth dimensions of sixteen to eighteen inches.

(17) "Wheelchair" means any wheelchair, scooter, or modular assembly, including a demonstrator, that is motor driven or manually operated that a consumer purchases or accepts transfer of in this state for the purposes of mobility assistance.

Source: L. 97: Entire part added, p. 605, § 1, effective July 1.

6-1-403. Express warranty required - authorized servicers. (1) (a) Except as provided in subsection (2) of this section, a consumer who purchases or leases a new wheelchair either directly or indirectly through a dealer or lessor shall receive an express warranty for such wheelchair. The manufacturer shall issue this express warranty that shall extend for not less than one year after first delivery to the consumer.

(b) Except as provided in subsection (2) of this section, a selling dealer shall provide an express warranty for any modifications made by the dealer that shall also extend for not less than six months after first delivery to the consumer.

(2) Notwithstanding the provisions of subsection (1) of this section, the warranty for the specialty control module shall be limited to the warranty provided by the manufacturer of such specialty control module or ninety days, whichever is longer.

(3) If a manufacturer or dealer fails to furnish the express warranty required by this section, the wheelchair shall be covered by a warranty the same as if an express warranty had been provided by the manufacturer or dealer pursuant to this section.

(4) Any entity that sells or leases wheelchairs in this state, including any entity that sells or leases through mail order or catalogue sales, shall designate an authorized servicer for such chairs that is located in this state in reasonable proximity to the consumer.

(5) (a) In the event that the selling dealer from whom the consumer purchased the wheelchair goes out of business or ceases to be an authorized dealer or service center for the manufacturer, or if the dealer or consumer moves or relocates to a location that makes it unreasonable for the consumer to seek warranty service from the selling dealer, or if the consumer is dissatisfied with the selling dealer, the consumer shall be responsible for contacting the manufacturer or another authorized dealer which will be responsible for facilitating the warranty service required with an authorized dealer, to be mutually agreed upon by the consumer and the manufacturer, which entity shall be referred to as the alternative warranty service provider.

(b) In the event that an alternative warranty service provider is designated pursuant to paragraph (a) of this subsection (5), the consumer may only seek warranty service from such alternative warranty service provider.

(c) To the extent reasonable and possible, the manufacturer shall take into account the independent mobility resources of the consumer when determining the alternative warranty service provider pursuant to the provisions of this subsection (5).

Source: L. 97: Entire part added, p. 607, § 1, effective July 1.

6-1-404. Remedies. (1) If a new wheelchair does not conform to the applicable express warranty and the consumer reports the nonconformity to the manufacturer, the lessor, the selling dealer, or the alternative warranty service provider, and makes the wheelchair available for repair within the warranty period, the nonconformity shall be repaired at no charge to the

consumer. Any repairs performed pursuant to the provisions of this section shall be warranted for a period not less than the original warranty period. When the wheelchair is not safely moveable and there is no reasonable way for the consumer to deliver the wheelchair to the manufacturer or dealer, the manufacturer or dealer shall be responsible for the return of the wheelchair, or the wheelchair may be repaired on site at the option of the dealer.

(2) If the manufacturer authorizes the dealer or lessor to make the repair, the dealer or lessor shall make the repair and then be reimbursed by the manufacturer for the dealer's or lessor's cost for parts, labor, and repair if the nonconformity is a manufacturer's defect. A manufacturer shall respond to the dealer's or lessor's request for authorization to make a repair by the end of the business day that immediately follows the day such a request is made.

(3) When a wheelchair covered by an express warranty is tendered by a consumer to the manufacturer, selling dealer, alternative warranty service provider, or lessor for the repair of a defect, malfunction, or nonconformity to which the warranty is applicable, the consumer shall receive a loaner if the out-of-service period exceeds one day and shall keep the loaner until the requirements of section 6-1-405 or 6-1-406 are fulfilled. If the required loaner is not a standard wheelchair, the manufacturer or dealer shall make a good faith effort to make available alternative equipment that is usable by the consumer. The cost of the loaner shall be borne by the entity responsible for the defect requiring the repair or replacement of the wheelchair as provided in this section. The consumer shall have the duty to care for the loaner properly and to protect against any damage to the chair.

(4) If a nonconformity is not repaired after a reasonable attempt to repair, the manufacturer or dealer who originally supplied or modified the wheelchair, as required by this section, shall:

(a) If the wheelchair was purchased, take the following action at the direction of the consumer:

(I) Accept a return of the wheelchair, provide a replacement wheelchair of equal or greater value, and refund any collateral costs to the consumer, a holder of a perfected security interest in the wheelchair, or a third-party purchaser; or

(II) Accept a return of the wheelchair and refund to the consumer, holder of a perfected security interest in the wheelchair, or third-party purchaser not more than the full purchase price plus any finance charge, sales tax, shipping costs, and collateral costs paid;

(b) If the wheelchair was leased, take all of the following actions at the direction of the consumer:

(I) Accept a return of the wheelchair;

(II) (A) Refund to the lessor and any holder of a perfected security interest in the wheelchair the current value of the written lease.

(B) For purposes of this subparagraph (II), "current value of the written lease" means the sum of the total amount for which the consumer is obligated during the term of the lease remaining after the early termination date, the dealer's early termination costs, and the value of the wheelchair on the lease expiration date, if the lease sets forth that value, less the lessor's early termination savings.

(III) Refund to the consumer or third-party purchaser the amount paid under the lease plus any collateral costs.

(5) (a) In the event that a dispute arises as to liability under this part 4 between or among a manufacturer, dealer, lessor, or consumer, and the consumer is covered by any third-party

insurer, such third-party insurer shall not be relieved of any obligation to provide benefits covered under its plan or applicable law.

(b) In the event that a wheelchair is found to be defective, the third-party payor described in paragraph (a) of this subsection (5) shall have all rights of recovery, including the right to costs, that the consumer would have had under this part 4.

Source: L. 97: Entire part added, p. 608, § 1, effective July 1.

6-1-405. Remedies for consumers of purchased wheelchairs - conditions. (1) To receive a refund or a replacement wheelchair, the consumer of a purchased wheelchair shall first offer to transfer the wheelchair with the nonconformity to the manufacturer, selling dealer, or alternative warranty service provider.

(2) Within thirty business days after receipt of the offer described in subsection (1) of this section, the manufacturer or dealer shall provide the consumer with a refund or a replacement wheelchair.

(3) When a manufacturer or dealer provides a consumer with a refund or a replacement wheelchair, such consumer shall return the wheelchair with the nonconformity, if such wheelchair is safely operable, to the manufacturer or dealer with any endorsements necessary to transfer possession to the manufacturer or dealer. When the wheelchair is not safely movable and there is no reasonable way for the consumer to deliver the wheelchair to the manufacturer or dealer, the manufacturer or dealer shall be responsible for the return of the wheelchair.

Source: L. 97: Entire part added, p. 610, § 1, effective July 1.

6-1-406. Remedies for consumers of leased wheelchairs - conditions. (1) To receive a refund due on a leased wheelchair, a consumer shall first offer to return the wheelchair with the nonconformity to the lessor.

(2) Within thirty business days after receipt of the offer described in subsection (1) of this section, the lessor shall provide the consumer with a refund.

(3) When a lessor provides a consumer with a refund, such consumer shall return the wheelchair with the nonconformity to such lessor.

(4) A lessor shall offer to transfer to a manufacturer or dealer the possession of a wheelchair returned pursuant to subsection (3) of this section. Within thirty business days after receiving such offer, the manufacturer or dealer shall remit the refund amount to the lessor. When the manufacturer or dealer makes such refund, the lessor shall provide the manufacturer or dealer with the endorsements necessary to transfer possession to the manufacturer or dealer.

Source: L. 97: Entire part added, p. 610, § 1, effective July 1.

6-1-407. Resale of a returned wheelchair - disclosure required. A wheelchair returned pursuant to this part 4 by a consumer in this state, or by a consumer in another state under a similar law of that state, shall not be sold or leased again in this state unless full disclosure is made to the prospective consumer of the reasons for the return.

Source: L. 97: Entire part added, p. 611, § 1, effective July 1.

6-1-408. Other remedies - waiver of rights void. (1) This part 4 shall not limit the rights or remedies available to a consumer under any other law of this state.

(2) If a consumer waives the rights granted to consumers pursuant to this part 4, such waiver shall be void as against public policy.

(3) Notwithstanding the remedies that are available to a consumer pursuant to this part 4, a consumer may pursue any other remedy, including an action to recover for damages caused by a violation of this part 4. If a manufacturer or dealer is found to have violated this part 4, a consumer shall be awarded the amount of actual damages caused by the violation and reasonable attorney fees. The consumer may be awarded collateral costs and punitive damages.

Source: L. 97: Entire part added, p. 611, § 1, effective July 1.

6-1-409. Fraudulent acts. Any manufacturer, dealer, or lessor that engages in conduct to delay making a final repair that is required as a consequence of the enforcement of warranties or duties under this part 4 with the intention of requiring payment of the cost of such repair to be made by a publicly funded program of public assistance, medical assistance, or rehabilitation assistance commits the crime of theft, which crime shall be classified in accordance with section 18-4-401 (2), C.R.S., and which crime shall be punished as provided in section 18-1.3-401, C.R.S., if the crime is classified as a felony, or section 18-1.3-501, C.R.S., if the crime is classified as a misdemeanor.

Source: L. 97: Entire part added, p. 611, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1465, § 13, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

6-1-410. Arbitration. Disputes among manufacturers, dealers, and lessors concerning the enforcement of rights or remedies of consumers under this part 4 shall be subject to arbitration pursuant to the Colorado rules of civil procedure. The award of the arbitration panel shall be binding upon the parties and shall only be subject to court review by trial de novo.

Source: L. 97: Entire part added, p. 611, § 1, effective July 1.

6-1-411. Defect notification. (1) A manufacturer shall be responsible for providing written notification to an owner, user, purchaser, dealer, lessor, or consumer of any known or discovered inherent defect in a wheelchair that affects the safety, usability, or reliability of that wheelchair. The manufacturer shall send such notification by first class mail to the last known address of the owner, user, purchaser, dealer, lessor, or consumer within fourteen days after learning of such a defect.

(2) A manufacturer shall be responsible for the costs of providing the notification required in subsection (1) of this section and for all costs associated with correcting any defect described in subsection (1) of this section.

(3) The provisions of this section shall apply without time limitations.

Source: L. 97: Entire part added, p. 611, § 1, effective July 1.

6-1-412. Disclosures. (1) Prior to the sale of any wheelchair, the seller shall disclose whether the wheelchair is new or used and whether any warranty applies to such wheelchair.

(2) Upon delivery of a new or used wheelchair, the seller shall advise the buyer of any warranty rights under this part 4 and the wheelchair's maintenance schedule and operating instructions and shall provide the buyer with a copy of the owner's manual.

(3) The disclosure required pursuant to subsection (1) of this section and the advisement required pursuant to subsection (2) of this section shall be in writing and shall, in the case of buyer who is a person adjudicated not mentally competent, be provided to the guardian, parent, legal custodian, or primary caregiver of such person.

Source: L. 97: Entire part added, p. 612, § 1, effective July 1.

PART 5

WARRANTIES FOR FACILITATIVE TECHNOLOGY ACT

6-1-501. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity in a facilitative device, including the cost of an alternative facilitative device or other facilitative device or service.

(2) "Consumer" means:

(a) A purchaser of a facilitative device, if the facilitative device was purchased from a dealer or manufacturer for purposes other than resale;

(b) A person to whom a facilitative device is transferred for purposes other than resale, if such transfer occurs before the expiration of the express warranty applicable to such facilitative device;

(c) A person who may enforce the express warranty applicable to a facilitative device; or

(d) A person who leases a facilitative device from a lessor under a written lease.

(3) "Dealer" means a person or entity that is in the business of selling facilitative devices, or any agents of that person or entity. "Dealer" includes an alternative warranty service provider.

(4) (a) "Early termination cost" means any expense or obligation that a lessor of facilitative devices incurs as a result of:

(I) Terminating a written lease before the termination date set forth in the lease; and

(II) Returning the facilitative device to the manufacturer.

(b) "Early termination cost" includes any prepayment penalty under a finance arrangement.

(5) "Early termination savings" means any expense or obligation that a lessor of facilitative devices avoids as a result of performing the acts described in paragraph (a) of subsection (4) of this section. "Early termination savings" includes any interest charge that the lessor of facilitative devices would have paid to finance the facilitative device or, if the lessor did not finance the facilitative device, the difference between the total amount the lessee was

obligated to pay over the period of the lease term remaining after the early termination date and the present value of that amount on the early termination date.

(6) "Express warranty" means an express warranty as set forth in sections 4-2-313 and 4-2.5-210, C.R.S. An express warranty shall cover every part of a new facilitative device.

(7) "Facilitative device" means a device that has a retail price equal to or greater than one hundred dollars and that is exclusively designed and manufactured to assist a person with a disability with such person's specific disability, through the use of facilitative technology, to be self-sufficient or to maintain or improve that person's quality of life. "Facilitative device" does not include wheelchairs as that term is defined in section 6-1-402 (17). "Facilitative device" does include:

(a) Telephone communication devices for the hearing impaired and other facilitative listening devices except for hearing aids, as defined in section 12-29.9-101 (5), C.R.S., and surgically implanted hearing devices, as defined in section 12-29.9-101 (8), C.R.S.;

(b) Computer equipment and reading devices with voice input or output, optical scanners, talking software, braille printers, and other aids and devices that provide access to text by a person with a disability;

(c) Computer equipment with voice output, artificial larynges, voice amplification devices, and other alternative and augmentative communication devices;

(d) Voice recognition computer equipment, software and hardware accommodations, and other forms of alternative access to computers for persons with disabilities; and

(e) Any other device, other than a wheelchair, that enables a person with a disability to communicate, see, hear, or maneuver.

(8) "Facilitative technology" means technology used to develop technological devices to be used exclusively for the purpose of assisting a person with a disability with respect to such person's specific disability by facilitating or enhancing that person's ability to be self-sufficient.

(9) "Lessor" means a person or entity that leases a facilitative device to a consumer or that holds the lessor's rights under a written lease, or any agents of that person or entity.

(10) "Manufacturer" means a person or entity that manufactures or assembles facilitative devices and any agents of that person or entity, including an importer, a distributor, an authorized servicer, a factory branch, a distributor branch, and warrantors of the manufacturer's facilitative devices. "Manufacturer" does not include a dealer.

(11) "Nonconformity" means a defect that substantially impairs the use, reliability, value, or safety of a facilitative device and that is covered by an express warranty applicable to such facilitative device or a component of such facilitative device. "Nonconformity" does not include a defect that is the result of abuse, neglect, or the unauthorized modification or alteration of a facilitative device by a consumer.

(12) "Person with a disability" means a person who is considered to have a mental or physical disability, impairment, or handicap for purposes of any other law of this state or of the United States, including any rule or regulation.

(13) "Reasonable attempt to repair" means that one of the following has occurred within the term of an express warranty applicable to a new facilitative device or within one year after first delivery of a facilitative device to a consumer, whichever occurs earlier:

(a) The same nonconformity is subject to repair at least three times by the manufacturer, the lessor, or any of the manufacturer's authorized dealers; or

(b) Because of a nonconformity, the facilitative device cannot be used by the consumer for an aggregate of at least thirty days.

(14) "Replacement facilitative device" means a facilitative device of comparable quality, size, and function.

(15) "Selling dealer" means the entity that originally sold the facilitative device to the consumer and was involved in the design, assembly, fitting, and education of the consumer on the use and maintenance of the facilitative device.

Source: L. 98: Entire part added, p. 194, § 1, effective July 1. **L. 99:** (7)(a) amended, p. 654, § 9, effective May 18. **L. 2007:** (7)(a) amended, p. 809, § 3, effective July 1. **L. 2013:** IP(7) and (7)(a) amended, (SB 13-039), ch. 288, p. 1536, § 3, effective May 24.

6-1-502. Express warranty required - authorized servicers. (1) A consumer who purchases or leases a new facilitative device either directly or indirectly through a dealer or lessor shall receive an express warranty for such facilitative device. The manufacturer shall issue this express warranty that shall extend for not less than one year after first delivery to the consumer.

(2) If a manufacturer or dealer fails to furnish the express warranty required by this section, the facilitative device shall be covered by a warranty the same as if an express warranty had been provided by the manufacturer or dealer pursuant to this section.

(3) Any entity that sells or leases facilitative devices in this state, including any entity that sells or leases through mail order or catalogue sales, shall designate an authorized servicer for such facilitative devices that is accessible to the consumer.

(4) (a) In the event that the selling dealer from whom the consumer purchased the facilitative device goes out of business or ceases to be an authorized dealer or service center for the manufacturer, or if the dealer or consumer moves or relocates to a location that makes it unreasonable for the consumer to seek warranty service from the selling dealer, or if the consumer is dissatisfied with the selling dealer, the consumer shall be responsible for contacting the manufacturer or another authorized dealer which will be responsible for facilitating the warranty service required with an authorized dealer, to be mutually agreed upon by the consumer and the manufacturer, which entity shall be referred to as the "alternative warranty service provider".

(b) In the event that an alternative warranty service provider is designated pursuant to paragraph (a) of this subsection (4), the consumer may only seek warranty service from such alternative warranty service provider.

Source: L. 98: Entire part added, p. 197, § 1, effective July 1.

6-1-503. Remedies. (1) If a new facilitative device does not conform to the applicable express warranty and the consumer reports the nonconformity to the manufacturer, the lessor, the selling dealer, or the alternative warranty service provider and makes the facilitative device available for repair within the warranty period, the nonconformity shall be repaired at no charge to the consumer. Any repairs performed pursuant to the provisions of this section shall be warranted for a period not less than the original warranty period.

(2) If the manufacturer authorizes the dealer or lessor to make the repair, the dealer or lessor shall make the repair and then be reimbursed by the manufacturer for the dealer's or lessor's cost for parts, labor, and repair if the nonconformity is a manufacturer's defect. A manufacturer shall respond to the dealer's or lessor's request for authorization to make a repair within three business days after such a request is made.

(3) If a nonconformity is not repaired after a reasonable attempt to repair, the manufacturer or dealer who originally supplied or modified the facilitative device, as required by this section, shall:

(a) If the facilitative device was purchased, take the following action at the direction of the consumer:

(I) Accept a return of the facilitative device, provide a replacement facilitative device of equal or greater value, and refund any collateral costs to the consumer, a holder of a perfected security interest in the facilitative device, or a third-party purchaser; or

(II) Accept a return of the facilitative device and refund to the consumer, holder of a perfected security interest in the facilitative device, or third-party purchaser not more than the full purchase price plus any finance charge, sales tax, shipping costs, and collateral costs paid;

(b) If the facilitative device was leased, take all of the following actions at the direction of the consumer:

(I) Accept a return of the facilitative device;

(II) (A) Refund to the lessor or any holder of a perfected security interest in the facilitative device the current value of the written lease.

(B) For purposes of this subparagraph (II), "current value of the written lease" means the sum of the total amount for which the consumer is obligated during the term of the lease remaining after the early termination date, the dealer's early termination costs, and the value of the facilitative device on the lease expiration date, if the lease sets forth that value, less the lessor's early termination savings.

(III) Refund to the consumer or third-party purchaser the amount paid under the lease plus any collateral costs.

(4) (a) In the event that a dispute arises as to liability under this part 5 between or among a manufacturer, dealer, lessor, or consumer and the consumer is covered by any third-party insurer, such third-party insurer shall not be relieved of any obligation to provide benefits covered under its plan or applicable law.

(b) In the event that a facilitative device is found to be defective, the third-party payor described in paragraph (a) of this subsection (4) shall have all rights of recovery, including the right to costs, that the consumer would have had under this part 5.

Source: L. 98: Entire part added, p. 198, § 1, effective July 1.

6-1-504. Remedies for consumers of purchased facilitative devices - conditions. (1) To receive a refund or a replacement facilitative device, the consumer of a purchased facilitative device shall first offer to transfer the facilitative device with the nonconformity to the manufacturer, selling dealer, or alternative warranty service provider.

(2) Within thirty business days after receipt of the offer described in subsection (1) of this section, the manufacturer or dealer shall provide the consumer with a refund or a replacement facilitative device.

(3) When a manufacturer or dealer provides a consumer with a refund or a replacement facilitative device, such consumer shall return the facilitative device with the nonconformity to the manufacturer or dealer with any endorsements necessary to transfer possession to the manufacturer or dealer.

Source: L. 98: Entire part added, p. 199, § 1, effective July 1.

6-1-505. Remedies for consumers of leased facilitative devices - conditions. (1) To receive a refund due on a leased facilitative device, a consumer shall first offer to return the facilitative device with the nonconformity to the lessor.

(2) Within thirty business days after receipt of the offer described in subsection (1) of this section, the lessor shall provide the consumer with a refund.

(3) When a lessor provides a consumer with a refund, such consumer shall return the facilitative device with the nonconformity to such lessor.

(4) A lessor shall offer to transfer to the manufacturer or dealer possession of the facilitative device returned pursuant to subsection (3) of this section. Within thirty business days after receiving such offer, the manufacturer or dealer shall remit the refund amount to the lessor. When the manufacturer or dealer makes such refund, the lessor shall provide the manufacturer or dealer with the endorsements necessary to transfer possession to the manufacturer or dealer.

Source: L. 98: Entire part added, p. 199, § 1, effective July 1.

6-1-506. Resale of a returned facilitative device - disclosure required. A facilitative device returned pursuant to this part 5 by a consumer in this state, or by a consumer in another state under a similar law of that state, shall not be sold or leased again in this state unless full disclosure is made to the prospective consumer of the reasons for the return.

Source: L. 98: Entire part added, p. 200, § 1, effective July 1.

6-1-507. Other remedies - waiver of rights void - limitation of coverage. (1) This part 5 shall not limit the rights or remedies available to a consumer under any other law of this state.

(2) This part 5 shall be in addition to and shall not limit the rights or remedies available to a consumer under any manufacturer's warranty with respect to a facilitative device or other technological device designed to be used by and assist a person with a disability, regardless of the retail price of the facilitative device or other technological device.

(3) If a consumer waives the rights granted to consumers pursuant to this part 5, such waiver shall be void as against public policy.

(4) Notwithstanding the remedies that are available to a consumer pursuant to this part 5, a consumer may pursue any other remedy, including an action to recover damages caused by a violation of this part 5. If a manufacturer or dealer is found to have violated this part 5, a consumer shall be awarded the amount of actual damages caused by the violation and reasonable attorney fees. The consumer may be awarded collateral costs and punitive damages.

(5) Nothing in this part 5 shall be deemed or construed to be a warranty to consumers of wheelchairs described in part 4 of this article.

Source: L. 98: Entire part added, p. 200, § 1, effective July 1.

6-1-508. Fraudulent acts. Any manufacturer, dealer, or lessor that engages in conduct to delay making a final repair that is required as a consequence of the enforcement of warranties or duties under this part 5 with the intention of requiring payment of the cost of such repair to be made by a publicly funded program of public assistance, medical assistance, or rehabilitation assistance commits the crime of theft, which crime shall be classified in accordance with section 18-4-401 (2), C.R.S., and which crime shall be punished as provided in section 18-1.3-401, C.R.S., if the crime is classified as a felony, or section 18-1.3-501, C.R.S., if the crime is classified as a misdemeanor.

Source: L. 98: Entire part added, p. 200, § 1, effective July 1. **L. 2002:** Entire section amended, p. 1465, § 14, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

6-1-509. Arbitration. Disputes among manufacturers, dealers, and lessors concerning the enforcement of rights or remedies of consumers under this part 5 shall be subject to arbitration pursuant to the Colorado rules of civil procedure. The award of the arbitration panel shall be binding upon the parties and shall only be subject to court review by trial de novo.

Source: L. 98: Entire part added, p. 200, § 1, effective July 1.

6-1-510. Defect notification. (1) A manufacturer shall be responsible for providing written notification to an owner, user, purchaser, dealer, lessor, or consumer of any known or discovered inherent defect in a facilitative device that affects the safety, usability, or reliability of that facilitative device. The manufacturer shall send such notification by first-class mail to the last-known address of the owner, user, purchaser, dealer, lessor, or consumer within fourteen days after learning of such a defect.

(2) A manufacturer shall be responsible for the costs of providing the notification required in subsection (1) of this section and for all costs associated with correcting any defect described in subsection (1) of this section.

(3) The provisions of this section shall apply without time limitations.

Source: L. 98: Entire part added, p. 201, § 1, effective July 1.

6-1-511. Disclosures. (1) Prior to the sale of any facilitative device, the seller shall disclose whether the facilitative device is new or used and whether any warranty applies to such facilitative device.

(2) Upon delivery of a new or used facilitative device, the seller shall advise the consumer of any warranty rights under this part 5 and the facilitative device's maintenance schedule and operating instructions and shall provide the consumer with a copy of the owner's manual.

(3) The disclosure required pursuant to subsection (1) of this section and the advisement required pursuant to subsection (2) of this section shall be in writing and shall, in the case of a consumer who is a person adjudicated not mentally competent, be provided to the guardian, parent, legal custodian, or primary caregiver of such person.

Source: L. 98: Entire part added, p. 201, § 1, effective July 1.

PART 6

SELLERS OF MANUFACTURED HOMES - REGISTRATION,
ESCROW AND BONDING,
AND CONTRACT REQUIREMENTS

6-1-601 to 6-1-606. (Repealed)

Source: L. 2003: Entire part repealed, p. 532, § 1, effective March 5.

Editor's note: This part 6 was added in 1999 and was not amended prior to its repeal in 2003. For the text of this part 6 prior to 2003, consult the 2002 Colorado Revised Statutes.

PART 7

SPECIFIC PROVISIONS

Editor's note: This part 7 was added with relocations in 1999. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

6-1-701. Dispensing hearing aids - deceptive trade practices - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Dispense", with regard to a hearing aid, means to sell or transfer title, possession, or the right to use by lease, bailment, or any other method. The term does not apply to wholesale transactions with distributors or dealers.

(b) "Dispenser" means a person who dispenses hearing aids.

(c) (I) "Hearing aid" means any wearable instrument or device designed or offered to aid or compensate for impaired human hearing and includes:

(A) Any parts, attachments, or accessories to the instrument or device, as defined in rules adopted by the director of the division of professions and occupations in the department of regulatory agencies; and

(B) Ear molds, excluding batteries and cords.

(II) "Hearing aid" does not include a surgically implanted hearing device.

(d) "Practice of dispensing, fitting, or dealing in hearing aids" includes:

(I) Selecting and adapting hearing aids for sale;

(II) Testing human hearing for purposes of selecting and adapting hearing aids for sale; and

(III) Making impressions for ear molds and counseling and instructing prospective users for purposes of selecting, fitting, adapting, or selling hearing aids.

(e) "Surgically implanted hearing device" means a device that is designed to produce useful hearing sensations to a person with a hearing impairment and that has, as one or more components, a unit that is surgically implanted into the ear, skull, or other interior part of the body. The term includes any associated unit that may be worn on the body.

(2) In addition to any other deceptive trade practices under section 6-1-105, a dispenser engages in a deceptive trade practice when the dispenser:

(a) Fails to deliver to each person to whom the dispenser dispenses a hearing aid a receipt that:

(I) Bears the business address of the dispenser together with specifications as to the make and serial number of the hearing aid furnished and the full terms of the sale clearly stated. If the dispenser dispenses a hearing aid that is not new, the dispenser shall clearly mark on the hearing aid container and the receipt the term "used" or "reconditioned", whichever is applicable, within the terms of the guarantee, if any.

(II) Bears, in no smaller type than the largest used in the body of the receipt, in substance, a provision that the buyer has been advised at the outset of the buyer's relationship with the dispenser that any examination or representation made by a dispenser in connection with the practice of dispensing, fitting, or dealing in hearing aids is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and, therefore, must not be regarded as medical opinion or advice;

(III) Bears, in no smaller type than the largest used in the body of the receipt, a provision indicating that dispensers who are licensed, certified, or registered by the department of regulatory agencies are regulated by the division of professions and occupations in the department of regulatory agencies;

(IV) Bears a provision labeled "warranty" in which the exact warranty terms and periods available from the manufacturer are documented, or includes an original or photocopy of the original manufacturer's warranty with the receipt;

(b) Dispenses a hearing aid to a child under eighteen years of age without receiving documentation that the child has been examined by a licensed physician and an audiologist within six months prior to the fitting;

(c) (I) Fails to receive from a licensed physician, before dispensing, fitting, or selling a hearing aid to any person, a written prescription or recommendation, issued within the previous six months, that specifies that the person is a candidate for a hearing aid; except that any person eighteen years of age or older who objects to medical evaluation on the basis of religious or personal beliefs may waive the requirement by delivering to the dispenser a written waiver;

(II) Dispenses, adjusts, provides training or teaching in regard to, or otherwise services surgically implanted hearing devices unless the dispenser is an audiologist or physician;

(d) Fails to recommend in writing, prior to fitting or dispensing a hearing aid, that the best interests of the prospective user would be served by consulting a licensed physician specializing in diseases of the ear, or any licensed physician, if any of the following conditions exist:

(I) Visible congenital or traumatic deformity of the ear;

(II) Active drainage of the ear, or a history of drainage of the ear within the previous ninety days;

(III) History of sudden or rapidly progressive hearing loss;

(IV) Acute or chronic dizziness;

(V) Unilateral hearing loss of sudden onset within the previous ninety days;

(VI) Audiometric air-bone gap equal to or greater than fifteen decibels at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz;

(VII) Visible evidence of significant cerumen accumulation on, or a foreign body in, the ear canal;

(VIII) Pain or discomfort in the ear;

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

(I) The buyer has the right to cancel the purchase for any reason before the expiration of the rescission period by giving or mailing written notice of cancellation to the dispenser and presenting the hearing aid to the dispenser, unless the hearing aid has been lost or significantly damaged beyond repair while in the buyer's possession and control. The rescission period is tolled for any period during which a dispenser takes possession or control of a hearing aid after its original delivery.

(II) The buyer, upon cancellation, is entitled to receive a full refund of any payment made for the hearing aid within thirty days after returning the hearing aid to the dispenser, unless the hearing aid was significantly damaged beyond repair while the hearing aid was in the buyer's possession and control;

(III) (A) The dispenser shall provide a written receipt or contract to the buyer that includes, in immediate proximity to the space reserved for the signature of the buyer, the following specific statement in all capital letters of no less than ten-point, bold-faced type:

THE BUYER HAS THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT ANY TIME PRIOR TO 12 MIDNIGHT ON THE [insert applicable rescission period, which must be no shorter than thirty days after receipt of the hearing aid] **CALENDAR DAY AFTER RECEIPT OF THE HEARING AID BY GIVING OR MAILING THE DISPENSER WRITTEN NOTICE OF CANCELLATION AND BY RETURNING THE HEARING AID, UNLESS THE HEARING AID HAS BEEN SIGNIFICANTLY DAMAGED BEYOND REPAIR WHILE THE HEARING AID WAS IN THE BUYER'S CONTROL.**

(B) The written contract or receipt provided to the buyer must also contain a statement, in print size no smaller than ten-point type, that the sale is void and unenforceable if the hearing aid being purchased is not delivered to the consumer within thirty days after the date the written contract is signed or the receipt is issued, whichever occurs later. The written contract or receipt must also include the dispenser's license, certification, or registration number, if the dispenser is required to be licensed, certified or registered by the state, and a statement that the dispenser will promptly refund all moneys paid for the purchase of a hearing aid if it is not delivered to the consumer within the thirty-day period. The buyer cannot waive this requirement, and any attempt to waive it is void.

(IV) A refund request form must be attached to each receipt and must contain the information in subparagraph (I) of paragraph (a) of this subsection (2) and the statement, in all capital letters of no less than ten-point, bold-faced type: "Refund request - this form must be postmarked by _____ (Date to be filled in). No refund will be given until the hearing aid or hearing aids are returned to the dispenser." A space for the buyer's address, telephone number,

and signature must be provided. The buyer is required only to sign, list the buyer's current address and telephone number, and mail the refund request form to the dispenser. If the hearing aid is sold in the buyer's home, the buyer may require the dispenser to arrange the return of the hearing aid.

(f) Represents that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true or using the terms "doctor", "clinic", "state-licensed clinic", "state-registered", "state-certified", or "state-approved" or any other term, abbreviation, or symbol when it would:

(I) Falsely give the impression that service is being provided by persons trained in medicine or that the dispenser's service has been recommended by the state when that is not the case; or

(II) Be false or misleading;

(g) Directly or indirectly:

(I) Gives or offers to give, or permits or causes to be given, money or anything of value to any person who advises another in a professional capacity as an inducement to influence the person or have the person influence others to purchase or contract to purchase products sold or offered for sale by the dispenser; except that a dispenser does not violate this subparagraph (I) if the dispenser pays an independent advertising or marketing agent compensation for advertising or marketing services the agent rendered on the dispenser's behalf, including compensation that is paid for the results or performance of the services on a per-patient basis; or

(II) Influences or attempts to influence any person to refrain from dealing in the products of competitors;

(h) Dispenses a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in the fitting of hearing aids, except when selling a replacement hearing aid within one year after the date of the original purchase;

(i) Makes a false or misleading statement of fact concerning goods or services 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, or refuses to honor a buyer's request to cancel a contract for the purchase of a hearing aid, if the request was made during the rescission period set forth in paragraph (e) of this subsection (2);

(j) Employs a device, a scheme, or artifice with the intent to defraud a buyer of a hearing aid;

(k) Intentionally disposes of, conceals, diverts, converts, or otherwise fails to account for any funds or assets of a buyer of a hearing aid that is under the dispenser's control; or

(l) Charges, collects, or recovers any cost or fee for any good or service that has been represented by the dispenser as free.

(3) (a) This section applies to a dispenser who dispenses hearing aids in this state.

(b) This section does not apply to the dispensing of hearing aids outside of this state so long as the transaction either conforms to this section or to the applicable laws and rules of the jurisdiction in which the transaction takes place.

Source: L. 99: Entire part added with relocations, p. 637, § 2, effective May 18. **L. 2000:** (1)(d), (1)(f), IP(2), (2)(a)(I), (2)(a)(II), (2)(a)(III), (2)(c)(I), (2)(c)(II), (2)(e)(I), (2)(e)(II), (2)(e)(III), (2)(g), and (2)(j) amended and (1)(e.5) added, p. 1092, § 11, effective July 1; (1)(a)

amended, p. 1837, § 1, effective August 2. **L. 2007:** Entire section repealed, p. 810, § 4, effective July 1. **L. 2013:** Entire section RC&RE, (SB 13-228), ch. 271, p. 1420, § 1, effective May 24.

Editor's note: This section is similar to former § 6-1-105.5, as it existed prior to 1999.

6-1-702. Unsolicited facsimiles - deceptive trade practice - definitions. (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

(a) Uses a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine;

(b) Uses a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission:

(I) The date and time the facsimile is sent;

(II) An identification of the person sending the facsimile; and

(III) The telephone number of the sending machine of the person; or

(c) Violates 47 U.S.C. sec. 227 or any rule promulgated thereunder.

(2) For the purposes of this section, unless the context otherwise requires:

(a) "Telephone facsimile machine" means equipment that has the capacity to:

(I) Transcribe text or images from paper into an electronic signal and to transmit that signal over a regular telephone line; or

(II) Transcribe text or images from an electronic signal received over a regular telephone line onto paper.

(b) "Unsolicited advertisement" means material that advertises the commercial availability or quality of any property, good, or service and that is transmitted to a person without that person's prior express invitation or permission.

(3) (a) The provisions of this section shall not apply to:

(I) A person who has an existing business relationship with the person receiving a facsimile; or

(II) A nonprofit organization operating pursuant to 26 U.S.C. sec. 501 (c) of the federal "Internal Revenue Code of 1986", as amended, that sends a facsimile to a nonmember recipient, if the nonprofit organization has received, by facsimile or other means, such nonmember recipient's prior express written invitation or permission to deliver facsimiles that includes the recipient's signature and facsimile number.

(b) For the purposes of this subsection (3), "existing business relationship" means a relationship formed by a voluntary two-way communication between a person or entity and a residential or business subscriber, with or without an exchange of consideration on the basis of an inquiry, application, purchase, membership, or transaction by the residential or business subscriber regarding products or services offered by such person or entity.

Source: L. 99: Entire part added with relocations, p. 641, § 2, effective May 18. **L. 2004:** Entire section R&RE, p. 406, § 1, effective August 4. **L. 2005:** (3) added, p. 463, § 1, effective May 4.

Editor's note: This section is similar to former § 6-1-105 (1)(p.3), (1)(p.5), and (1)(p.7), as it existed prior to 1999.

6-1-702.5. Commercial electronic mail messages - deceptive trade practice - remedies - definitions - short title - legislative declaration. (1) This section shall be known and may be cited as the "Spam Reduction Act of 2008".

(2) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

(a) Violates any provision of the federal "Controlling the Assault of Non-Solicited Pornography and Marketing ('CAN-SPAM') Act of 2003", 15 U.S.C. secs. 7701 to 7713, or any rule promulgated under the federal act that can be enforced by states or providers of internet access service pursuant to 15 U.S.C. sec. 7706 (f) or (g);

(b) Knowingly fails to disclose the actual point-of-origin electronic mail address of a commercial electronic mail message in order to mislead or deceive the recipient as to the source or sender of the message;

(c) Knowingly falsifies electronic mail transmission information or other routing information for a commercial electronic mail message in order to mislead or deceive the recipient as to the source or sender of the message;

(d) Knowingly uses a third party's internet address or domain name without the third party's consent for the purposes of transmitting a commercial electronic mail message; or

(e) Knowingly sends a commercial electronic mail message to any person that has previously given the sender a do-not-email directive under 15 U.S.C. sec. 7704 (a)(3)(A) or provides the electronic mail address of any such person to a third party for the purpose of enabling the third party to send a commercial electronic mail message, other than pursuant to affirmative consent, to that electronic mail address.

(3) As used in this section:

(a) "Affirmative consent" has the same meaning as set forth in 15 U.S.C. sec. 7702.

(b) "Commercial electronic mail message" has the same meaning as set forth in 15 U.S.C. sec. 7702.

(c) "Electronic mail service provider" means a provider of internet access service, as defined in 47 U.S.C. sec. 231.

(d) "Sender" has the same meaning as set forth in 15 U.S.C. sec. 7702.

(4) (a) In the case of any violation of this section, an electronic mail service provider whose network or facilities were used in the transmission or attempted transmission of a commercial electronic mail message may file a civil action in a court of competent jurisdiction and may, upon proof of such violation, recover such sums as are allowed under this subsection (4).

(b) (I) In any such action, if the electronic mail service provider prevails, the provider shall be entitled to actual damages. Upon a showing that the sender of a commercial electronic mail message violated any provision of this section, whether or not the violation resulted in a financial loss or injury, the electronic mail service provider may recover attorney fees and costs.

(II) In any such action, if the electronic mail service provider prevails, the provider is also entitled to recover, as part of the judgment, statutory damages in the amount of one thousand dollars for each commercial electronic mail message transmitted in violation of this

section; except that the total amount of statutory damages awarded against a single defendant based on one transaction or occurrence shall not exceed ten million dollars.

(c) The remedies, duties, prohibitions, and penalties of this subsection (4) are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.

(d) At the request of any party to an action brought pursuant to this subsection (4), the court may, in its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of any computer, computer network, computer data, or computer software involved in order to prevent possible recurrence of the same or similar conduct by another person and to protect the trade secrets of any party.

(e) Electronic mail service providers that adopt and implement terms, conditions, or technical measures in good faith to prevent or prohibit the origination or transmission of commercial electronic mail messages in violation of this section shall be immune from civil liability for any such actions, and no provision of this section shall be construed to create any liability for such actions.

(f) No electronic mail service provider shall be liable for the mere transmission of commercial electronic mail messages over the provider's computer network or facilities.

(g) This section shall not be construed to require any electronic mail service provider to carry or deliver any electronic mail merely because a sender complies with the provisions of this section.

(h) This section shall apply when a commercial electronic mail message is sent to a computer located in Colorado or to an electronic mail address that the sender knows, or has reason to know, is held by a Colorado resident.

(5) (a) The attorney general is hereby specifically authorized to take all actions and invoke all remedies authorized under 15 U.S.C. sec. 7706 (f) to enforce this section. Such actions and remedies are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by this article and any other state or federal law.

(b) The attorney general is encouraged to and may, in his or her discretion, cooperate with an electronic mail service provider in an action by such provider under 15 U.S.C. sec. 7706 (g).

(6) The general assembly:

(a) Finds that all violations of the federal "CAN-SPAM Act of 2003" are inherently false and deceptive;

(b) Determines that falsity and deception in any portion of a commercial electronic mail message or an attachment thereto harms Colorado consumers and threatens Colorado's economy; and

(c) Declares that the intent of this section and of section 18-5-308, C.R.S., is to exercise state authority in a manner consistent with, and to the maximum extent permissible under, the federal preemption provisions of 15 U.S.C. sec. 7707 (b).

Source: L. 2008: Entire section added, p. 593, § 1, effective August 5.

6-1-703. Time shares and resale time shares - deceptive trade practices. (1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person engages in one or more of the following activities in

connection with the advertisement or sale of a time share or the provision of a time share resale service:

(a) Misrepresents:

(I) The investment, resale, or rental value of any time share;

(II) The conditions under which a purchaser may exchange the right to use accommodations or facilities in one location for the right to use accommodations or facilities in another location; or

(III) The period of time during which the accommodations or facilities contracted for will be available to the purchaser;

(b) Fails to allow any purchaser a right to rescind the sale of a time share or a time share resale service within five calendar days after the sale;

(c) (I) Fails to provide conspicuous notice on the contract of the right of a purchaser of a time share or time share resale service to rescind the sale in writing either by electronic means, mail, or hand delivery.

(II) For purposes of this section, notice of rescission is given:

(A) If by mail, when postmarked;

(B) If by electronic mail or other electronic means, when sent; or

(C) If by hand delivery, when delivered to the seller's place of business.

(d) Fails to refund any down payment or deposit made pursuant to a time share contract or contract for time share resale service within seven days after the seller or time share resale entity receives the purchaser's written notice of rescission; except that, if the purchaser's check has not cleared at the time notice of rescission is received, the person has seven additional days after receipt of funds from the purchaser's cleared check to refund the down payment or deposit;

(e) With respect to the sale or solicitation of any time share resale service, makes false or misleading statements, including statements concerning:

(I) The existence of offers to buy or rent the resale time share;

(II) The likelihood of, or the time necessary to complete, any sale, rental, transfer, or invalidation;

(III) The value of the resale time share;

(IV) The current or future costs of owning the resale time share, including assessments, maintenance fees, or taxes;

(V) How amounts paid by the purchaser of the time share resale service will be utilized;

(VI) The method or source from which the name, address, telephone number, or other contact information of the owner of the resale time share was obtained;

(VII) The identity of the time share resale entity or that entity's affiliates; or

(VIII) The terms and conditions upon which the time share resale service is offered;

(f) Engages in any time share resale service without first obtaining a written contract to provide the service, which contract is signed by the purchaser of the time share resale service and complies with the requirements of this section. For purposes of paragraph (c) of this subsection (1), the required notice of rescission rights applicable to a contract for a time share resale service is conspicuous if printed in at least fourteen-point, bold-faced type immediately preceding the space in the contract provided for the purchaser's signature. In addition to any other remedy provided in this article, a time share resale service contract that does not satisfy the requirements of this section is voidable at the option of the purchaser for up to one year after the date the purchaser executes the contract.

(g) With respect to time share resale transfer agreements, fails to comply with any provision of, or otherwise makes false or misleading statements in connection with, any disclosure or other act required to be made or observed under section 6-1-703.5.

(2) The unlawful practices listed in this section are in addition to, and do not limit, the types of deceptive trade practices actionable under section 6-1-105.

(3) No person shall knowingly circumvent the requirements of this section or section 6-1-703.5.

(4) (a) A person who, as director, officer, or agent of a time share resale entity or as agent of a person who violates this article, assists or aids, directly or indirectly, in a violation of this article is responsible equally with the person for which the person acts.

(b) In the prosecution of a person as officer, director, or agent, it is sufficient to allege and prove the unlawful intent of the person or entity for which the person acts.

Source: L. 99: Entire part added with relocations, p. 642, § 2, effective May 18. **L. 2013:** Entire section amended, (SB 13-182), ch. 166, p. 541, § 2, effective August 7.

Editor's note: This section is similar to former § 6-1-105 (1)(s), as it existed prior to 1999.

6-1-703.5. Time share resale transfer agreements - deceptive trade practices. (1) A time share resale entity engages in a deceptive trade practice when the entity fails to include in a time share resale transfer agreement the following information:

(a) The name, telephone number, and physical address of the time share resale entity and the name and address of any agent or third-party service provider who will perform any of the time share resale services for that time share resale entity;

(b) A description of the applicable resale time share legally sufficient for recording or other legal transfer;

(c) A description of the method or documentation by which the transfer of the resale time share will be completed, including whether:

(I) The owner of the resale time share will retain any interest in the resale time share following the transfer; and

(II) The owner of the resale time share must grant a power of attorney or otherwise delegate any authority necessary to complete the transfer of the resale time share and the scope of the authority delegated by the owner of the resale time share;

(d) If the owner of the resale time share will retain any interest in the resale time share, a description of the interests retained by the owner of the resale time share;

(e) A listing of any fees, costs, or other consideration that the owner of the resale time share must pay or reimburse for performance of the time share resale service;

(f) A statement that neither the time share resale entity nor any affiliate or agent of the entity shall collect from the owner of the resale time share any fees, costs, or other consideration until the time share resale entity:

(I) Provides the owner of the resale time share a copy of the recordable deed or other equivalent written evidence clearly demonstrating that the resale time share has been transferred to a subsequent transferee in accordance with the time share resale transfer agreement and applicable law; and

(II) Satisfies all other requirements of this section;

(g) The date by which all acts sufficient to transfer the resale time share in accordance with the time share resale transfer agreement are estimated to be completed. The time share resale entity shall use commercially reasonable good faith efforts to complete the transfer of the subject time share within the estimated period. Commercially reasonable good faith efforts include making a request to the association of time share owners pursuant to section 38-33.3-316 (8), C.R.S., for a written statement detailing unpaid assessments levied against the time share.

(h) A statement as to whether any person, including the owner of the resale time share, may occupy, rent, exchange, or otherwise exercise any form of use of the resale time share during the term of the time share resale transfer agreement;

(i) The name of any person, other than the owner of the resale time share, who will receive any rents, profits, or other consideration or thing of value, if any, generated from the transfer of the applicable resale time share or the use of the applicable resale time share during the term of the time share resale transfer agreement;

(j) The following statement clearly and conspicuously and in substantially the following form:

We [name of time share resale entity] will use commercially reasonable good faith efforts to transfer ownership of your resale time share to another person within the period we estimate for completing the transfer. Until the transfer of ownership is complete, you, the resale time share owner, will continue to be responsible for the payment of all costs and fees associated with your resale time share, including, as applicable, regular assessments, special assessments, and real and personal property taxes.

(k) A statement that the time share resale entity will notify the following persons or entities, in writing, when ownership of the resale time share is transferred, as applicable:

(I) The association of time share owners or other persons responsible for managing or operating the plan or arrangement by which the rights or interests associated with the applicable time share resale are utilized; and

(II) The exchange company operating any exchange program that the resale time share was part of at the time the transfer was completed.

(2) In making the disclosures required under this section, the time share resale entity may rely upon information provided in writing by the owner of the applicable resale time share or the developer, association of time share owners, or other person responsible for managing or operating the plan or arrangement by which the rights or interests associated with the applicable resale time share are utilized.

(3) A time share resale entity shall not transfer or offer to assist in transferring a resale time share, or receive consideration in connection with the transfer of a resale time share, if the time share resale entity knows that the transferee does not have the ability or the intent to fulfill the obligations of ownership of the resale time share, including the obligation to pay all assessments and taxes incurred in connection with ownership of the resale time share. If a time share resale entity transfers or offers to transfer, or receives compensation in connection with the transfer of, a resale time share to a person who has a demonstrated pattern of nonpayment of assessments or taxes or the demonstrated inability to meet payment obligations, the actions of the time share resale entity are prima facie evidence of a violation of this subsection (3).

(4) A time share resale entity shall supervise, manage, and control all aspects of the time share resale transfer agreement and the offering of the resale time share by any affiliate, agent, contractor, or employee of that time share resale entity. A violation of this section is a violation by the time share resale entity and by the person actually committing the conduct that constitutes the violation.

(5) If a time share resale entity engages in an act that is prohibited by this section, either directly or as a means to avoid or circumvent the purpose of this section, a person injured by the act may bring a private civil action pursuant to section 6-1-113.

Source: L. 2013: Entire section added, (SB 13-182), ch. 166, p. 543, § 3, effective August 7.

6-1-704. Health clubs - 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 engages in one or more of the following activities in connection with the advertisement or sale of a membership in a health club:

(a) Fails to allow any buyer of a membership in a health club to rescind the membership contract within three business days after receipt by the buyer of a copy of the contract;

(b) Fails to provide conspicuous notice of the right of a purchaser of a health club membership to rescind the sale either by telegram, mail, or hand delivery. For purposes of this section, notice of rescission is considered given, if by mail when postmarked, if by telegram when filed for telegraphic transmission, or if by hand delivery when delivered to the seller's place of business.

(c) Fails to allow the buyer, or the estate of the buyer, to cancel the membership contract when:

(I) The buyer dies;

(II) The buyer becomes totally physically disabled as determined by a licensed physician or advanced practice nurse for the duration of the membership contract;

(III) The health club is moved to a location that is more than five miles from the location of the establishment when the buyer entered into the membership contract;

(IV) The membership in the health club is transferred to a location of the same club or another club, which location is more than five miles from the location of the club when the buyer entered into the contract, and this transfer occurs because of cessation of health club services at the club location from which the membership is transferred;

(V) The seller permanently discontinues operation of the health club or sells the health club and the sale results in substantial alteration of the quality of health club services or facilities or the nature of benefits so that they no longer conform to the provisions of the membership contract, but there shall be a thirty-day "right to cure" during which the fees payable by the buyer under the membership contract shall be suspended and the health club may bring the services, facilities, and benefits into conformance with the provisions of the membership contract;

(d) Fails to refund all payments made pursuant to the membership contract, less a prorated fee for days of actual use of the health club by the buyer, within fifteen days after the seller receives the buyer's written notice of rescission;

(e) When a health club is planned or under construction, and the sale of the membership takes place before the health club is completed, fails to:

(I) Disclose clearly and conspicuously in the membership contract the date on which the health club will open for use;

(II) Escrow all preopening membership sales receipts in a separate account in a bank or trust company doing business in the state of Colorado or provide a cash bond, letter of credit, certificate of deposit, or other similar surety, in the amount of fifty thousand dollars, for the repayment of amounts actually paid under preopening membership agreements until the health club is open for business;

(III) Allow the buyer to cancel the membership contract and receive a full refund of all payments made pursuant to the membership contract if the date the health club will open for use is delayed more than sixty days from the date of opening specified in the membership contract;

(f) 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 or financial duration of which is not longer than thirty-six months with a buyer's option to renew annually thereafter if:

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

(II) 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

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

(IV) 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

(V) 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

(VI) 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

(VII) 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

(VIII) In the event that the health club elects to cancel, revoke, or terminate the bond, it posts a notice of such action, in twenty-four-point bold-faced type, to its customers, on the front door of such health club; or

(g) Makes any representation, orally or in writing, in connection with the offer or sale of a membership in a health club that a membership contract is for a lifetime or is for a perpetual membership, or uses coercive sales tactics, or misrepresents the quality, benefits, or nature of the services.

Source: L. 99: Entire part added with relocations, p. 643, § 2, effective May 18. **L. 2008:** (1)(c)(II) amended, p. 123, § 1, effective January 1, 2009.

Editor's note: This section is similar to former § 6-1-105 (1)(t), as it existed prior to 1999.

6-1-705. Dance studios - 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 engages in one or more of the following activities or practices in connection with the advertisement, sale, or performance of contracts for dance studio services in which the total amount of the obligation that the purchaser undertakes is in excess of five hundred dollars:

(a) Fails to execute a written contract and to provide a copy of the contract to the purchaser at the time the purchaser signs it;

(b) Fails to include, printed in ten-point, bold-faced type in the contract:

(I) The total amount of the obligation the purchaser undertakes;

(II) All goods and services that the purchaser is to receive under the contract set forth in specific terms, including the total number or hours of dance instruction to be given by the dance studio under the contract broken down by different hourly rates, if applicable, and all other goods and services;

(III) The itemized cost of all goods and services to be provided under the contract, including but not limited to the cost per hour of dance instruction and the different hourly rates for different types of dance lessons, if any, and any charges to be paid by the purchaser for cost of travel, accommodations, or other expenses of dance studio owners, operators, managers, agents, or employees, the total cost of which shall equal the amount to be specified in the contract pursuant to subparagraph (I) of this paragraph (b); and

(IV) The purchaser's right to cancel as specified in paragraphs (c) to (e) of this subsection (1);

(c) Fails to include in the contract the following statement in bold-faced type under the conspicuous caption:

PURCHASER'S RIGHT TO CANCEL:

YOU, THE PURCHASER, MAY CANCEL THIS CONTRACT AT ANY TIME DURING THE TERM OF ITS EFFECTIVENESS. YOU MUST GIVE WRITTEN NOTICE TO THE DANCE STUDIO THAT YOU DO NOT WANT TO BE FURTHER BOUND BY THIS CONTRACT. THE NOTICE OF CANCELLATION MAY BE SERVED IN PERSON, BY TELEGRAM, OR BY MAIL TO THE DANCE STUDIO AT THE ADDRESS STATED IN THIS CONTRACT OR AT THE LOCATION WHERE DANCE LESSONS ARE CONDUCTED. WITHIN THIRTY DAYS AFTER RECEIPT OF YOUR NOTICE OF CANCELLATION, THE DANCE STUDIO SHALL REFUND TO YOU THE CONTRACT PRICE LESS THE COST OF GOODS AND SERVICES ALREADY RECEIVED BY YOU AND AN AMOUNT OF LIQUIDATED DAMAGES EQUAL TO NOT MORE THAN TEN PERCENT OF THE COST OF THE REMAINING GOODS AND SERVICES.

(d) Fails to allow the contract to be cancelled by the purchaser upon the purchaser's serving written notice to the dance studio;

(e) Fails, upon cancellation of a contract for dance studio services, to refund to the purchaser all prepayments made under the contract, minus the total of:

(I) The amount equal to the cost of goods and services actually received by the purchaser under the contract; and

(II) An amount of liquidated damages equal to not more than ten percent of the cost of the remaining goods and services not received by the purchaser;

(f) Subtracts a total amount under subparagraphs (I) and (II) of paragraph (e) of this subsection (1) that exceeds the total amount of the obligation as set out in subparagraph (I) of paragraph (b) of this subsection (1);

(g) Fails to have a performance bond in the amount of twenty-five thousand dollars, as to each studio, location, or owner, for the benefit of any person who enters into a contract for dance studio services in which the total amount of the obligation that the purchaser undertakes is in excess of five hundred dollars and who is damaged by the failure of the dance studio to provide the services specified in the contract or by the failure of the dance studio to comply with this section, which performance bond guarantees the dance studio's performance of its contractual obligations with the purchaser in accordance with the provisions of this section, or fails to disclose in the contract with such purchaser the existence of the performance bond;

(h) Sells or induces any person to purchase or to become obligated directly or contingently, or both, under more than one contract for dance studio services at the same time for the purpose of avoiding the provisions of this section; or

(i) Assigns or accepts an assignment of dance studio services without the written consent of the purchaser.

Source: L. 99: Entire part added with relocations, p. 645, § 2, effective May 18.

Editor's note: This section is similar to former § 6-1-105 (1)(w), as it existed prior to 1999.

6-1-706. Buyers' clubs - 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 engages in one or more of the following activities or practices in connection with the advertisement, sale, or performance of any contract of membership in a buyers' club in which the price of the membership equals or exceeds one hundred dollars:

(a) Fails to allow any purchaser of a membership in a buyers' club to rescind the membership contract at any time prior to the close of business on the next business day following the day the purchaser signs the contract;

(b) Fails to provide in the membership contract the following mandatory disclosure under the heading:

PURCHASER'S RIGHT TO CANCEL:

THE PURCHASER MAY CANCEL THIS CONTRACT FOR ANY REASON AT ANY TIME PRIOR TO THE CLOSE OF BUSINESS ON THE NEXT BUSINESS DAY FOLLOWING THE DAY THE PURCHASER SIGNS THE MEMBERSHIP CONTRACT BY DELIVERING OR MAILING TO THE BUYERS' CLUB WRITTEN NOTICE OF CANCELLATION. NOTICE OF CANCELLATION, IF SENT BY MAIL, IS DEEMED TO BE GIVEN AS OF THE DATE THE MAILED NOTICE WAS POSTMARKED.

Said heading and disclosure shall be in capital letters in no less than ten-point, bold-faced type.

(c) Fails to refund all payments made pursuant to the membership contract within fifteen days after the buyers' club receives notice of cancellation from the purchaser.

Source: L. 99: Entire part added with relocations, p. 646, § 2, effective May 18.

Editor's note: This section is similar to former § 6-1-105 (1)(bb), as it existed prior to 1999.

6-1-707. Use of title or degree - deceptive trade practice. (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

(a) (I) Claims, either orally or in writing, to possess either an academic degree or an honorary degree or the title associated with said degree, unless the person has, in fact, been awarded said degree from an institution that is:

(A) Accredited by a regional or professional accrediting agency recognized by the United States department of education or the council on postsecondary accreditation, or is recognized as a candidate for accreditation by such an agency;

(B) Provided, operated, and supported by a state government or any of its political subdivisions or by the federal government;

(C) A school, institute, college, or university chartered outside the United States, the academic degree from which has been validated by an accrediting agency approved by the United States department of education as equivalent to the baccalaureate or postbaccalaureate degree conferred by a regionally accredited college or university in the United States;

(D) A religious seminary, institute, college, or university that offers only educational programs that prepare students for a religious vocation, career, occupation, profession, or lifework, and the nomenclature of whose certificates, diplomas, or degrees clearly identifies the religious character of the educational program;

(E) Authorized to grant degrees pursuant to article 2 of title 23, C.R.S.

(II) This paragraph (a) shall not apply to persons claiming degrees or certificates that were submitted as a requirement of the application process for licensure, certification, or registration pursuant to title 12, C.R.S.

(III) No person awarded a doctorate degree from an institution not listed in paragraph (a) of this subsection (1) shall claim in the state, either orally or in writing, the title "Dr." before the person's name or any mark, appellation, or series of letters, numbers, or words, such as, but not limited to, "Ph.D.","Ed.D.", "D.N.", or "D.Th.", which signify, purport, or are generally taken to signify satisfactory completion of the requirements of a doctorate degree, after the person's name.

(b) Claims either orally or in writing to be a "dietitian", "dietician", "certified dietitian", or "certified dietician" or uses the abbreviation "C.D." or "D." to indicate that such person is a dietitian, unless such person:

(I) Possesses a baccalaureate, masters, or doctorate degree in human nutrition, foods and nutrition, dietetics, nutrition education, food systems management, or public health nutrition from an institution that is:

(A) Accredited by a regional or professional accrediting agency recognized by the United States department of education or the council on postsecondary accreditation, or is recognized as a candidate for accreditation by such accrediting agency;

(B) Authorized to grant degrees pursuant to article 2 of title 23, C.R.S.; or

(C) A school, institute, college, or university chartered outside the United States, the academic degree from which has been validated by an accrediting agency approved by the United States department of education as equivalent to a baccalaureate or postbaccalaureate degree conferred by a regionally accredited college or university in the United States; and

(II) Meets one of the following:

(A) Completes at least nine hundred hours of a planned, continuous, preprofessional work experience in a nutrition or dietetic practice under the supervision of a qualified dietitian; or

(B) Holds a certificate of registered dietitian through the commission on dietetic registration;

(c) Repealed.

(d) (I) Claims either orally or in writing to be a "certified optician" or "certified opticien", unless such person holds a current certificate of competence issued by the American board of opticianry. Each certificate shall be prominently displayed or maintained in such person's place of business and made available for immediate inspection and review by any consumer or agent of the state of Colorado. No person may associate a service, product, or business name with the title "certified optician" unless such person holds the required certificate of competence. This paragraph (d) shall not apply to persons authorized under article 36 or 40 of title 12, C.R.S., to practice medicine or optometry.

(II) Performs or claims orally or in writing to be able to perform the following procedures, and such person is a certified optician:

(A) Vision therapy;

(B) Refractions;

(C) Automated refractions; except that a certified optician may use an auto refractor to provide vision screenings for the sole purpose of determining if the subject of the screening needs a further eye examination;

(D) Refractometry;

(E) Fitting contact lenses;

(F) Keratometry or automated keratometry; or

(G) Any other act that constitutes the practice of optometry or the practice of medicine.

(III) A certified optician does not engage in a deceptive trade practice under subparagraph (II) of this paragraph (d), if said optician performs the described procedures under the direction and supervision of a person who has statutory authority under title 12, C.R.S., to supervise the work of others within the scope of his or her license.

(e) Claims to be a "sign language interpreter", "interpreter for the deaf", "deaf interpreter", "ASL-English interpreter", "American sign language (ASL) interpreter", "transliterator", "certified sign language interpreter", "certified interpreter for the deaf", "certified deaf interpreter", "certified ASL-English interpreter", "certified American sign language (ASL) interpreter", or "certified transliterator", unless he or she holds a current certification issued by the registry of interpreters for the deaf or a successor organization. A registry of interpreters for the deaf, or successor organization, membership card that shows proof

of current membership and certification shall be made available for immediate inspection and review by any consumer or agent of the state of Colorado.

Source: L. 99: Entire part added with relocations, p. 647, § 2, effective May 18. **L. 2002:** (1)(c) amended, p. 97, § 1, effective August 7. **L. 2006:** IP(1)(b) amended, p. 1488, § 3, effective June 1. **L. 2008:** (1)(c) repealed, p. 829, § 2, effective July 1. **L. 2009:** (1)(e) added, (HB 09-1090), ch. 29, p. 121, § 1, effective September 1; (1)(e) amended, (SB 09-144), ch. 219, p. 993, § 12, effective August 5.

Editor's note: This section is similar to former § 6-1-105 (1)(dd), (1)(ee.5), (1)(ee.7), and (1)(ee.8), as it existed prior to 1999.

6-1-708. Vehicle sales and leases - deceptive trade practice - definition. (1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, such person:

(a) Commits any of the following acts pertaining to the sale or lease of a motor vehicle, used motor vehicle, powersports vehicle, or used powersports vehicle:

(I) Guarantees to a purchaser or lessee of a motor vehicle, used motor vehicle, powersports vehicle, or used powersports vehicle who conditions the purchase or lease on the approval of a consumer credit transaction as defined in section 5-1-301 (12) that such purchaser or lessee has been approved for a consumer credit transaction if the approval is not final. For purposes of this subsection (1)(a)(I), "guarantee" means a written document or oral representation between the purchaser or lessee and the person selling or leasing the vehicle that leads such purchaser or lessee to a reasonable good faith belief that the financing of the vehicle is certain.

(II) Accepts a used vehicle as a trade-in on the purchase or lease of a motor vehicle, used motor vehicle, powersports vehicle, or used powersports vehicle and sells or leases the vehicle that has been traded in before the purchaser or lessee has been approved for a consumer credit transaction as defined in section 5-1-301 (12) if the approval is a condition of the purchase or lease;

(III) Fails to return to the consumer any collateral or down payment tendered by the consumer conditioned upon a guarantee by a motor vehicle dealer, used motor vehicle dealer, powersports vehicle dealer, or used powersports vehicle dealer that a consumer credit transaction as defined in section 5-1-301 (12) has been approved if the approval was a condition of the sale or lease and if the financing is not approved and the consumer is required to return the vehicle;

(b) 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 (17), or 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 10 of title 42 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 or powersports vehicle has sustained material damage at any one time from any one incident.

(2) For purposes of this section, if a motor vehicle or used motor vehicle dealer guarantees financing and if approval for financing is a condition of the sale or lease, such motor vehicle or used motor vehicle dealer shall not retain any portion of such purchaser's down

payment or any trade-in vehicle as payment of rent on any vehicle released by such dealer to such purchaser pending approval of financing even if such dealer has obtained a waiver of such purchaser's right to return a vehicle or has contracted for a rental agreement with such purchaser.

Source: L. 99: Entire part added with relocations, p. 650, § 2, effective May 18. **L. 2000:** (1)(a) and (2) amended, p. 244, § 3, effective March 30; (1)(a) amended, p. 1871, § 104, effective August 2. **L. 2001:** (1)(a) amended, p. 1265, § 2, effective June 5. **L. 2007:** (1)(b) amended, p. 2018, § 5, effective June 1. **L. 2017:** (1) amended, (SB 17-240), ch. 395, p. 2064, § 45, effective July 1.

Editor's note: (1) Subsection (1)(a) is similar to former § 6-1-105 (1)(ff)(I), subsection (1)(b) is similar to former § 6-1-105 (1)(ii), and subsection (2) is similar to former § 6-1-105 (1)(ff)(II), as they existed prior to 1999.

(2) Amendments to subsection (1)(a) by Senate Bill 00-080 and House Bill 00-1463 were harmonized.

6-1-709. Sales of manufactured homes - deceptive trade practices. A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person engages in conduct that constitutes an unlawful manufactured home sale practice as described in section 24-32-3326, C.R.S.

Source: L. 99: Entire part added with relocations, p. 651, § 2, effective May 18. **L. 2003:** Entire section amended, p. 550, § 5, effective March 5.

Editor's note: (1) This section is similar to former § 6-1-105 (1)(qq), as it existed prior to 1999.

(2) Section 6-1-105 (1)(qq) as amended by House Bill 99-1270 was harmonized with Senate Bill 99-143 and relocated to this section.

6-1-710. Installation or reinstallation of false air bag - deceptive trade practices - criminal liability. (1) A person engages in a deceptive trade practice when such person installs or reinstalls, as part of a vehicle inflatable restraint system, any object in lieu of an air bag that was designed in accordance with federal safety regulations for the make, model, and year of the vehicle.

(2) Any person who violates subsection (1) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two thousand five hundred dollars and not more than five thousand dollars per violation, or imprisonment in the county jail for up to one year, or both.

Source: L. 2002: Entire section added, p. 197, § 3, effective July 1.

6-1-711. Restrictions on credit card receipts - legislative declaration - application - definitions. (1) The general assembly hereby finds, determines, and declares that credit, particularly the use of credit cards, is an important tool for consumers in today's economy. Unscrupulous persons often fraudulently use the credit card accounts of others by stealing the

credit card itself or obtaining the necessary information to fraudulently charge the purchase of goods and services to another person's credit card account. The general assembly, therefore, finds, determines, and declares that protection from unauthorized use of credit card accounts is necessary.

(2) No person that accepts credit cards for the transaction of business shall print more than the last five digits of the credit card account number or print the credit card expiration date, or both, on a credit card receipt.

(3) This section shall apply only to receipts that are electronically printed and shall not apply to transactions in which the sole means of recording the credit card number is by handwriting or by an imprint or copy of the credit card.

(4) For the purposes of this section, "credit card" means a card or device existing for the purpose of obtaining money, property, labor, or services on credit; those cards pursuant to which unpaid balances are payable upon demand; and any card or device used to withdraw moneys from a bank account.

(5) (a) Except as provided in paragraph (c) of this subsection (5), this section shall apply to any entity formed on and after April 25, 2002, that uses a cash register or any other machine or device that electronically imprints receipts on credit card transactions and is placed into service on or after April 25, 2002.

(b) Except as provided in paragraph (c) of this subsection (5), on and after January 1, 2004, this section shall apply to any cash register and any other machine or device that electronically imprints receipts on credit card transactions for entities that were formed on or before April 25, 2002.

(c) On and after January 1, 2005, this section shall apply to:

(I) Institutions of higher education; and

(II) Persons who employ no more than twenty-five employees or who have generated no more than five million dollars annually in revenues from the person's business activities.

Source: L. 2002: Entire section added, p. 379, § 1, effective April 25. **L. 2006:** (2) amended, p. 1324, § 10, effective July 1.

6-1-712. Discount health plan and cards - deceptive trade practices - definitions. (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

(a) Solicits, markets, advertises, promotes, or sells to a consumer residing in Colorado a discount health plan and such plan materials:

(I) Fail to provide to the consumer a clear and conspicuous disclosure that the discount health plan is not insurance and that the plan only provides for discount health care services from participating providers within the plan;

(II) Fail to provide the name, address, and telephone number of the administrator of the discount health plan;

(III) Fail to make available to the consumer through a toll-free telephone number, upon request of the consumer, a complete and accurate list of the participating providers within the plan in the consumer's local area and a list of the services for which the discounts are applicable. Such list shall be available to the consumer upon request commencing with the time of purchase and shall be updated at least every six months.

(IV) Fail to use common usage for words and phrases in describing the discounts or access to discounts offered, and such failure results in representations of the discounts that are misleading, deceptive, or fraudulent;

(V) Fail to provide to the consumer notice of the right to cancel such discount health plan pursuant to paragraph (c) of this subsection (1);

(b) Offers discounted health services or products that are not authorized by a contract with each provider listed in conjunction with the discount health plan;

(c) Fails to allow a purchaser of a discount health plan to cancel such plan within thirty days after purchase;

(d) Fails to refund all membership fees paid to the discount health plan by the consumer within thirty days after timely notification of the cancellation of the plan to the discount health plan administrator pursuant to paragraph (c) of this subsection (1).

(2) The provisions of this section shall not apply to:

(a) A carrier as defined in section 10-16-102 (8), C.R.S., that offers discounts for services to a covered person, as defined in section 10-16-102 (15), C.R.S., and such services are supplemental to and not part of the health coverage plan of the carrier;

(b) A medicare endorsed drug card as approved by the centers for medicare and medicaid services pursuant to the "Medicare Prescription Drug, Improvement, and Modernization Act of 2003", Public Law 108-173.

(3) For the purposes of this section, unless the context otherwise requires:

(a) "Health care services" has the same meaning as in section 10-16-102 (33), C.R.S.

(b) "Provider" has the same meaning as in section 10-16-102 (56), C.R.S.

Source: L. 2004: Entire section added, p. 968, § 8, effective May 21. **L. 2013:** (2)(a), (3)(a), and (3)(b) amended, (HB 13-1266), ch. 217, p. 984, § 38, effective May 13.

6-1-713. Disposal of personal identifying information - policy - definitions. (1) Each covered entity in the state that maintains paper or electronic documents during the course of business that contain personal identifying information shall develop a written policy for the destruction or proper disposal of those paper and electronic documents containing personal identifying information. Unless otherwise required by state or federal law or regulation, the written policy must require that, when such paper or electronic documents are no longer needed, the covered entity shall destroy or arrange for the destruction of such paper and electronic documents within its custody or control that contain personal identifying information by shredding, erasing, or otherwise modifying the personal identifying information in the paper or electronic documents to make the personal identifying information unreadable or indecipherable through any means.

(2) For the purposes of this section and section 6-1-713.5:

(a) "Covered entity" means a person, as defined in section 6-1-102 (6), that maintains, owns, or licenses personal identifying information in the course of the person's business, vocation, or occupation. "Covered entity" does not include a person acting as a third-party service provider as defined in section 6-1-713.5.

(b) "Personal identifying information" means a social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data, as defined

in section 6-1-716 (1)(a); an employer, student, or military identification number; or a financial transaction device, as defined in section 18-5-701 (3).

(3) A covered entity that is regulated by state or federal law and that maintains procedures for disposal of personal identifying information pursuant to the laws, rules, regulations, guidances, or guidelines established by its state or federal regulator is in compliance with this section.

(4) Unless an entity specifically contracts with a recycler or disposal firm for destruction of documents that contain personal identifying information, nothing herein shall require a recycler or disposal firm to verify that the documents contained in the products it receives for disposal or recycling have been properly destroyed or disposed of as required by this section.

Source: L. 2004: Entire section added, p. 1959, § 2, effective August 4. **L. 2018:** (1), (2), and (3) amended, (HB 18-1128), ch. 266, p. 1632, § 1, effective September 1.

Editor's note: This section was originally numbered as § 6-1-712 in House Bill 04-1311, but has been renumbered on revision for ease of location.

6-1-713.5. Protection of personal identifying information - definition. (1) To protect personal identifying information, as defined in section 6-1-713 (2), from unauthorized access, use, modification, disclosure, or destruction, a covered entity that maintains, owns, or licenses personal identifying information of an individual residing in the state shall implement and maintain reasonable security procedures and practices that are appropriate to the nature of the personal identifying information and the nature and size of the business and its operations.

(2) Unless a covered entity agrees to provide its own security protection for the information it discloses to a third-party service provider, the covered entity shall require that the third-party service provider implement and maintain reasonable security procedures and practices that are:

(a) Appropriate to the nature of the personal identifying information disclosed to the third-party service provider; and

(b) Reasonably designed to help protect the personal identifying information from unauthorized access, use, modification, disclosure, or destruction.

(3) For the purposes of subsection (2) of this section, a disclosure of personal identifying information does not include disclosure of information to a third party under circumstances where the covered entity retains primary responsibility for implementing and maintaining reasonable security procedures and practices appropriate to the nature of the personal identifying information and the covered entity implements and maintains technical controls that are reasonably designed to:

(a) Help protect the personal identifying information from unauthorized access, use, modification, disclosure, or destruction; or

(b) Effectively eliminate the third party's ability to access the personal identifying information, notwithstanding the third party's physical possession of the personal identifying information.

(4) A covered entity that is regulated by state or federal law and that maintains procedures for protection of personal identifying information pursuant to the laws, rules,

regulations, guidances, or guidelines established by its state or federal regulator is in compliance with this section.

(5) For the purposes of this section, "third-party service provider" means an entity that has been contracted to maintain, store, or process personal identifying information on behalf of a covered entity.

Source: L. 2018: Entire section added, (HB 18-1128), ch. 266, p. 1633, § 2, effective September 1.

6-1-714. Unfair drug pricing practice - deceptive trade practice - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Emergency" means a declaration made by the department of public health and environment pursuant to section 25-1.5-101 (1)(aa), C.R.S., after the department has determined that there is a shortage of drugs critical to public safety.

(b) "Unfair drug pricing" means charging a consumer an unconscionable amount for the sale of a drug. Unfair drug pricing occurs if:

(I) The price charged by a wholesaler, distributor, or retailer exceeds by more than ten percent the average price for the drug charged by that wholesaler, distributor, or retailer during the thirty days immediately preceding the declaration of an emergency; and

(II) The increase in the amount charged by a wholesaler, distributor, or retailer is not attributable to cost factors of the retailer, including, but not limited to, replacement costs, taxes, and transportation costs incurred by that wholesaler, distributor, or retailer.

(2) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, the person engages in the practice of unfair drug pricing.

Source: L. 2005: Entire section added, p. 372, § 2, effective April 22.

6-1-715. Confidentiality of social security numbers. (1) Except as provided in subsections (2) to (4) of this section, a person or entity may not do any of the following:

(a) Publicly post or publicly display in any manner an individual's social security number. "Publicly post" or "publicly display" means to intentionally communicate or otherwise make available to the general public.

(b) Print an individual's social security number on any card required for the individual to access products or services provided by the person or entity;

(c) Require an individual to transmit his or her social security number over the internet, unless the connection is secure or the social security number is encrypted;

(d) Require an individual to use his or her social security number to access an internet website, unless a password or unique personal identification number or other authentication device is also required to access the internet website; and

(e) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law requires, permits, or authorizes the social security number to be on the document to be mailed. Notwithstanding this paragraph (e), social security numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend, or terminate an account, contract, or policy, or to confirm the accuracy of the social security number. A social security number that is

permitted to be mailed under this section may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(2) (a) A person or entity that has used, prior to January 1, 2007, an individual's social security number in a manner inconsistent with subsection (1) of this section, may continue using that individual's social security number in that manner on or after January 1, 2007, if all of the following conditions are met:

(I) The use of the social security number is continuous. If the use is stopped for any reason, subsection (1) of this section shall apply.

(II) The person or entity provides the individual with an annual disclosure that informs the individual that he or she has the right to stop the use of his or her social security number in a manner prohibited by subsection (1) of this section.

(b) The person or entity shall implement a written request by an individual to stop the use of his or her social security number in a manner prohibited by subsection (1) of this section within thirty days after the receipt of the request. The person or entity may not impose a fee or charge for implementing the request.

(c) The person or entity shall not deny services to an individual because the individual makes a written request pursuant to paragraph (b) of this subsection (2).

(3) This section shall not prevent the collection, use, or release of a social security number as required, permitted, or authorized by state or federal law or the use of a social security number for internal verification or administrative purposes, including by the department of revenue.

(4) This section shall not apply to:

(a) Documents or records that are recorded or required to be open to the public pursuant to the constitution or laws of this state or by court rule or order, and this section shall not limit access to these documents or records; or

(b) An entity that is subject to the federal "Health Insurance Portability and Accountability Act of 1996", as amended, 42 U.S.C. sec. 1320d to 1320d-9.

Source: L. 2006: Entire section added, p. 274, § 1, effective January 1, 2007. **L. 2010:** (4)(b) amended, (HB 10-1422), ch. 419, p. 2063, § 8, effective August 11.

6-1-716. Notification of security breach. (1) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Biometric data" means unique biometric data generated from measurements or analysis of human body characteristics for the purpose of authenticating the individual when he or she accesses an online account.

(b) "Covered entity" means a person, as defined in section 6-1-102 (6), that maintains, owns, or licenses personal information in the course of the person's business, vocation, or occupation. "Covered entity" does not include a person acting as a third-party service provider as defined in subsection (1)(i) of this section.

(c) "Determination that a security breach occurred" means the point in time at which there is sufficient evidence to conclude that a security breach has taken place.

(d) "Encrypted" means rendered unusable, unreadable, or indecipherable to an unauthorized person through a security technology or methodology generally accepted in the field of information security.

(e) "Medical information" means any information about a consumer's medical or mental health treatment or diagnosis by a health care professional.

(f) "Notice" means:

(I) Written notice to the postal address listed in the records of the covered entity;

(II) Telephonic notice;

(III) Electronic notice, if a primary means of communication by the covered entity with a Colorado resident is by electronic means or the notice provided is consistent with the provisions regarding electronic records and signatures set forth in the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001 et seq.; or

(IV) Substitute notice, if the covered entity required to provide notice demonstrates that the cost of providing notice will exceed two hundred fifty thousand dollars, the affected class of persons to be notified exceeds two hundred fifty thousand Colorado residents, or the covered entity does not have sufficient contact information to provide notice. Substitute notice consists of all of the following:

(A) E-mail notice if the covered entity has e-mail addresses for the members of the affected class of Colorado residents;

(B) Conspicuous posting of the notice on the website page of the covered entity if the covered entity maintains one; and

(C) Notification to major statewide media.

(g) (I) (A) "Personal information" means a Colorado resident's first name or first initial and last name in combination with any one or more of the following data elements that relate to the resident, when the data elements are not encrypted, redacted, or secured by any other method rendering the name or the element unreadable or unusable: Social security number; student, military, or passport identification number; driver's license number or identification card number; medical information; health insurance identification number; or biometric data;

(B) A Colorado resident's username or e-mail address, in combination with a password or security questions and answers, that would permit access to an online account; or

(C) A Colorado resident's account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to that account.

(II) "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records or widely distributed media.

(h) "Security breach" means the unauthorized acquisition of unencrypted computerized data that compromises the security, confidentiality, or integrity of personal information maintained by a covered entity. Good faith acquisition of personal information by an employee or agent of a covered entity for the covered entity's business purposes is not a security breach if the personal information is not used for a purpose unrelated to the lawful operation of the business or is not subject to further unauthorized disclosure.

(i) "Third-party service provider" means an entity that has been contracted to maintain, store, or process personal information on behalf of a covered entity.

(2) **Disclosure of breach.** (a) A covered entity that maintains, owns, or licenses computerized data that includes personal information about a resident of Colorado shall, when it becomes aware that a security breach may have occurred, conduct in good faith a prompt investigation to determine the likelihood that personal information has been or will be misused. The covered entity shall give notice to the affected Colorado residents unless the investigation determines that the misuse of information about a Colorado resident has not occurred and is not reasonably likely to occur. Notice must be made in the most expedient time possible and without unreasonable delay, but not later than thirty days after the date of determination that a security breach occurred, consistent with the legitimate needs of law enforcement and consistent with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the computerized data system.

(a.2) In the case of a breach of personal information, notice required by this subsection (2) to affected Colorado residents must include, but need not be limited to, the following information:

(I) The date, estimated date, or estimated date range of the security breach;

(II) A description of the personal information that was acquired or reasonably believed to have been acquired as part of the security breach;

(III) Information that the resident can use to contact the covered entity to inquire about the security breach;

(IV) The toll-free numbers, addresses, and websites for consumer reporting agencies;

(V) The toll-free number, address, and website for the federal trade commission; and

(VI) A statement that the resident can obtain information from the federal trade commission and the credit reporting agencies about fraud alerts and security freezes.

(a.3) If an investigation by the covered entity pursuant to subsection (2)(a) of this section determines that the type of personal information described in subsection (1)(g)(I)(B) of this section has been misused or is reasonably likely to be misused, then the covered entity shall, in addition to the notice otherwise required by subsection (2)(a.2) of this section and in the most expedient time possible and without unreasonable delay, but not later than thirty days after the date of determination that a security breach occurred, consistent with the legitimate needs of law enforcement and consistent with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the computerized data system:

(I) Direct the person whose personal information has been breached to promptly change his or her password and security question or answer, as applicable, or to take other steps appropriate to protect the online account with the covered entity and all other online accounts for which the person whose personal information has been breached uses the same username or e-mail address and password or security question or answer.

(II) For log-in credentials of an e-mail account furnished by the covered entity, the covered entity shall not comply with this section by providing the security breach notification to that e-mail address, but may instead comply with this section by providing notice through other methods, as defined in subsection (1)(f) of this section, or by clear and conspicuous notice delivered to the resident online when the resident is connected to the online account from an internet protocol address or online location from which the covered entity knows the resident customarily accesses the account.

(a.4) The breach of encrypted or otherwise secured personal information must be disclosed in accordance with this section if the confidential process, encryption key, or other

means to decipher the secured information was also acquired in the security breach or was reasonably believed to have been acquired.

(a.5) A covered entity that is required to provide notice to affected Colorado residents pursuant to this subsection (2) is prohibited from charging the cost of providing such notice to such residents.

(a.6) Nothing in this subsection (2) prohibits the notice described in this subsection (2) from containing additional information, including any information that may be required by state or federal law.

(b) If a covered entity uses a third-party service provider to maintain computerized data that includes personal information, then the third-party service provider shall give notice to and cooperate with the covered entity in the event of a security breach that compromises such computerized data, including notifying the covered entity of any security breach in the most expedient time possible, and without unreasonable delay following discovery of a security breach, if misuse of personal information about a Colorado resident occurred or is likely to occur. Cooperation includes sharing with the covered entity information relevant to the security breach; except that such cooperation does not require the disclosure of confidential business information or trade secrets.

(c) Notice required by this section may be delayed if a law enforcement agency determines that the notice will impede a criminal investigation and the law enforcement agency has notified the covered entity that conducts business in Colorado not to send notice required by this section. Notice required by this section must be made in good faith, in the most expedient time possible and without unreasonable delay, but not later than thirty days after the law enforcement agency determines that notification will no longer impede the investigation and has notified the covered entity that conducts business in Colorado that it is appropriate to send the notice required by this section.

(d) If a covered entity is required to notify more than one thousand Colorado residents of a security breach pursuant to this section, the covered entity shall also notify, in the most expedient time possible and without unreasonable delay, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined by the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681a (p), of the anticipated date of the notification to the residents and the approximate number of residents who are to be notified. Nothing in this subsection (2)(d) requires the covered entity to provide to the consumer reporting agency the names or other personal information of security breach notice recipients. This subsection (2)(d) does not apply to a covered entity who is subject to Title V of the federal "Gramm-Leach-Bliley Act", 15 U.S.C. sec. 6801 et seq.

(e) A waiver of these notification rights or responsibilities is void as against public policy.

(f) (I) The covered entity that must notify Colorado residents of a data breach pursuant to this section shall provide notice of any security breach to the Colorado attorney general in the most expedient time possible and without unreasonable delay, but not later than thirty days after the date of determination that a security breach occurred, if the security breach is reasonably believed to have affected five hundred Colorado residents or more, unless the investigation determines that the misuse of information about a Colorado resident has not occurred and is not likely to occur.

(II) The Colorado attorney general shall designate a person or persons as a point of contact for functions set forth in this subsection (2)(f) and shall make the contact information for that person or those persons public on the attorney general's website and by any other appropriate means.

(g) The breach of encrypted or otherwise secured personal information must be disclosed in accordance with this section if the confidential process, encryption key, or other means to decipher the secured information was also acquired or was reasonably believed to have been acquired in the security breach.

(3) **Procedures deemed in compliance with notice requirements.** (a) Pursuant to this section, a covered entity that maintains its own notification procedures as part of an information security policy for the treatment of personal information and whose procedures are otherwise consistent with the timing requirements of this section is in compliance with the notice requirements of this section if the covered entity notifies affected Colorado residents in accordance with its policies in the event of a security breach; except that notice to the attorney general is still required pursuant to subsection (2)(f) of this section.

(b) A covered entity that is regulated by state or federal law and that maintains procedures for a security breach pursuant to the laws, rules, regulations, guidances, or guidelines established by its state or federal regulator is in compliance with this section; except that notice to the attorney general is still required pursuant to subsection (2)(f) of this section. In the case of a conflict between the time period for notice to individuals that is required pursuant to this subsection (3) and the applicable state or federal law or regulation, the law or regulation with the shortest time frame for notice to the individual controls.

(4) **Violations.** The attorney general may bring an action in law or equity to address violations of this section, section 6-1-713, or section 6-1-713.5, and for other relief that may be appropriate to ensure compliance with this section or to recover direct economic damages resulting from a violation, or both. The provisions of this section are not exclusive and do not relieve a covered entity subject to this section from compliance with all other applicable provisions of law.

(5) **Attorney general criminal authority.** Upon receipt of notice pursuant to subsection (2) of this section, and with either a request from the governor to prosecute a particular case or with the approval of the district attorney with jurisdiction to prosecute cases in the judicial district where a case could be brought, the attorney general has the authority to prosecute any criminal violations of section 18-5.5-102.

Source: L. 2006: Entire section added, p. 536, § 1, effective September 1. **L. 2010:** (2)(d) amended, (HB 10-1422), ch. 419, p. 2064, § 9, effective August 11. **L. 2018:** (1) R&RE, (2), (3), and (4) amended, and (5) added, (HB 18-1128), ch. 266, p. 1634, § 3, effective September 1.

6-1-717. Influencing a real estate appraisal - deceptive trade practice. (1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, the person:

(a) Knowingly submits a false or misleading appraisal in connection with a dwelling offered as security for repayment of a mortgage loan; or

(b) Directly or indirectly compensates, coerces, or intimidates an appraiser, or attempts, directly or indirectly, to compensate, coerce, or intimidate an appraiser, for the purpose of influencing the independent judgment of the appraiser with respect to the value of a dwelling offered as security for repayment of a mortgage loan.

(2) The prohibition referred to in subsection (1) of this section shall not be construed as prohibiting a person from requesting an appraiser to:

(a) Consider additional, appropriate property information;

(b) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(c) Correct errors in the appraisal report.

Source: L. 2007: Entire section added, p. 1727, § 4, effective June 1.

6-1-718. Ticket sales and resales - prohibitions - unlawful conditions - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Operator" means a person or entity who owns, operates, or controls a place of entertainment or who promotes or produces entertainment and that sells a ticket to an event for original sale, including an employee of such person or entity.

(b) "Original sale" means the first sale of a ticket by an operator.

(c) "Place of entertainment" means a public or private entertainment facility, such as a stadium, arena, racetrack, museum, amusement park, or other place where performances, concerts, exhibits, athletic games, or contests are held, for which an entry fee is charged, to which the public is invited to observe, and for which tickets are sold. "Place of entertainment" does not include a ski area.

(d) "Purchaser" means a person or entity who purchases a ticket to a place of entertainment.

(e) "Resale" or "resold" means a sale other than the original sale of a ticket by a person or entity.

(f) "Reseller" means a person or entity that offers or sells tickets for resale after the original sale by the operator including an entity that operates a platform or exchange for the purchase and sale of tickets to events that also engages in the purchase and resale of the ticket either on behalf of the operator or on its own behalf if a reseller.

(g) "Ticket" means a license issued by the operator of a place of entertainment for admission to an event at the date and time specified on the ticket, subject to the terms and conditions as specified by the operator.

(2) Resellers shall guarantee a full refund to a purchaser if:

(a) The event for which the ticket was resold is canceled;

(b) The ticket does not or would not in fact grant the purchaser admission to the event for which the ticket was resold;

(c) The ticket is counterfeit; or

(d) The ticket fails to conform to its description as advertised or as represented to the purchaser by the reseller.

(3) (a) It is void as against public policy to apply a term or condition to the original sale to the purchaser to limit the terms or conditions of resale, including, but not limited to, a term or condition:

(I) That restricts resale in a subscription or season ticket package agreement as a condition of purchase;

(II) That a purchaser must comply with to retain a ticket for the duration of a subscription or season ticket package agreement that limits the rights of the purchaser to resell the ticket;

(III) That a purchaser must comply with to retain any contractually agreed-upon rights to purchase future subscriptions or season ticket package agreements; or

(IV) That imposes a sanction on the purchaser if the sale of the ticket is not through a reseller approved by the operator.

(b) Nothing in this section shall be deemed to prohibit an operator from prohibiting the resale of a contractual right in a season ticket package agreement that gives the original purchaser a priority or other preference to enter into a subsequent season ticket package agreement with the operator.

(4) A person or entity, including an operator, that regulates admission to an event shall not deny access to the event to a person in possession of a valid ticket to the event, regardless of whether the ticket is subject to a subscription or season ticket package agreement, based solely on the ground that such ticket was resold through a reseller that was not approved by the operator.

(5) Nothing in this section shall be construed to prohibit an operator from maintaining and enforcing policies regarding conduct or behavior at or in connection with the operator's venue. An operator may revoke or restrict season tickets for reasons relating to a violation of venue policies and to the extent the operator may deem necessary for the protection of the safety of patrons or to address fraud or misconduct.

Source: L. 2008: Entire section added, p. 108, § 1, effective March 19.

6-1-719. Truth in music advertising. (1) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Performing group" means a vocal or instrumental group seeking to use the name of a recording group.

(b) "Recording group" means a vocal or instrumental group, at least one of whose members has previously released a commercial sound recording under that group's name and in which at least one of the members has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

(c) "Sound recording" means a work that results from the fixation, on or in a recording medium or other material object, of a series of musical, spoken, or other sounds regardless of the nature of the medium or object, such as a disk, tape, or other phono record, in which the sounds are recorded.

(2) **Production.** (a) Except as otherwise provided in paragraph (b) of this subsection (2), it is unlawful for any person to advertise or conduct a live musical performance or production in this state through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group.

(b) Paragraph (a) of this subsection (2) does not apply if:

(I) The performing group is the authorized registrant and owner of a federal service mark for that group registered in the United States patent and trademark office;

(II) At least one member of the performing group was a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group;

(III) The live musical performance or production is identified in all advertising and promotion as a salute or tribute;

(IV) The advertising does not relate to a live musical performance or production taking place in this state; or

(V) The performance or production is expressly authorized by the recording group.

(3) **Restraining prohibited acts.** In addition to the actions and remedies specified in part 1 of this article that may apply:

(a) **Injunction.** Whenever the attorney general or a district attorney has reason to believe that a person is advertising, conducting, or about to advertise or conduct a live musical performance or production in violation of this section and that proceedings would be in the public interest, the attorney general or district attorney may bring an action in the name of the state against the person to restrain that practice by temporary or permanent injunction.

(b) **Payment of costs and restitution.** Whenever a court issues a permanent injunction to restrain and prevent violations of this section as authorized in paragraph (a) of this subsection (3), the court may, in its discretion, direct that the defendant restore to any person in interest any moneys or property, real or personal, that may have been acquired by means of a violation of this section, under terms and conditions to be established by the court.

(c) **Penalty.** A person who violates this section is liable to the state for a civil penalty of not less than five thousand dollars nor more than fifteen thousand dollars per violation, which civil penalty shall be in addition to any other relief that may be granted under this subsection (3) but which shall not be cumulative with the penalty specified in section 6-1-112. Each performance or production that violates this section constitutes a separate violation.

Source: L. 2008: Entire section added, p. 364, § 1, effective August 5.

6-1-720. Online event ticket sales - deceptive trade practice - definitions. (1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, such person:

(a) Uses or causes to be used a software application that runs automated tasks over the internet to access a computer, computer network, or computer system, or any part thereof, for the purpose of purchasing tickets in excess of authorized limits for an online event ticket sale with the intent to resell such tickets; or

(b) Uses or causes to be used a software application that runs automated tasks over the internet that circumvents or disables any electronic queues, waiting periods, or other sales volume limitation systems associated with an online event ticket sale.

(2) As used in this section, unless the context otherwise requires:

(a) "In excess of authorized limits", with regard to an online purchase of tickets, means exceeding a restriction on the number of individual tickets that can be purchased by any single person or circumventing any other terms and conditions of access to an online event ticket sale established by the event sponsor or promoter.

(b) "Online event ticket sale" means an electronic system utilized by the sponsor or promoter of a sporting or entertainment event to sell tickets to such event to the public over the internet.

(3) This section shall not prohibit the resale of tickets in a secondary market by a person other than the event sponsor or promoter.

(4) Every ticket acquired in violation of this section shall constitute a separate violation for purposes of assessing a civil penalty under section 6-1-112 (1)(a) and (1)(b).

Source: L. 2008: Entire section added, p. 2229, § 1, effective July 1. **L. 2009:** (4) amended, (SB 09-054), ch.138, p. 597, § 3, effective August 5.

6-1-721. Like-kind exchanges by exchange facilitators - deceptive trade practice - definitions. (1) **Legislative declaration.** The general assembly hereby:

(a) Finds that, absent enactment of this section, Colorado has no requirements for the protection of taxpayers who engage persons or entities that facilitate like-kind exchanges pursuant to 26 U.S.C. sec. 1031; and

(b) Determines that, to protect taxpayers who engage exchange facilitators, exchange facilitators should meet certain requirements and follow certain procedures.

(2) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Affiliated with" means that a person directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the other specified person.

(b) "Colorado property" means real property located in Colorado; except that replacement property need not be located in Colorado.

(c) (I) "Exchange facilitator" means a person that holds a taxpayer's exchange funds and that:

(A) For a fee, facilitates an exchange of like-kind Colorado property by entering into an agreement with a taxpayer by which the exchange facilitator acquires from the taxpayer the contractual rights to sell the taxpayer's relinquished Colorado property and transfer a replacement property to the taxpayer as an exchange facilitator, as is defined in 26 CFR 1.1031 (k)-1 (g)(4), or enters into an agreement with a taxpayer to take title to Colorado property as an exchange accommodation titleholder, as that term is defined in federal internal revenue service revenue procedure 2000-37, or enters into an agreement with a taxpayer to act as a qualified trustee or qualified escrow holder, as those terms are defined in 26 CFR 1.1031 (k)-1 (g)(3), except as otherwise provided in subparagraph (II) of this paragraph (c); or

(B) Maintains an office in this state for the purpose of soliciting business as an exchange facilitator regarding Colorado property.

(II) "Exchange facilitator" does not include:

(A) The taxpayer or disqualified person, as defined under 26 CFR 1.1031 (k)-1 (k), seeking to qualify for the nonrecognition provisions of 26 U.S.C. sec. 1031;

(B) A bank, savings bank, savings and loan association, building and loan association, or credit union; a bank or savings association holding company organized under the laws of any state, the District of Columbia, a territory or protectorate of the United States, or the United States, subject to regulation and supervision by a federal banking agency; an operating

subsidiary of such entities; or an employee or exclusive agent of any of such entities, including, without limitation, a subsidiary that is owned or controlled by such entities;

(C) A person who advertises for and teaches seminars or classes for, or gives presentations to, attorneys, accountants, real estate professionals, tax professionals, or other professionals, where the primary purpose is to teach the professionals about tax-deferred exchanges or train them to act as exchange facilitators;

(D) An exchange facilitator, as defined in 26 CFR 1.1031 (k)-1 (g)(4), whose sole business in this state as an exchange facilitator consists of holding exchange funds from the disposition of relinquished property located outside this state; or

(E) An entity that is wholly owned by an exchange facilitator or is wholly owned by the owner of an exchange facilitator and is used by that exchange facilitator to facilitate exchanges or to take title to Colorado property as an exchange accommodation titleholder, as defined in federal internal revenue service revenue procedure 2000-37.

(III) For purposes of this paragraph (c), "fee" means compensation of any nature, direct or indirect, monetary or in-kind, that is received by a person or a related person as defined in 26 U.S.C. sec. 1031 (f)(3) for any services relating to or incidental to the exchange of like-kind property under 26 U.S.C. sec. 1031.

(d) "Like-kind exchange" means a section 1031 exchange that is subject to 26 U.S.C. sec. 1031.

(e) "Publicly traded company" means a corporation whose securities are publicly traded on a stock exchange that is regulated by the United States securities and exchange commission. The term "publicly traded company" also includes all subsidiaries of such publicly traded company.

(f) "Section 1031 exchange" means an exchange conducted pursuant to 26 U.S.C. sec. 1031 that allows investors to defer the tax on capital gains.

(g) "Taxpayer exchange funds" or "exchange funds" means money a taxpayer entrusts to an exchange facilitator.

(3) **Deceptive trade practices.** A person engages in a deceptive trade practice when a person acts as an exchange facilitator and:

(a) (I) Except as specified in subparagraph (III) of this paragraph (a), fails to notify all current clients of any change in control of the exchange facilitator within two business days after the effective date of the change by:

(A) Facsimile, e-mail transmission, or first-class mail; and

(B) Posting such notice on the exchange facilitator's website for a period ending not sooner than ninety days after the change in control.

(II) The notice required in subparagraph (I) of this paragraph (a) shall specify the name, address, and other contact information of the transferees.

(III) If the exchange facilitator is a publicly traded company and remains a publicly traded company after a change in control, the exchange facilitator need not notify its client of the change in control.

(IV) For purposes of this paragraph (a), "change in control" means any transfer within twelve months of more than fifty percent of the assets or ownership interests, directly or indirectly, of the exchange facilitator.

(b) (I) Fails to maintain adequate financial assurance and errors and omissions insurance or deposits. An exchange facilitator may maintain bonds, insurance policies, deposits, or

irrevocable letters of credit in excess of the amounts required by this subparagraph (I). An exchange facilitator shall at all times:

(A) Maintain a fidelity bond or bonds executed by an insurer authorized to do business in this state in the amount of at least one million dollars and maintain a policy of errors and omissions insurance, in an amount of at least two hundred fifty thousand dollars, executed by an insurer authorized to do business in this state;

(B) Deposit an amount of cash or irrevocable letters of credit in an amount of at least the sum of the amounts specified in sub-subparagraph (A) of this subparagraph (I) in an interest-bearing deposit account or in a money market account with a financial institution of the exchange facilitator's choice, with the interest earned on such account accruing to the exchange facilitator; or

(C) Deposit all exchange funds in a qualified escrow or qualified trust as those terms are defined under 26 CFR 1.1031(k)-1 (g)(3) with a financial institution and provide that any withdrawals from such qualified escrow or qualified trust require the taxpayer's and the exchange facilitator's written authorization.

(II) A person claiming to have sustained damage by reason of the failure of an exchange facilitator to comply with this section may file a claim to recover damages from the bond or deposit described in this paragraph (b).

(c) Fails to act as a custodian for all exchange funds, including money, Colorado property, other consideration, or instruments received by the exchange facilitator from or on behalf of the taxpayer, except funds received as the exchange facilitator's compensation. As used in this paragraph (c), "custodian" means a person who has the same responsibilities as a fiduciary under Colorado law to protect and preserve assets and shall not mean a person who has the same responsibilities as a fiduciary under Colorado law to increase assets or to accomplish other fiduciary duties. Exchange funds are not subject to execution or attachment on any claim against an exchange facilitator. An exchange facilitator shall not knowingly keep or cause to be kept any money in a financial institution under any name designating the money as belonging to a taxpayer unless the money equitably belongs to the taxpayer and was actually entrusted to the exchange facilitator by the taxpayer. Taxpayer exchange funds in excess of two hundred fifty thousand dollars shall be invested or deposited in such manner as to require both the taxpayer's and the exchange facilitator's commercially reasonable means of authorization for withdrawal, including: The taxpayer's delivery to the exchange facilitator of the taxpayer's authorization to disburse exchange funds, and the exchange facilitator's delivery to the depository of the exchange facilitator's authorization to disburse exchange funds; or delivery to the depository of both the taxpayer's and the exchange facilitator's authorizations to disburse exchange funds. An exchange facilitator shall provide the taxpayer with written notification of the manner in which the exchange funds will be invested or deposited, shall invest or deposit exchange funds for the benefit of the taxpayer in investments that meet a standard of care that an ordinarily prudent investor would use when dealing with the property of another, and shall satisfy investment goals of liquidity and preservation of principal. For purposes of this paragraph (c), a prudent investor standard of care shall be deemed to have been violated if:

(I) A taxpayer's exchange funds are commingled by the exchange facilitator with the operating accounts of the exchange facilitator or with the exchange funds of another taxpayer; except that an exchange facilitator may aggregate exchange funds. For purposes of this subparagraph (I):

(A) "Aggregate" means to combine exchange funds of multiple taxpayers for investment purposes to achieve common investment goals and efficiencies. Exchange funds that have been aggregated into common investments shall be readily identifiable by the financial institution or other regulated investment custodian holding the funds as to each taxpayer for whom they are held through an accounting or subaccounting system.

(B) "Commingle" means to mix together exchange funds of taxpayers with other funds belonging to or under the control of the exchange facilitator in such a manner that a taxpayer's exchange funds cannot be distinguished from other funds belonging to or under the control of the exchange facilitator.

(II) Exchange funds are loaned or otherwise transferred to any person or entity affiliated with the exchange facilitator; except that this subparagraph (II) shall not apply to a transfer or loan made to a financial institution that is the parent of or affiliated with the exchange facilitator or from an exchange facilitator to an exchange accommodation titleholder, as defined in federal internal revenue service revenue procedure 2000-37, as required under the section 1031 exchange contract; or

(III) Exchange funds are invested in a manner that does not provide sufficient liquidity to meet the exchange facilitator's contractual obligations to the taxpayer and does not preserve the principal of the exchange funds. The deposit of funds in a financial institution exempted from this section pursuant to sub-subparagraph (B) of subparagraph (II) of paragraph (c) of subsection (2) of this section shall be deemed to be sufficiently liquid to meet the requirements of this subparagraph (III).

(d) Commits any of the following:

(I) Knowingly makes any material misrepresentation concerning an exchange facilitator's transaction that is intended to mislead another;

(II) Pursues a continued or flagrant course of misrepresentation or makes false statements through advertising or otherwise;

(III) Fails, within a reasonable time, to account for any money or property belonging to others that may be in the possession or under the control of the exchange facilitator;

(IV) Engages in any conduct constituting fraudulent or dishonest dealing;

(V) Is convicted of, or, in the case of an entity, one or more of its owners, officers, directors, or employees who has access to exchange funds is convicted of, any crime involving fraud, misrepresentation, deceit, embezzlement, misappropriation of funds, robbery, or other theft of property; except that commission of such crime by an officer, director, or employee of an exchange facilitator shall not be considered a violation of this subparagraph (V) if the employment or appointment of the officer, director, or employee has been terminated and no clients of the exchange facilitator were harmed or full restitution has been made to all harmed clients;

(VI) Wilfully fails to fulfill an exchange facilitator's contractual duties to the taxpayer to deliver property or funds to the taxpayer unless such failure is due to circumstances beyond the control of the exchange facilitator;

(VII) Materially violates this section or aids, abets, or knowingly permits any person to violate this section;

(VIII) Commits an act that does not meet generally accepted standards of practice for ordinarily prudent investors or fails to perform an act necessary to meet generally accepted standards of practice for ordinarily prudent investors;

(IX) Fails to keep appropriate business and transaction records, falsifies such records, or knowingly and wilfully makes incorrect entries of an essential nature on such records; except that an exchange facilitator may dispose of records after a reasonable time pursuant to the exchange facilitator's document retention and document destruction policy;

(X) Is disciplined in any way by a national certifying agency or by a regulatory agency of another jurisdiction for conduct that relates to the person's employment as an exchange facilitator; or

(XI) Is convicted of or pleads guilty or nolo contendere to a felony or any crime defined in title 18, C.R.S., that relates to the person's employment as an exchange facilitator. A certified copy of the judgment of a court of competent jurisdiction of the conviction or plea shall be prima facie evidence of the conviction or plea.

Source: L. 2009: Entire section added, (HB 09-1254), ch. 116, p. 487, § 1, effective April 16.

6-1-722. Gift certificates - validity - exemptions - definitions. (1) (a) As used in this section, "gift card" means a prefunded tangible or electronic record of a specific monetary value evidencing an issuer's agreement to provide goods, services, credit, money, or anything of value. A "gift card" includes, but is not limited to, a tangible card; electronic card; stored-value card; or certificate or similar instrument, card, or tangible record, all of which contain a microprocessor chip, magnetic chip, or other means for the storage of information and for which the value is decremented upon each use. A "gift card" does not include a prefunded tangible or electronic record issued by, or on behalf of, any government agency; a gift certificate that is issued only on paper; a prepaid telecommunications or technology card; a card or certificate issued to a consumer pursuant to an awards, loyalty, or promotional program for which no money or other item of monetary value was exchanged; or a card that is donated or sold below face value at a volume discount to an employer or charitable organization for fundraising purposes.

(b) This section shall not apply to gift cards that are usable with multiple sellers of goods or services. This exception shall not apply to a gift card usable only with affiliated sellers of goods or services.

(2) On and after August 11, 2010, the issuer shall redeem the remaining value of a gift card for cash if the amount remaining is five dollars or less on request of the holder.

(3) It is unlawful for any person or entity to sell to a purchaser a gift card that contains a service fee, a dormancy fee, an inactivity fee, a maintenance fee, or any other type of fee.

(4) A violation of this section shall be deemed a deceptive trade practice as provided in section 6-1-105 (1)(ccc).

Source: L. 2010: Entire section added, (SB 10-155), ch. 180, p. 647, § 1, effective August 11.

6-1-723. Cathinone bath salts - deceptive trade practice. (1) It is unlawful for any person or entity to distribute, dispense, manufacture, display for sale, offer for sale, attempt to sell, or sell to a purchaser any product that is labeled as a bath salt or any other trademark if the product contains any amount of any cathinones, as defined in section 18-18-102 (3.5), C.R.S.

(2) (a) A violation of this section shall be deemed a deceptive trade practice as provided in section 6-1-105 (1)(fff), and the violator shall be subject to a civil penalty as described in section 6-1-112 (1)(d) in addition to any applicable criminal penalty.

(b) For the purposes of this section, a person shall be deemed to have committed a violation for each individually packaged product that he or she distributed, dispensed, manufactured, displayed for sale, offered for sale, attempted to sell, or sold in violation of subsection (1) of this section.

Source: L. 2012: Entire section added, (HB 12-1310), ch. 268, p. 1406, § 32, effective June 7. **L. 2014:** Entire section amended, (HB 14-1037), ch. 358, p. 1683, § 5, effective August 6.

6-1-724. Unlicensed alternative health care practitioners - deceptive trade practices - short title - legislative declaration - definitions. (1) This section shall be known and may be cited as the "Colorado Natural Health Consumer Protection Act".

(2) The general assembly hereby finds and declares that:

(a) According to a July 2009 report from the national institute of health's national center for complementary and alternative medicine, which was based on 2007 survey data:

(I) Thirty-eight percent of Americans use complementary and alternative medicine; and

(II) Americans spent nearly thirty-four billion dollars in out-of-pocket costs in a twelve-month period for complementary and alternative medicine;

(b) It is estimated that more than one million five hundred thousand Coloradans currently receive a substantial volume of health care services from complementary and alternative health care practitioners;

(c) Those studies further indicate that individuals who use complementary and alternative health care services represent a wide variety of age, ethnic, socioeconomic, and other demographic categories;

(d) Although complementary and alternative health care practitioners are not regulated by the state and are not required to obtain a state-issued license, certification, or registration, the provision of alternative health care services in some circumstances may be interpreted as the provision of a health care service that only a professional who is licensed or otherwise regulated by the state may perform, thereby subjecting complementary and alternative health care practitioners to potential fines, penalties, and restrictions of their practices even though their practices do not pose an imminent and discernable risk of significant harm to public health and safety;

(e) Because the state recognizes and values the freedom of consumers to choose their health care providers, including the ability to choose a person who is not regulated by the state, the intent of this section is to protect consumer choice and, in consideration of the public's health and safety, to remove technical barriers to access to unregulated health care practitioners and include appropriate consumer protections and disclosures as required in this section; and

(f) Nothing in this section:

(I) Requires a person engaged in complementary and alternative health care to obtain a license, certification, or registration from the state as long as the person practices within the parameters of this section;

(II) Limits the public's right to access complementary and alternative health care practitioners or the right of an unregulated complementary and alternative health care practitioner to practice.

(3) As used in this section, unless the context otherwise requires:

(a) "Complementary and alternative health care practitioner" means a person who provides complementary and alternative health care services in accordance with this section and who is not licensed, certified, or registered by the state as a health care professional.

(b) (I) "Complementary and alternative health care services" means advice and services:

(A) Within the broad domain of health care and healing arts therapies and methods that are based on complementary and alternative theories of health and wellness, including those that are traditional, cultural, religious, or integrative; and

(B) That are not prohibited by subsection (6) of this section.

(II) "Complementary and alternative health care services" include:

(A) Healing practices using food; food extracts; dietary supplements, as defined in the federal "Dietary Supplement Health and Education Act of 1994", Pub.L. 103-417; nutrients; homeopathic remedies and preparations; and the physical forces of heat, cold, water, touch, sound, and light;

(B) Stress reduction healing practices; and

(C) Mind-body and energetic healing practices.

(c) "Health care professional" means a person engaged in a health care profession for which the state requires the person to obtain a license, certification, or registration under title 12, C.R.S., in order to engage in the health care profession.

(4) This section applies to any person who is not licensed, certified, or registered by the state as a health care professional and who is practicing complementary and alternative health care services.

(5) (a) A person who is not licensed, certified, or registered by the state as a health care professional and who is practicing complementary and alternative health care services consistent with this section does not violate any statute relating to a health care profession or professional practice act unless the person:

(I) Engages in an activity prohibited in subsection (6) of this section; or

(II) Fails to fulfill the disclosure duties specified in subsection (7) of this section.

(b) A complementary and alternative health care practitioner who engages in an activity prohibited by subsection (6) of this section is subject to the enforcement provisions, civil penalties, and damages specified in part 1 of this article, is no longer exempt from laws regulating the practice of health care professionals under title 12, C.R.S., and may be subject to penalties for unauthorized practice of a state-regulated health care profession.

(c) A person who fails to comply with subsection (7) of this section is subject to the enforcement provisions, civil penalties, and damages specified in part 1 of this article.

(6) A complementary and alternative health care practitioner providing complementary and alternative health care services under this section who is not licensed, certified, or registered by the state shall not:

(a) Perform surgery or any invasive procedure, including a procedure that requires entry into the body through skin, puncture, mucosa, incision, or other intrusive method, except as permitted under paragraph (g) of this subsection (6);

(b) Administer or prescribe X ray radiation to another person;

(c) Prescribe, administer, inject, dispense, suggest, or recommend a prescription or legend drug or a controlled substance or device identified in the federal "Controlled Substances Act", 21 U.S.C. sec. 801 et seq., as amended;

(d) Use general or spinal anesthetics, other than topical anesthetics;

(e) Administer ionizing radioactive substances for therapeutic purposes;

(f) Use a laser device that punctures the skin, incises the body, or is otherwise used as an invasive instrument. If a complementary and alternative health care practitioner uses a laser device as a noninvasive instrument, the laser device must be cleared by the federal food and drug administration for over-the-counter use.

(g) Perform enemas or colonic irrigation unless the complementary and alternative health care practitioner:

(I) Maintains board certification through the international association of colon hydrotherapy or the national board for colon hydrotherapy or their successor entities;

(II) Discloses that he or she is not a physician licensed pursuant to article 36 of title 12, C.R.S.; and

(III) Recommends that the client have a relationship with a licensed physician;

(h) Practice midwifery;

(i) Practice psychotherapy, as defined in section 12-43-201 (9), C.R.S.;

(j) Perform spinal adjustment, manipulation, or mobilization;

(k) Provide optometric procedures or interventions that constitute the practice of optometry, as defined in article 40 of title 12, C.R.S.;

(l) Directly administer medical protocols to a pregnant woman or to a client who has cancer;

(m) Treat a child who is under two years of age;

(n) Treat a child who is two years of age or older but less than eight years of age unless the complementary and alternative health care practitioner:

(I) Obtains the written, signed consent of the child's parent or legal guardian;

(II) Discloses that he or she is not a physician licensed pursuant to article 36 of title 12, C.R.S.;

(III) Recommends that the child have a relationship with a licensed pediatric health care provider; and

(IV) Requests permission from the parent or legal guardian for the complementary and alternative health care practitioner to attempt to develop and maintain a collaborative relationship with the child's licensed pediatric health care provider, if the child has a relationship with a licensed pediatric health care provider;

(o) Provide dental procedures or interventions that constitute the practice of dentistry, as defined in article 35 of title 12, C.R.S.;

(p) Set fractures;

(q) Practice or represent that he or she is practicing massage or massage therapy as defined in article 35.5 of title 12, C.R.S.;

(r) Provide a conventional medical disease diagnosis to a client;

(s) Recommend the discontinuation of a course of care, including a prescription drug, that was recommended or prescribed by a health care professional; or

(t) Hold oneself out as, state, indicate, advertise, or imply to a client or prospective client that he or she is a physician, surgeon, or both, or that he or she is a health care professional who is licensed, certified, or registered by the state.

(7) (a) Any person providing complementary and alternative health care services in this state who is not licensed, certified, or registered by the state as a health care professional is not regulated by a professional board or the division of professions and occupations in the department of regulatory agencies pursuant to title 12, C.R.S., and is advertising or charging a fee for health care services shall provide to each client during the initial client contact the following information in a plainly worded written statement:

(I) The complementary and alternative health care practitioner's name, business address, telephone number, and any other contact information for the practitioner;

(II) The fact that the complementary and alternative health care practitioner is not licensed, certified, or registered by the state as a health care professional;

(III) The nature of the complementary and alternative health care services to be provided;

(IV) A listing of any degrees, training, experience, credentials, or other qualifications the person holds regarding the complementary and alternative health care services he or she provides;

(V) A statement that the client should discuss any recommendations made by the complementary and alternative health care practitioner with the client's primary care physician, obstetrician, gynecologist, oncologist, cardiologist, pediatrician, or other board-certified physician; and

(VI) A statement indicating whether or not the complementary and alternative health care practitioner is covered by liability insurance applicable to any injury caused by an act or omission of the complementary and alternative health care practitioner in providing complementary and alternative health care services pursuant to this section.

(b) Before a complementary and alternative health care practitioner provides complementary and alternative health care services for the first time to a client, the complementary and alternative health care practitioner shall obtain a written, signed acknowledgment from the client stating that the client has received the information described in paragraph (a) of this subsection (7). The complementary and alternative health care practitioner shall give a copy of the acknowledgment to the client and shall retain the original or a copy of the acknowledgment for at least two years after the last date of service.

(c) A complementary and alternative health care practitioner shall not represent in any advertisement for complementary and alternative health care services that the complementary and alternative health care practitioner is licensed, certified, or registered by the state as a health care professional.

(8) The following persons shall not provide complementary and alternative health care services pursuant to this section:

(a) A health care professional whose state-issued license, certification, or registration has been revoked or suspended by the state and has not been reinstated;

(b) A person who has been convicted of a felony for a crime against a person or a felony related to health care and who has not satisfied the terms of the sentence imposed for the crime. As used in this paragraph (b), "convicted" includes entering a plea of guilty or nolo contendere or the imposition of a deferred sentence.

(c) A person who has been deemed mentally incompetent by a court of law.

(9) (a) A complementary and alternative health care practitioner who renders complementary and alternative health care services consistent with this section is not engaging in the practice of medicine, as defined in article 36 of title 12, C.R.S., and is not violating the "Colorado Medical Practice Act", article 36 of title 12, C.R.S., as long as the complementary and alternative health care practitioner does not engage in an act prohibited in subsection (6) of this section.

(b) Nothing otherwise authorizes a complementary and alternative health care practitioner practicing within the scope of practice in this section to engage in the practice of medicine.

(10) This section does not apply to or prohibit:

(a) Any licensed, certified, or registered health care professional from practicing his or her regulated profession;

(b) The practice of health care services that are exempt from state regulation or the provision of health care services by a person who is exempt from state regulation; or

(c) A person from selling dietary supplements as stipulated under the federal "Dietary Supplement Health and Education Act of 1994", Pub.L. 103-417, or other natural health care products or advising, educating, or counseling about the structure and function of the human body and the use of natural health care products to support health and wellness.

(11) This section does not limit the right of any person to seek relief under this article or any other available civil or common law remedy for damages resulting from the negligence of a person providing complementary and alternative health care services.

(12) Nothing in this section relieves a licensed, certified, or registered health care professional from liability arising from any injury caused by the health care professional in the course of providing complementary or alternative health care services.

(13) Nothing in this section prevents a consumer from obtaining nutritional information from a nutritionist employed by or under contract with a health food store or wellness center or the nutritionist from providing nutritional information to the consumer.

(14) A violation of this section constitutes a deceptive trade practice under this article.

Source: L. 2013: Entire section added, (SB 13-215), ch. 399, p. 2328, § 1, effective June 5. **L. 2016:** (6)(q) amended, (HB 16-1320), ch. 265, p. 1101, § 9, effective June 8.

Cross references: For the legislative declaration in HB 16-1320, see section 1 of chapter 265, Session Laws of Colorado 2016.

6-1-725. Synthetic cannabinoids - incense - deceptive trade practice. (1) It is unlawful for any person or entity to distribute, dispense, manufacture, display for sale, offer for sale, attempt to sell, or sell to a purchaser any product that contains any amount of any synthetic cannabinoid, as defined in section 18-18-102 (34.5), C.R.S.

(2) (a) A violation of this section is a deceptive trade practice as provided in section 6-1-105 (1)(ggg), and the violator shall be subject to a civil penalty as described in section 6-1-112 (1)(e) in addition to any applicable criminal penalty.

(b) For the purposes of this section, a person shall be deemed to have committed a violation for each individually packaged product that he or she distributed, dispensed,

manufactured, displayed for sale, offered for sale, attempted to sell, or sold in violation of subsection (1) of this section.

Source: L. 2014: Entire section added, (HB 14-1037), ch. 358, p. 1681, § 1, effective August 6.

6-1-726. Sale of public services - deceptive trade practice - definition. (1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person does any of the following with respect to a government service or an appointment to receive a government service and if a government entity makes the service or appointment publicly available without charge:

(a) The person reserves or obtains the service or appointment, and the person sells the service or appointment;

(b) The person reserves or obtains, with the intent to sell, the service or appointment;

(c) The person reserves or obtains the service or appointment, and the person appends the service or appointment to another good or service the person offers for sale; or

(d) The person falsely represents to the potential customer that the person has obtained or secured the service or appointment, and the person attempts to sell the service or appointment.

(2) This section does not apply when the person:

(a) Has consent from the government entity to sell the specific service or appointment obtained or reserved; or

(b) Is obtaining and selling or offering to sell only information.

(3) As used in this section, "government entity" means the state of Colorado, a political subdivision of Colorado, or an agency of either the state of Colorado or a political subdivision of Colorado.

Source: L. 2016: Entire section added, (HB 16-1335), ch. 246, p. 1015, § 3, effective July 1.

6-1-727. Immigration-related services provided by nonattorneys - deceptive trade practice - definitions. (1) **Legislative declaration.** The general assembly hereby finds and determines that the practice by some nonattorneys of providing legal advice or services in immigration matters negatively impacts the people who use their services and the public interest in preventing fraud and providing adequate opportunities to pursue immigration relief. While the Colorado supreme court regulates the practice of law in this state, the general assembly hereby finds and declares that it is in the public interest to prohibit nonattorneys from engaging in deceptive trade practices in immigration services in addition to the Colorado supreme court's prohibition against the unauthorized practice of law.

(2) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Compensation" means money, property, or anything else of value.

(b) (I) "Immigration matter" means a proceeding, filing, or other action that affects a person's immigrant, nonimmigrant, or citizenship status that arises under an immigration and naturalization law, executive order, or presidential proclamation or pursuant to an action of the United States citizenship and immigration services, the United States immigration and customs enforcement, the United States department of labor, the United States department of state, the

United States department of justice, the United States department of homeland security, the board of immigration appeals, or their successor agencies, or any other entity having jurisdiction over immigration law.

(II) "Immigration matter" includes a pending or future act of congress or executive order that concerns immigration reform.

(c) "Practice of law" has the meaning established by the Colorado supreme court, whether by rule or decision.

(3) **Prohibited practices - assistance with immigration matters - permitted practices.** (a) A person shall not engage in the practice of law in an immigration matter for compensation unless the person is:

(I) Licensed or otherwise authorized to practice law in this state pursuant to Colorado supreme court rules and article 93 of title 13; or

(II) Authorized, under federal law, whether acting through a charitable organization or otherwise, to represent others in immigration matters.

(b) If a person other than a person listed in subparagraph (I) or (II) of paragraph (a) of this subsection (3) engages in or offers to engage in one or more of the following acts or practices in an immigration matter for compensation, the person engages in a deceptive trade practice:

(I) Advising or assisting another person in a determination of the person's legal or illegal status for the purpose of an immigration matter;

(II) For the purpose of applying for a benefit, visa, or program related to an immigration matter, selecting for another person, assisting another person in selecting, or advising another person in selecting a benefit, visa, or program;

(III) Selecting for another person, assisting another person in selecting, or advising another person in selecting his or her answers on a government agency form or document related to an immigration matter;

(IV) Preparing documents for, or otherwise representing the interests of, another person in a judicial or administrative proceeding in an immigration matter;

(V) Explaining, advising, or otherwise interpreting the meaning or intent of a question on a government agency form in an immigration matter;

(VI) Demanding or accepting advance payment for the future performance of services in an immigration matter, especially with regard to services to be performed if a pending or future act of congress or executive order that concerns immigration reform is made effective; or

(VII) Selecting, drafting, or completing a legal document affecting the legal rights of another person in an immigration matter.

(c) With or without compensation or the expectation of compensation, a person other than a person listed in subparagraph (I) or (II) of paragraph (a) of this subsection (3) engages in a deceptive trade practice in an immigration matter if he or she represents, in any language, either orally or in a document, letterhead, advertisement, stationery, business card, website, or other written material that he or she:

(I) Is a notario publico, notario, immigration assistant, immigration consultant, immigration specialist, or other designation or title that conveys or implies in any language that he or she possesses professional legal skills or expertise in the area of immigration law; or

(II) Can or is willing to provide services in an immigration matter, if such services would constitute the practice of law.

(d) The prohibitions of subsection (3)(a) to (3)(c) of this section do not apply to the activities of a nonattorney assistant acting under the supervision of a person who is:

(I) Licensed or otherwise authorized to practice law in this state pursuant to Colorado supreme court rules and article 93 of title 13; or

(II) Authorized, under federal law, to represent others in immigration matters.

(e) Notwithstanding paragraphs (a) to (d) of this subsection (3), a person other than a person listed in subparagraph (I) or (II) of paragraph (a) of this subsection (3) may:

(I) Offer or provide language translation or typing services, regardless of whether compensation is sought;

(II) Secure or offer to secure existing documents, such as birth and marriage certificates, for a person seeking services; or

(III) Offer other immigration-related services that:

(A) Are not prohibited under this subsection (3), section 24-21-523 (1)(f) or (1)(i) or 24-21-525 (3), (4), or (5), or any other provision of law; and

(B) Do not constitute the practice of law.

Source: L. 2016: Entire section added, (HB 16-1391), ch. 354, p. 1453, § 1, effective June 10. **L. 2017:** (3)(a)(I), IP(3)(d), and (3)(d)(I) amended, (SB 17-227), ch. 192, p. 704, § 3, effective August 9; (3)(e)(III)(A) amended, (SB 17-132), ch. 207, p. 808, § 5, effective July 1, 2018.

Editor's note: (1) Section 8(1) of Senate Bill 17-132 was amended by section 121 of Senate Bill 17-294 to change the effective date of Senate Bill 17-132 from August 9, 2017, to July 1, 2018.

(2) Section 8(2) of chapter 207 (SB 17-132), Session Laws of Colorado 2017, provides that the act changing this section applies to conduct occurring on or after July 1, 2018.

6-1-728. Solicitation of fee for a deed or deed of trust - definitions. (1) As used in this section:

(a) "Local government" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, or a combination or subunit of any of them.

(b) "Solicit" or "solicitation" means to directly advertise or market through writing or graphics and via mail, telefax, or electronic mail to an individually identified person, residence, or business location. "Solicit" and "solicitation" do not include any of the following:

(I) Communicating via telephone, mail, or electronic communication, if initiated by a consumer; or

(II) Advertising and marketing to those with whom the solicitor has a preexisting business relationship.

(c) "State agency" means any office, department, or independent agency in the executive branch of Colorado state government, the general assembly, or the courts.

(2) A person who solicits a fee for providing a copy of a deed or deed of trust shall:

(a) Not less than fifteen days before distributing a solicitation, furnish a copy of the document that will be used for the solicitation to each county clerk and recorder where the solicitation is to be distributed;

(b) Not charge a fee of more than four times the amount charged by the county clerk and recorder that has custody of the deed or deed of trust for a copy of the same deed or deed of trust; and

(c) (I) State on the top of the document used for the solicitation, in at least twenty-four-point type:

(A) That the solicitation is not from a state agency or local government;

(B) That no action is legally required of the person being solicited;

(C) The fee for, or the cost of, obtaining a copy of the deed or deed of trust from the county clerk and recorder that has custody of the deed or deed of trust;

(D) The information necessary to contact the county clerk and recorder that has custody of the deed or deed of trust; and

(E) The name and physical address of the person soliciting the fee.

(II) The document used for a solicitation must not be in a form or use deadline dates or other language that makes the document appear to be a document issued by a state agency or local government or that appears to impose a legal duty on the individual being solicited.

(3) Only the attorney general or district attorney may bring an action against a person who violates this section. The penalties specified in section 6-1-112 apply to the action.

Source: L. 2018: Entire section added, (HB 18-1154), ch. 136, p. 892, § 1, effective August 8.

Editor's note: Section 2 of chapter 136 (HB 18-1154), Session Laws of Colorado 2018, provides that the act adding this section applies to conduct occurring on or after August 8, 2018.

PART 8

SWEEPSTAKES AND CONTESTS

6-1-801. Legislative finding, declaration, and intent. (1) The general assembly hereby finds, determines, and declares that a vast number of sweepstakes and contests have been and are being directed to Colorado consumers; that Colorado consumers may have paid millions of dollars to purchase goods or services to enter sweepstakes and contests based on representations created by the sponsors of those sweepstakes and contests; that these sweepstakes and contests may be targeted to certain vulnerable Colorado consumers; that there is a compelling need to curtail and prevent the most deceptive practices in connection with the promotion of sweepstakes and contests; that there is a compelling need for more complete disclosure of rules and operation of sweepstakes and contests in which money or other valuable consideration may be solicited; that preventing the deceptive promotions of sweepstakes and contests is a matter vitally affecting the public interest; and, therefore, that statutory regulation of sweepstakes and contests is necessary to the general welfare of the public.

(2) It is the intent of the general assembly to require that Colorado consumers be provided with all relevant information necessary to make an informed decision concerning sweepstakes and contests. It is also the intent of the general assembly to prohibit misleading and deceptive prize promotions. The terms of this part 8 shall be construed liberally in order to achieve this purpose.

Source: L. 2000: Entire part added, p. 861, § 1, effective August 2.

6-1-802. Definitions. As used in this part 8, unless the context otherwise requires:

(1) "Contest" means any game, puzzle, competition, or plan that holds out or offers to prospective participants the opportunity to receive or compete for gifts, prizes, or gratuities as determined by skill or any combination of chance and skill; except that "contest" shall not be construed to include any activity of licensees regulated under part 6 of article 21 of title 24 or article 30 or 40 of title 44.

(2) "No purchase necessary message" means the following statement, set apart and in bold-faced type, and at least ten-point type: "No purchase or payment of any kind is necessary to enter or win this [sweepstakes or contest].".

(3) "Official rules" means the formal printed statement of the rules for the sweepstakes or contest, which statement shall be printed in contrasting type face at least ten-point type.

(4) "Prize" means cash or an item or service of monetary value that is offered or awarded to a person in a real or purported sweepstakes or contest.

(5) "Prize notice" means a written notice, other than an advertisement appearing in a magazine or newspaper of general circulation, delivered by the United States postal service or by a private carrier, that is or contains a representation that the recipient will receive, or may be or may become eligible to receive, a prize.

(6) "Represent" and "representation" includes express statements and the implications and inferences that would be drawn from those statements, taking into account the context in which the representation is made, including, but not limited to, emphasis, font, size, color, location, and presentation of the representation and any qualifying language. If the representation is made on or visible through a mailing envelope, the context in which the representation is to be considered, including any qualifying language, shall be limited to that which is visible without opening the mailing envelope.

(7) "Retail value" of a prize means:

(a) A price at which the sponsor can demonstrate that a substantial number of the prizes or substantially similar items have been sold to the public in this state by someone other than the sponsor during the preceding year; or

(b) If the sponsor is unable to satisfy the requirement in paragraph (a) of this subsection (7), then the retail value is no more than one and one-half times the amount that the sponsor paid or would pay for the prize in a bona fide purchase from a seller unaffiliated with the sponsor.

(8) "Specially selected" means a representation that a person is a winner, a finalist, in first place or tied for first place, or otherwise among a limited group of persons with an enhanced likelihood of receiving a prize.

(9) "Sponsor" means a person who offers, by means of a prize notice, a prize to another person in this state in conjunction with any real or purported sweepstakes or contest that requires or allows, or creates the impression of requiring or allowing, the person to purchase any goods or services or pay any money as a condition of receiving, or in conjunction with allowing the person to receive, use, compete for, or obtain a prize or information about a prize.

(10) "Sweepstakes" means any competition, giveaway, drawing, plan, or other selection process or other enterprise or promotion in which anything of value is awarded to participants by chance or random selection that is not otherwise unlawful under other provisions of law; except

that "sweepstakes" shall not be construed to include any activity of licensees regulated under part 6 of article 21 of title 24 or article 30 or 40 of title 44.

Source: L. 2000: Entire part added, p. 862, § 1, effective August 2. **L. 2018:** (1) and (10) amended,(SB 18-034), ch. 14, p. 237, § 6, effective October 1; (1) and (10) amended, (HB 18-1027), ch. 31, p. 362, § 4, effective October 1.

Editor's note: Amendments to subsections (1) and (10) by HB 18-1027 and SB 18-034 were harmonized.

6-1-803. Prohibited practices and required disclosures. (1) No sponsor shall require a person to pay the sponsor money or any other consideration as a condition of awarding the person a prize, or as a condition of allowing the person to receive, use, compete for, or obtain a prize or information about a prize.

(2) No sponsor shall represent that a person has won or unconditionally will be the winner of a prize or use language that may lead a person to believe he or she has won a prize, unless all of the following conditions are met:

(a) The person shall be given the prize without obligation;

(b) The person shall be notified at no expense to such person within fifteen days of winning a prize; and

(c) The representation is not false, deceptive, or misleading.

(3) If a sponsor offers one or more items of the same or substantially the same value to all or substantially all of the recipients of a prize notice, the sponsor shall not:

(a) Represent that such items are prizes or that the process by which such items are to be distributed is a sweepstakes or contest, or otherwise represent that such process involves a distribution by chance; or

(b) Represent that the recipient is or has been specially selected unless it is true.

(4) No sponsor shall represent that a person has been specially selected in connection with a sweepstakes or contest unless it is true.

(5) No sponsor shall represent that a person may be or may become a winner of a prize, characterize the person as a possible winner of a prize, or represent that the person will, upon the satisfaction of some condition or the occurrence of some event or other contingency, become the winner of a prize, unless each of the following is clearly and conspicuously disclosed:

(a) The material conditions necessary to make the representation truthful and not misleading, including but not limited to the conditions that must be satisfied in order for the person to be determined as the winner. All such conditions shall be:

(I) Presented in such a manner that they are an integral part of the representation and not separated from the remainder of the representation by intervening words, graphics, colors, or excessive blank space;

(II) Made in terms, syntax, and grammar that are as simple and easy to understand as those used in the representation; and

(III) Presented in such a manner that they appear in the same type size and in the same type face, color, style, and font as the remainder of the representation.

(b) The fact that the person has not yet won;

(c) The no purchase necessary message;

(d) The retail value of each prize;

(e) The estimated odds of receiving each prize pursuant to paragraph (c) of subsection (6) of this section;

(f) The true name or names of the sponsor, the address of the sponsor's actual principal place of business, and the address at which the sponsor may be contacted;

(g) If receipt of a prize is subject to a restriction, a statement that a restriction applies and a description of the restriction;

(h) The deadline for submission of an entry to be eligible to win each prize;

(i) If a sponsor represents that the person is or has been specially selected, and if the representation is not prohibited under subsections (3) and (4) of this section, then immediately adjacent to such representation, in the same type size and boldness as the representation, a statement of the maximum number of persons in the group or purported group of persons with this enhanced likelihood of receiving a prize;

(j) The official rules for the sweepstakes or contest.

(6) Unless otherwise provided by subsection (5) of this section, the information required by subsection (5) of this section shall be presented in the following form:

(a) The information required by paragraphs (b) to (h) of subsection (5) of this section may be presented either:

(I) Immediately adjacent to the first identification of the prize to which it refers and in the same type size and boldness as the reference to the prize; or

(II) In a separate section of official rules with a section entitled "consumer disclosure", which title shall be printed in no less than twelve-point, bold-faced type, which section shall contain only a description of the prize, and which text shall be printed in no less than ten-point type.

(b) In addition to the other requirements of this subsection (6), the no purchase necessary message shall be presented in the official rules and, if the official rules do not appear thereon, on any device by which a person enters a sweepstakes or contest or purchases any goods or services or pays any money in connection with a sweepstakes or contest. The no purchase necessary message included in the official rules shall be set out in a separate paragraph in the official rules and be printed in capital letters in contrasting type face not smaller than the largest type face used in the text of the official rules. If a person is required or allowed to enter the sweepstakes or contest, or purchase any goods or services or pay any money in connection with a sweepstakes or contest, through a telephone call, the no purchase necessary message must be read to the person during the telephone call prior to accepting the entry, purchase, or payment.

(c) The statement of the odds of receiving each prize shall include, for each prize, the total number of prizes to be given away and the estimated odds of winning each prize based upon the following formula: "____ [number of prizes] out of _____ prize notices distributed".

(d) All dollar values shall be stated in Arabic numerals and be preceded by a dollar sign.

(7) No sponsor shall subject sweepstakes or contest entries not accompanied by an order for products or services to any disability or disadvantage in the winner selection process to which an entry accompanied by an order for products or services would not be subject.

(8) No sponsor shall represent that an entry in a sweepstakes or contest accompanied by an order for products or services will be eligible to receive additional prizes or be more likely to win than an entry not accompanied by an order for products or services, or that an entry not

accompanied by an order for products or services will have a reduced chance of winning a prize in the sweepstakes or contest.

(9) No sponsor shall represent that a person will have an increased chance of receiving a prize by making multiple or duplicate purchases, payments, or donations, or by entering a sweepstakes or contest more than one time.

(10) No sponsor shall represent that a person is being notified a second or final time of the opportunity to receive or compete for a prize, unless the representation is true.

(11) No sponsor shall represent that a prize notice is urgent or otherwise convey an impression of urgency by use of description, narrative copy, phrasing on a mailing envelope, or similar method, unless there is a limited time period in which the recipient must take some action to claim or be eligible to receive a prize, and the date by which such action is required appears immediately adjacent to each representation of urgency in the same type size and boldness as each representation of urgency.

(12) No sponsor shall deliver, or cause to be delivered, a prize notice which is in the form of, or a prize notice which includes, a document which simulates a bond, check, or other negotiable instrument, unless that document contains a statement that such document is nonnegotiable and has no cash value.

(13) No sponsor shall deliver, or cause to be delivered, a prize notice which:

(a) Simulates or falsely represents that it is a document authorized, issued, or approved by any court, official, or agency of the United States or any state or by any lawyer, law firm, or insurance or brokerage company; or

(b) Creates a false impression as to its source, authorization, or approval.

(14) No sponsor shall represent that a prize notice is being delivered by any method other than bulk mail unless that is the case or otherwise misrepresent the manner in which the prize notice is delivered.

(15) In the operation of a sweepstakes or contest, no sponsor shall:

(a) Misrepresent in any manner the likelihood or odds of winning any prize or misrepresent in any manner the rules, terms, or conditions of participation in a sweepstakes or contest;

(b) Fail to clearly and conspicuously disclose with all contest puzzles and games all of the following in the rules:

(I) The number of rounds or levels which may be necessary to complete the contest and determine winners;

(II) Whether future puzzles or games, if any, or tie breakers, if any, will be significantly more difficult than the initial puzzle;

(III) The date or dates on or before which the contest will terminate and upon which all prizes will be awarded;

(IV) The method of determining prizewinners if a tie remains after the last tie breaker puzzle is completed; and

(V) All rules, regulations, terms, and conditions of the contest.

(16) The prohibited practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable at common law or under other civil and criminal statutes of this state.

(17) No sponsor, requiring a person to respond in any manner to claim a prize, shall require the person to purchase insurance; except that the sponsor is in no way responsible for

applicable state and federal taxes on the prize; and except that a sponsor may require proof of health insurance in order to claim a prize for travel or recreational activities. Such health insurance may not be acquired from the sponsor.

Source: L. 2000: Entire part added, p. 863, § 1, effective August 2. **L. 2002:** (17) added, p. 383, § 1, effective April 25.

6-1-804. Exemptions. (1) The requirements of section 6-1-803 (5) and (6) shall not apply to solicitations or representations made in connection with the sale of goods:

(a) By a catalog seller that derives at least thirty-seven and one-half percent of its annual revenues from the sale of products sold in connection with the distribution of catalogs of at least twenty-four pages that contain written descriptions or illustrations and sale prices for each item of merchandise, if the catalogs are distributed in more than one state with a total annual distribution of at least two hundred fifty thousand; or

(b) From a membership group or club selling books, periodicals, recordings, videocassettes and similar items that is regulated by the federal trade commission pursuant to 16 CFR 425.1 concerning the use of negative option plans by sellers in commerce.

Source: L. 2000: (1)(a) amended, p. 989, § 108, effective July 1; entire part added, p. 867, § 1, effective August 2.

PART 9

COLORADO NO-CALL LIST ACT

6-1-901. Short title. This part 9 shall be known and may be cited as the "Colorado No-Call List Act".

Source: L. 2001: Entire part added, p. 1454, § 1, effective August 8.

6-1-902. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) The use of the telephone and telefacsimile ("fax") to market goods and services is widespread;

(b) Many citizens of this state view telemarketing as an invasion of privacy;

(c) Individuals' privacy rights and commercial freedom of speech should be balanced in a way that accommodates both the privacy of individuals and legitimate telemarketing practices;

(d) Although charitable and political organizations are exempt from the provisions of this part 9 because of considerations of freedom of speech, the general assembly encourages such organizations to voluntarily comply with this part 9 when possible; and

(e) It is in the public interest to establish a mechanism under which the individual citizens of this state can decide whether or not to receive telephone solicitations by phone or fax.

Source: L. 2001: Entire part added, p. 1454, § 1, effective August 8.

6-1-903. Definitions. As used in this part 9, unless the context otherwise requires:

(1) "Caller identification service" means a type of telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls.

(2) "Colorado no-call list" means the database of Colorado residential subscribers and wireless telephone service subscribers that have given notice, in accordance with rules promulgated under section 6-1-905, of such subscribers' objection to receiving telephone solicitations.

(3) "Conforming consolidated no-call list" means any database that includes telephone numbers of telephone subscribers that do not wish to receive telephone solicitations, if such database has been updated within the prior thirty days to include all of the telephone numbers on the Colorado no-call list.

(4) "Conforming list broker" means any person or entity that provides lists for the purpose of telephone solicitation, if such lists shall have removed, at a minimum of every thirty days, any phone numbers that are included on the Colorado no-call list.

(5) "Designated agent" means the party with which the public utilities commission contracts under section 6-1-905 (2).

(6) "Electronic mail" means an electronic message that is transmitted between two or more computers or electronic terminals. "Electronic mail" includes electronic messages that are transmitted within or between computer networks.

(7) (a) "Established business relationship" means a relationship that:

(I) Was formed, prior to the telephone solicitation, through a voluntary, two-way communication between a seller or telephone solicitor and a residential subscriber or wireless telephone service subscriber, with or without consideration, on the basis of an application, purchase, ongoing contractual agreement, or commercial transaction between the parties regarding products or services offered by such seller or telephone solicitor; and

(II) Has not been previously terminated by either party; and

(III) Currently exists or has existed within the immediately preceding eighteen months.

(b) "Established business relationship", with respect to a financial institution or affiliate, as those terms are defined in section 527 of the federal "Gramm-Leach-Bliley Act", includes any situation in which a financial institution or affiliate makes solicitation calls related to other financial services offered, if the financial institution or affiliate is subject to the requirements regarding privacy of Title V of the federal "Gramm-Leach-Bliley Act", and the financial institution or affiliate regularly conducts business in Colorado.

(8) "Internet" means the international computer network consisting of federal and nonfederal, interoperable, packet-controlled switched data networks.

(9) "Residential subscriber" means a person who has subscribed to residential telephone service with a local exchange provider, as defined in section 40-15-102 (18), C.R.S. "Person" also includes any other persons living or residing with such person.

(10) (a) "Telephone solicitation" means any voice, telefacsimile, graphic imaging, or data communication, including text messaging communication over a telephone line or through a wireless telephone for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services.

(b) Notwithstanding paragraph (a) of this subsection (10), "telephone solicitation" does not include communications:

(I) To any residential subscriber or wireless telephone service subscriber with the subscriber's prior express invitation or permission;

(II) By or on behalf of any person or entity with whom a residential subscriber or wireless telephone service subscriber has an established business relationship;

(III) For thirty days after a residential subscriber or wireless telephone service subscriber has contacted a business to inquire about the potential purchase of goods or services or until the subscriber requests that no further calls be made, whichever occurs first;

(IV) By or on behalf of a charitable organization that is required to comply and that has complied with the notice and reporting requirements of section 6-16-104 or is excluded from such notice and reporting requirements by section 6-16-104 (6);

(V) Made for the sole purpose of urging support for or opposition to a political candidate or ballot issue; or

(VI) Made for the sole purpose of conducting political polls or soliciting the expression of opinions, ideas, or votes.

(c) "Telephone solicitation" includes any communication described in paragraph (a) of this subsection (10), whether such communication originates from a live operator, through the use of automatic dialing and recorded message equipment, or by other means.

(11) "Wireless telephone" means a telephone that operates without a physical, wireline connection to the provider's equipment. The term includes, without limitation, cellular and mobile telephones.

(12) "Wireless telephone service subscriber" means a person who has subscribed to a telephone service that does not employ a wireline telephone or that employs both wireline and wireless telephones on the same customer account.

Source: L. 2001: Entire part added, p. 1455, § 1, effective August 8. **L. 2003:** (2), (7)(a)(I), (10)(a), (10)(b)(I), (10)(b)(II), and (10)(b)(III) amended and (11) and (12) added, p. 771, § 1, effective March 25. **L. 2004:** (7)(b) amended, p. 1188, § 7, effective August 4. **L. 2008:** (10)(b)(IV) amended, p. 1879, § 7, effective August 5.

Cross references: For the "Gramm-Leach-Bliley Act", see Pub.L. 106-102, 113 Stat. 1338.

6-1-904. Unlawful to make telephone solicitations to subscribers on the Colorado no-call list - requirements for telephone solicitations generally. (1) (a) No person or entity shall make or cause to be made any telephone solicitation to the telephone of any residential subscriber or wireless telephone service subscriber in this state who has added his or her telephone number and zip code to the Colorado no-call list in accordance with rules promulgated under section 6-1-905.

(b) Any person or entity that makes a telephone solicitation to the telephone of any residential subscriber or wireless telephone service subscriber in this state shall register in accordance with the provisions of section 6-1-905 (3)(b)(II).

(2) Repealed.

(3) No person or entity that makes a telephone solicitation to the telephone of a residential subscriber or a wireless telephone service subscriber in this state shall knowingly utilize any method to block or otherwise circumvent such subscriber's use of a caller

identification service when that person or entity's service or equipment is capable of allowing the display of the number.

(4) Persons or entities desiring to make telephone solicitations shall update their copies of the Colorado no-call list, conforming consolidated no-call list, or a list obtained from a conforming list broker within thirty days after the beginning of every calendar quarter, on or after July 1, 2002, or upon the initial availability and accessibility of the Colorado no-call list, whichever is earlier.

Source: L. 2001: Entire part added, p. 1457, § 1, effective August 8. **L. 2003:** (1), (2), and (3) amended, p. 772, § 2, effective March 25. **L. 2007:** (2) repealed, p. 2018, § 6, effective June 1.

6-1-905. Establishment and operation of a Colorado no-call list. (1) The Colorado no-call list program is hereby created for the purpose of establishing a database to use when verifying residential subscribers and wireless telephone service subscribers in this state who have given notice, in accordance with rules promulgated under paragraph (b) of subsection (3) of this section, of such subscribers' objection to receiving telephone solicitations. The program shall be administered by the public utilities commission.

(2) Not later than January 1, 2002, the public utilities commission shall contract with a designated agent, which shall maintain the website and database containing the Colorado no-call list. If no more than one entity bids on the contract, the public utilities commission may award, at its discretion, such contract.

(3) (a) Not later than July 1, 2002, the designated agent, using the designated state internet website, shall develop and maintain the Colorado no-call list database with information provided by residential subscribers and, as soon as practicable after March 25, 2003, shall include information provided by wireless telephone service subscribers.

(b) The public utilities commission shall establish, by rule, guidelines for the designated agent for the development and maintenance of the Colorado no-call list so that the no-call list can easily be accessed by persons or entities desiring to make telephone solicitations, and by state and local law enforcement agencies. As soon as practicable after March 25, 2003, the public utilities commission shall promulgate rules that:

(I) Specify that there shall be no cost for a residential subscriber or wireless telephone service subscriber to provide notification to the designated agent that such subscriber objects to receiving telephone solicitations;

(II) Specify that there shall be an annual registration fee of not more than five hundred dollars for persons or entities that wish to make telephone solicitations or otherwise access the database of telephone numbers and zip codes contained in the Colorado no-call list database. The public utilities commission shall determine such fee on a sliding scale so that persons or entities with fewer than five employees shall pay no fee. In addition, there shall be no fee charged to conforming list brokers or nonprofit corporations, as defined in section 7-121-401 (26), C.R.S. The maximum fee shall be charged only to persons or entities with more than one thousand employees. Moneys collected from such fees shall cover the direct and indirect costs related to the creation and operation of the Colorado no-call list. Moneys from such fees shall be collected by and paid directly to the designated agent. The public utilities commission shall have the authority to annually adjust the fees below the stated maximum based on revenue history of the

fees received by the designated agent. The designated agent shall provide means for online registration and credit card payment of fees charged pursuant to this subparagraph (II). Each such person or entity shall provide a current business name, business address, e-mail address if available, and telephone number when initially registering for the no-call list. This information shall be updated when changes occur.

(III) Specify that the method by which each residential subscriber and wireless telephone service subscriber may give notice to the designated agent of his or her objection to receiving such solicitations, or may revoke such notice, shall be exclusively by entering the area code, phone number, and zip code of the subscriber directly into the database via the designated state internet website or by using a touch-tone phone to enter the area code, phone number, and zip code of the subscriber via a designated statewide, toll-free telephone number maintained by the designated agent as a part of the Colorado no-call list;

(IV) Specify that the date of every notice received in accordance with subparagraph (III) of this paragraph (b) be recorded and included as part of the information in the no-call list;

(V) Require the designated agent to provide updated information about the Colorado no-call list program on the designated state website, subject to supervision by the public utilities commission;

(VI) Prohibit the designated agent or any person or entity collecting information to be transmitted to the designated agent from making any use or distribution of subscriber information contained in the no-call list except as expressly authorized under this part 9;

(VII) Specify the methods by which additions, deletions, changes, and modifications shall be made to the Colorado no-call list database and how updates of the database shall be made available to persons or entities desiring such updates. Such methods shall include provisions to remove from the Colorado no-call list, on at least an annual basis, any telephone number that has been disconnected or reassigned.

(VIII) Require the designated agent to maintain an automated, online complaint system for residential subscribers and wireless telephone service subscribers to report suspected violations over the internet website. The automated, online complaint system shall have the capability to collect, sort, and report suspected violations to the appropriate state enforcement agency electronically for enforcement purposes.

(IX) Specify that the no-call list shall be available on line at the Colorado no-call list website to a person or entity desiring to make telephone solicitations if the person or entity has registered in accordance with the provisions of subparagraph (II) of this paragraph (b). The list shall be available in a text or other compatible format, at the discretion of the public utilities commission, but shall allow telephone solicitors to select and sort by specific zip codes and telephone area codes. Telephone solicitors and conforming list brokers shall not receive additional compensation for distributing the Colorado no-call list, but are encouraged to freely distribute the Colorado no-call list at no cost.

(X) Specify such other matters relating to the database as the public utilities commission deems necessary or desirable.

(c) If the federal government establishes one or more official databases of residential or wireless telephone service subscribers who object to receiving telephone solicitations, the designated agent is authorized to provide appropriate data from the official Colorado no-call list exclusively for inclusion in an official, national do-not-call database. To the extent allowed by

federal law, the designated agent shall ensure that the Colorado no-call list includes that portion of an official national do-not-call database that relates to Colorado.

(4) The state shall not be liable to any person for gathering, managing, or using information in the Colorado no-call list database pursuant to this part 9 and for enforcing the provisions of this part 9.

(5) The designated agent shall not be liable to any person for performing its duties under this part 9 unless, and only to the extent that, the designated agent commits a willful and wanton act or omission.

(6) As soon as practicable after March 25, 2003, the designated agent shall update the database, on an ongoing basis, with information provided by residential subscribers, wireless telephone service subscribers, and local exchange providers.

(7) No person shall place the telephone number of another person on the Colorado no-call list without the authorization of the person to whom the number is assigned.

(8) Repealed.

Source: L. 2001: Entire part added, p. 1457, § 1, effective August 8. **L. 2003:** (1), (3)(a), IP(3)(b), (3)(b)(I), (3)(b)(III), (3)(b)(VIII), (3)(c), and (6) amended, p. 773, § 3, effective March 25. **L. 2004:** (8) repealed, p. 585, § 1, effective August 4.

6-1-906. Enforcement - penalties - defenses. (1) On and after July 1, 2002, violation of any provision of this part 9 constitutes a deceptive trade practice under the provisions of section 6-1-105 (1) and may be enforced under sections 6-1-110, 6-1-112, and 6-1-113. No state enforcement action under this part 9 may be brought against a person or entity for fewer than three violations per month.

(2) Notwithstanding subsection (1) of this section, it shall not be a violation of this part 9 if:

(a) The person or entity has otherwise fully complied with the provisions of this part 9 and has established and implemented, prior to the violation, written practices and procedures to effectively prevent telephone solicitations in violation of this part 9; or

(b) The violation resulted from an error in transcription or other technical defect, not the fault of the person or entity, that caused the information in the no-call list as received by the person or entity to differ from the information that was or should have been included in the no-call list as transmitted by the designated agent.

(3) The remedies, duties, prohibitions, and penalties of this section are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.

(4) No provider of telephone caller identification service shall be held liable for violations of this part 9 committed by other persons or entities.

Source: L. 2001: Entire part added, p. 1460, § 1, effective August 8.

6-1-907. Acceptance of gifts, grants, and donations. The public utilities commission may accept and expend moneys from gifts, grants, and donations for purposes of administering the provisions of this part 9.

Source: L. 2001: Entire part added, p. 1460, § 1, effective August 8.

6-1-908. Severability. If any provision of this part 9 or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this part 9 which can be given effect without the invalid provision or application, and to this end the provisions of this part 9 are declared to be severable.

Source: L. 2001: Entire part added, p. 1460, § 1, effective August 8.

PART 10

RESTRICTIONS ON USE OF LOAN INFORMATION - SOLICITATIONS

6-1-1001. Restrictions on use of loan information for solicitations - definition. (1) A person shall not reference the trade name or trademark of a lender or a trade name or trademark confusingly similar to that of a lender in a solicitation for the offering of services or products without the consent of the lender unless the solicitation clearly and conspicuously states in bold-faced type on the front page of the correspondence containing the solicitation:

(a) The name, address, and telephone number of the person making the solicitation;

(b) That the person making the solicitation is not affiliated with the lender;

(c) That the solicitation is not authorized or sponsored by the lender; and

(d) That the loan information referenced was not provided by the lender.

(2) A person shall not reference a loan number, loan amount, or other specific loan information that is not publicly available in a solicitation for the purchase of services or products; except that this prohibition shall not apply to communications by a lender or its affiliates with a current customer of the lender or with a person who was a customer of the lender.

(3) (a) A person shall not reference a loan number, loan amount, or other specific loan information that is publicly available in a solicitation for the purchase of services or products unless the communication clearly and conspicuously states in bold-faced type on the front page of the correspondence containing the solicitation:

(I) The name, address, and telephone number of the person making the solicitation;

(II) That the person making the solicitation is not affiliated with the lender;

(III) That the solicitation is not authorized or sponsored by the lender; and

(IV) That the loan information referenced was not provided by the lender.

(b) The prohibition in paragraph (a) of this subsection (3) shall not apply to communications by a lender or its affiliates with a current customer of the lender or with a person who was a customer of the lender.

(4) Any reference to an existing lender without the consent of the lender, and any reference to a loan number, loan amount, or other specific loan information, appearing on the outside of an envelope, visible through the envelope window, or on a postcard, in connection with any written communication that includes or contains a solicitation for goods or services is prohibited.

(5) It is not a violation of this section for a person to use the trade name of another lender in an advertisement for services or products to compare the services or products offered by the other lender.

(6) A lender or owner of a trade name or trademark may seek an injunction against a person who violates this section to stop the unlawful use of the trade name, trademark, or loan information. The person seeking the injunction shall not have to prove actual damage as a result of the violation. Irreparable harm and interim harm to the lender or owner shall be presumed. The lender or owner seeking the injunction may seek to recover actual damages and any profits the defendant has accrued as a result of the violation. The prevailing party in any action brought pursuant to this section is entitled to recover costs associated with the action and reasonable attorney fees from the other party.

(7) For the purposes of this section, "lender" means a bank, savings and loan association, savings bank, credit union, finance company, mortgage bank, mortgage broker, loan originator or holder of the loan, or other person who makes loans in this state, and any affiliate thereof, or any third party operating with the consent of the lender. For the purposes of this section, a person is not a lender based on the person's former employment with a lender.

(8) Nothing in this section shall apply to title insurance.

Source: L. 2004: Entire part added, p. 1533, § 1, effective August 4. **L. 2013:** (7) amended, (SB 13-154), ch. 282, p. 1468, § 22, effective July 1.

PART 11

COLORADO FORECLOSURE PROTECTION ACT

SUBPART 1

GENERAL PROVISIONS

6-1-1101. Short title. This part 11 shall be known and may be cited as the "Colorado Foreclosure Protection Act".

Source: L. 2006: Entire part added, p. 1330, § 1, effective May 30.

6-1-1102. Legislative declaration. The general assembly hereby finds, determines, and declares that home ownership and the accumulation of equity in one's home provide significant social and economic benefits to the state and its citizens. Unfortunately, too many home owners in financial distress, especially the poor, elderly, and financially unsophisticated, are vulnerable to a variety of deceptive or unconscionable business practices designed to dispossess them or otherwise strip the equity from their homes. There is a compelling need to curtail and to prevent the most deceptive and unconscionable of these business practices, to provide each home owner with information necessary to make an informed and intelligent decision regarding transactions with certain foreclosure consultants and equity purchasers, to provide certain minimum requirements for contracts between such parties, including statutory rights to cancel such contracts, and to ensure and foster fair dealing in the sale and purchase of homes in foreclosure. Therefore, it is the intent of the general assembly that all violations of this part 11 have a significant public impact and that the terms of this part 11 be liberally construed to achieve these purposes.

Source: L. 2006: Entire part added, p. 1330, § 1, effective May 30.

6-1-1103. Definitions. As used in this part 11, unless the context otherwise requires:

(1) "Associate" means a partner, subsidiary, affiliate, agent, or any other person working in association with a foreclosure consultant or an equity purchaser. "Associate" does not include a person who is excluded from the definition of an "equity purchaser" or a "foreclosure consultant".

(2) "Equity purchaser" means a person, other than a person who acquires a property for the purpose of using such property as his or her personal residence, who acquires title to a residence in foreclosure; except that the term does not include a person who acquires such title:

(a) (Deleted by amendment, L. 2010, (HB 10-1133), ch. 350, p. 1615, § 1, effective January 1, 2011.)

(b) By a deed in lieu of foreclosure to the holder of an evidence of debt, or an associate of the holder of an evidence of debt, of a consensual lien or encumbrance of record if such consensual lien or encumbrance is recorded in the real property records of the clerk and recorder of the county where the residence in foreclosure is located prior to the recording of the notice of election and demand for sale required under section 38-38-101, C.R.S.;

(c) By a deed from the public trustee or a county sheriff as a result of a foreclosure sale conducted pursuant to article 38 of title 38, C.R.S.;

(d) At a sale of property authorized by statute;

(e) By order or judgment of any court;

(f) From the person's spouse, relative, or relative of a spouse, by the half or whole blood or by adoption, or from a guardian, conservator, or personal representative of a person identified in this paragraph (f);

(g) While performing services as a part of a person's normal business activities under any law of this state or the United States that regulates banks, trust companies, savings and loan associations, credit unions, insurance companies, title insurers, insurance producers, or escrow companies authorized to conduct business in the state, an affiliate or subsidiary of such person, or an employee or agent acting on behalf of such person; or

(h) As a result of a short sale transaction in which a short sale addendum form, as promulgated by the Colorado real estate commission, is part of the contract used to acquire a residence in foreclosure and such transaction complies with section 6-1-1121.

(3) "Evidence of debt" means a writing that evidences a promise to pay or a right to the payment of a monetary obligation, such as a promissory note, bond, negotiable instrument, a loan, credit, or similar agreement, or a monetary judgment entered by a court of competent jurisdiction.

(4) (a) "Foreclosure consultant" means a person who does not, directly or through an associate, take or acquire any interest in or title to a homeowner's property and who, in the course of such person's business, vocation, or occupation, makes a solicitation, representation, or offer to a home owner to perform, in exchange for compensation from the home owner or from the proceeds of any loan or advance of funds, a service that the person represents will do any of the following:

(I) Stop or postpone a foreclosure sale;

(II) Obtain a forbearance from a beneficiary under a deed of trust, mortgage, or other lien;

(III) Assist the home owner in exercising a right to cure a default as provided in article 38 of title 38, C.R.S.;

(IV) Obtain an extension of the period within which the home owner may cure a default as provided in article 38 of title 38, C.R.S.;

(V) Obtain a waiver of an acceleration clause contained in an evidence of debt secured by a deed of trust, mortgage, or other lien on a residence in foreclosure or contained in such deed of trust, mortgage, or other lien;

(VI) Assist the home owner to obtain a loan or advance of funds;

(VII) Avoid or reduce the impairment of the home owner's credit resulting from the recording of a notice of election and demand for sale, commencement of a judicial foreclosure action, or due to any foreclosure sale or the granting of a deed in lieu of foreclosure or resulting from any late payment or other failure to pay or perform under the evidence of debt, the deed of trust, or other lien securing such evidence of debt;

(VIII) In any way delay, hinder, or prevent the foreclosure upon the home owner's residence; or

(IX) Repealed.

(b) The term "foreclosure consultant" does not include:

(I) A person licensed to practice law in this state, while performing any activity related to the person's attorney-client relationship with a home owner or any activity related to the person's attorney-client relationship with the beneficiary, mortgagee, grantee, or holder of any lien being enforced by way of foreclosure;

(II) A holder or servicer of an evidence of debt or the attorney for the holder or servicer of an evidence of debt secured by a deed of trust or other lien on any residence in foreclosure while the person performs services in connection with the evidence of debt, lien, deed of trust, or other lien securing such debt;

(III) A person doing business under any law of this state or the United States, which law regulates banks, trust companies, savings and loan associations, credit unions, insurance companies, title insurers, insurance producers, or escrow companies authorized to conduct business in the state, while the person performs services as part of the person's normal business activities, an affiliate or subsidiary of any of the foregoing, or an employee or agent acting on behalf of any of the foregoing;

(IV) A person originating or closing a loan in a person's normal course of business if, as to that loan:

(A) The loan is subject to the requirements of the federal "Real Estate Settlement Procedures Act of 1974", as amended, 12 U.S.C. sec. 2601 to 2617; or

(B) With respect to any second mortgage or home equity line of credit, the loan is subordinate to and closed simultaneously with a qualified first mortgage loan under sub-subparagraph (A) of this subparagraph (IV) or is initially payable on the face of the note or contract to an entity included in subparagraph (III) of this paragraph (b);

(V) A judgment creditor of the home owner, if the judgment is recorded in the real property records of the clerk and recorder of the county where the residence in foreclosure is located and the legal action giving rise to the judgment was commenced before the notice of election and demand for sale required under section 38-38-101, C.R.S.;

(VI) A title insurance company or title insurance agent authorized to conduct business in this state, while performing title insurance and settlement services;

(VII) A person licensed as a real estate broker under article 61 of title 12, C.R.S., while the person engages in any activity for which the person is licensed; or

(VIII) A nonprofit organization that solely offers counseling or advice to home owners in foreclosure or loan default, unless the organization is an associate of the foreclosure consultant.

(5) "Foreclosure consulting contract" means any agreement between a foreclosure consultant and a home owner.

(6) "Holder of evidence of debt" means the person in actual possession of or otherwise entitled to enforce an evidence of debt; except that "holder of evidence of debt" does not include a person acting as a nominee solely for the purpose of holding the evidence of debt or deed of trust as an electronic registry without any authority to enforce the evidence of debt or deed of trust. The following persons are presumed to be the holder of evidence of debt:

(a) The person who is the obligee of and who is in possession of an original evidence of debt;

(b) The person in possession of an original evidence of debt together with the proper indorsement or assignment thereof to such person in accordance with section 38-38-101 (6), C.R.S.;

(c) The person in possession of a negotiable instrument evidencing a debt, which has been duly negotiated to such person or to bearer or indorsed in blank; or

(d) The person in possession of an evidence of debt with authority, which may be granted by the original evidence of debt or deed of trust, to enforce the evidence of debt as agent, nominee, or trustee or in a similar capacity for the obligee of the evidence of debt.

(7) "Home owner" means the owner of a dwelling who occupies it as his or her principal place of residence, including a vendee under a contract for deed to real property, as that term is defined in section 38-35-126 (1)(b), C.R.S.

(8) (a) Except as otherwise provided in paragraph (b) of this subsection (8), "residence in foreclosure" means a residence or dwelling, as defined in sections 5-1-201 and 5-1-301, C.R.S., that is occupied as the home owner's principal place of residence and that is encumbered by a residential mortgage loan that is at least thirty days delinquent or in default.

(b) With respect to subpart 3 of this part 11, "residence in foreclosure" means a residence or dwelling, as defined in sections 5-1-201 and 5-1-301, C.R.S., that is occupied as the home owner's principal place of residence, is encumbered by a residential mortgage loan, and against which a foreclosure action has been commenced or as to which an equity purchaser otherwise has actual or constructive knowledge that the loan is at least thirty days delinquent or in default.

(9) "Short sale" or "short sale transaction" means a transaction in which the residence in foreclosure is sold when:

(a) A holder of evidence of debt agrees to release its lien for an amount that is less than the outstanding amount due and owing under such evidence of debt; and

(b) The lien described in paragraph (a) of this subsection (9) is recorded in the real property records of the county where the residence in foreclosure is located.

Source: L. 2006: Entire part added, p. 1331, § 1, effective May 30. **L. 2007:** (4)(b)(IV)(A) amended, p. 2018, § 7, effective June 1. **L. 2008:** (4)(b)(VII) amended, p. 511, § 29, effective April 17. **L. 2009:** (8) amended, (HB 09-1109), ch. 39, p. 154, § 1, effective July 1.

L. 2010: IP(2), (2)(a), IP(4)(a), (7), and (8) amended and (2)(h) and (9) added, (HB 10-1133), ch. 350, pp. 1615, 1616, §§ 1, 2, effective January 1, 2011. **L. 2016:** (4)(a)(IX) repealed, (HB 16-1090), ch. 97, p. 277, § 3, effective August 10.

Cross references: For the legislative declaration in HB 16-1090, see section 1 of chapter 97, Session Laws of Colorado 2016.

SUBPART 2

FORECLOSURE CONSULTANTS

6-1-1104. Foreclosure consulting contract. (1) A foreclosure consulting contract shall be in writing and provided to and retained by the home owner, without changes, alterations, or modifications, for review at least twenty-four hours before it is signed by the home owner.

(2) A foreclosure consulting contract shall be printed in at least twelve-point type and shall include the name and address of the foreclosure consultant to which a notice of cancellation can be mailed and the date the home owner signed the contract.

(3) A foreclosure consulting contract shall fully disclose the exact nature of the foreclosure consulting services to be provided and the total amount and terms of any compensation to be received by the foreclosure consultant or associate.

(4) A foreclosure consulting contract shall be dated and personally signed, with each page being initialed, by each home owner and the foreclosure consultant and shall be acknowledged by a notary public in the presence of the home owner at the time the contract is signed by the home owner.

(5) A foreclosure consulting contract shall contain the following notice, which shall be printed in at least fourteen-point bold-faced type, completed with the name of the foreclosure consultant, and located in immediate proximity to the space reserved for the home owner's signature:

Notice Required by Colorado Law

_____ (Name) or (his/her/its) associate cannot ask you to sign or have you sign any document that transfers any interest in your home or property to (him/her/it) or (his/her/its) associate.

_____ (Name) or (his/her/its) associate cannot guarantee you that they will be able to refinance your home or arrange for you to keep your home.
You may, at any time, cancel this contract, without penalty of any kind.

If you want to cancel this contract, mail or deliver a signed and dated copy of this notice of cancellation, or any other written notice, indicating your intent to cancel to _____ (name and address of foreclosure consultant) at _____ (address of foreclosure consultant, including facsimile and electronic mail address).

As part of any cancellation, you (the home owner) must repay any money actually spent on your behalf by _____ (name of foreclosure consultant) prior to receipt of this notice and as a result of this agreement, within sixty days, along with interest at the prime rate published by the federal reserve plus two percentage points, with the total interest rate not to exceed eight percent per year.

This is an important legal contract and could result in the loss of your home. Contact an attorney or a housing counselor approved by the federal department of housing and urban development before signing.

(6) A completed form in duplicate, captioned "Notice of Cancellation" shall accompany the foreclosure consulting contract. The notice of cancellation shall:

(a) Be on a separate sheet of paper attached to the contract;

(b) Be easily detachable; and

(c) Contain the following statement, printed in at least fourteen-point type:

Notice of Cancellation

(Date of contract)

To: (name of foreclosure consultant)

(Address of foreclosure consultant, including facsimile and electronic mail)

I hereby cancel this contract.

_____ (Date)

_____ (Home owner's signature)

(7) The foreclosure consultant shall provide to the home owner a signed, dated, and acknowledged copy of the foreclosure consulting contract and the attached notice of cancellation immediately upon execution of the contract.

(8) The time during which the home owner may cancel the foreclosure consulting contract does not begin to run until the foreclosure consultant has complied with this section.

Source: L. 2006: Entire part added, p. 1334, § 1, effective May 30. **L. 2010:** (4) amended, (HB 10-1133), ch. 350, p. 1616, § 3, effective January 1, 2011.

6-1-1105. Right of cancellation. (1) In addition to any right of rescission available under state or federal law, the home owner has the right to cancel a foreclosure consulting contract at any time.

(2) Cancellation occurs when the home owner gives written notice of cancellation of the foreclosure consulting contract to the foreclosure consultant at the address specified in the contract or through any facsimile or electronic mail address identified in the contract or other materials provided to the home owner by the foreclosure consultant.

(3) Notice of cancellation, if given by mail, is effective when deposited in the United States mail, properly addressed, with postage prepaid.

(4) Notice of cancellation need not be in the form provided with the contract and is effective, however expressed, if it indicates the intention of the home owner to cancel the foreclosure consulting contract.

(5) As part of the cancellation of a foreclosure consulting contract, the home owner shall repay, within sixty days after the date of cancellation, all funds paid or advanced in good faith prior to the receipt of notice of cancellation by the foreclosure consultant or associate under the terms of the foreclosure consulting contract, together with interest at the prime rate published by the federal reserve plus two percentage points, with the total interest rate not to exceed eight percent per year, from the date of expenditure until repaid by the home owner.

(6) The right to cancel may not be conditioned on the repayment of any funds.

Source: L. 2006: Entire part added, p. 1336, § 1, effective May 30.

6-1-1106. Waiver of rights - void. (1) A provision in a foreclosure consulting contract is void as against public policy if the provision attempts or purports to:

(a) Waive any of the rights specified in this subpart 2 or the right to a jury trial;

(b) Consent to jurisdiction for litigation or choice of law in a state other than Colorado;

(c) Consent to venue in a county other than the county in which the property is located; or

(d) Impose any costs or fees greater than the actual costs and fees.

Source: L. 2006: Entire part added, p. 1337, § 1, effective May 30.

6-1-1107. Prohibited acts. (1) A foreclosure consultant may not:

(a) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented that the foreclosure consultant would perform;

(b) Claim, demand, charge, collect, or receive any interest or any other compensation for a loan that the foreclosure consultant makes to the home owner that exceeds the prime rate published by the federal reserve at the time of any loan plus two percentage points, with the total interest rate not to exceed eight percent per year;

(c) Take a wage assignment, lien of any type on real or personal property, or other security to secure the payment of compensation;

(d) Receive any consideration from a third party in connection with foreclosure consulting services provided to a home owner unless the consideration is first fully disclosed in writing to the home owner;

(e) Acquire an interest, directly, indirectly, or through an associate, in the real or personal property of a home owner with whom the foreclosure consultant has contracted;

(f) Obtain a power of attorney from a home owner for any purpose other than to inspect documents as provided by law; or

(g) Induce or attempt to induce a home owner to enter into a foreclosure consulting contract that does not comply in all respects with this subpart 2.

Source: L. 2006: Entire part added, p. 1337, § 1, effective May 30.

6-1-1108. Criminal penalties. A person who violates section 6-1-1107 is guilty of a misdemeanor, as defined in section 18-1.3-504, C.R.S., and shall be subject to imprisonment in county jail for up to one year, a fine of up to twenty-five thousand dollars, or both.

Source: L. 2006: Entire part added, p. 1338, § 1, effective May 30.

6-1-1109. Unconscionability.</CATCH_LI NE> (1) A foreclosure consultant or associate may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction.

(2) (a) If a court, as a matter of law, finds a foreclosure consultant contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.

(b) When it is claimed or appears to the court that a foreclosure consultant contract or any clause of such contract may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect, to aid the court in making the determination.

(c) In order to support a finding of unconscionability, there must be evidence of some bad faith overreaching on the part of the foreclosure consultant or associate such as that which results from an unreasonable inequality of bargaining power or other circumstances in which there is an absence of meaningful choice for one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the foreclosure consultant or associate.

Source: L. 2006: Entire part added, p. 1338, § 1, effective May 30.

6-1-1110. Language. A foreclosure consulting contract, and all notices of cancellation provided for therein, shall be written in English and shall be accompanied by a written translation from English into any other language principally spoken by the home owner, certified by the person making the translation as a true and correct translation of the English version. The translated version shall be presumed to have equal status and credibility as the English version.

Source: L. 2006: Entire part added, p. 1338, § 1, effective May 30.

SUBPART 3

EQUITY PURCHASERS

6-1-1111. Written contract required. Every contract shall be written in at least nine-point, legible type and fully completed, signed, and dated by the home owner and equity purchaser prior to the execution of any instrument quit-claiming, assigning, transferring, conveying, or encumbering an interest in the residence in foreclosure.

Source: L. 2006: Entire part added, p. 1338, § 1, effective May 30. **L. 2010:** Entire section amended, (HB 10-1133), ch. 350, p. 1616, § 4, effective January 1, 2011.

6-1-1112. Written contract - contents - notice. (1) Every contract shall contain the entire agreement of the parties and shall include the following terms:

(a) The name, business address, and telephone number of the equity purchaser;

(b) The street address and full legal description of the residence in foreclosure;

(c) Clear and conspicuous disclosure of any financial or legal obligations of the home owner that will be assumed by the equity purchaser. If the equity purchaser will not be assuming any financial or legal obligations of the home owner, the equity purchaser shall provide to the home owner a separate written disclosure that substantially complies with section 18-5-802 (6), C.R.S.

(d) The total consideration to be paid by the equity purchaser in connection with or incident to the acquisition by the equity purchaser of the residence in foreclosure;

(e) The terms of payment or other consideration, including, but not limited to, any services of any nature that the equity purchaser represents will be performed for the home owner before or after the sale;

(f) The date and time when possession of the residence in foreclosure is to be transferred to the equity purchaser;

(g) The terms of any rental agreement or lease;

(h) The specifications of any option or right to repurchase the residence in foreclosure, including the specific amounts of any escrow deposit, down payment, purchase price, closing costs, commissions, or other fees or costs;

(i) A notice of cancellation as provided in section 6-1-1114; and

(j) The following notice, in at least nine-point bold-faced type, and completed with the name of the equity purchaser, immediately above the statement required by section 6-1-1114:

NOTICE REQUIRED BY COLORADO LAW

Until your right to cancel this contract has ended, (Name) or anyone working for _____ (Name) CANNOT ask you to sign or have you sign any deed or any other document.

(2) The contract required by this section survives delivery of any instrument of conveyance of the residence in foreclosure, but does not have any effect on persons other than the parties to the contract or affect title to the residence in foreclosure.

Source: L. 2006: Entire part added, p. 1339, § 1, effective May 30. **L. 2010:** IP(1)(j) amended, (HB 10-1133), ch. 350, p. 1617, § 5, effective January 1, 2011.

6-1-1113. Cancellation. (1) In addition to any right of rescission available under state or federal law, the home owner has the right to cancel a contract with an equity purchaser until 12 midnight of the third business day following the day on which the home owner signs a contract that complies with this part 11 or until 12 noon on the day before the foreclosure sale of the residence in foreclosure, whichever occurs first.

(2) Cancellation occurs when the home owner personally delivers written notice of cancellation to the address specified in the contract or upon deposit of such notice in the United States mail, properly addressed, with postage prepaid.

(3) A notice of cancellation given by the home owner need not take the particular form as provided with the contract and, however expressed, is effective if it indicates the intention of the home owner not to be bound by the contract.

(4) In the absence of any written notice of cancellation from the home owner, the execution by the home owner of a deed or other instrument of conveyance of an interest in the residence in foreclosure to the equity purchaser after the expiration of the rescission period creates a rebuttable presumption that the home owner did not cancel the contract with the equity purchaser.

Source: L. 2006: Entire part added, p. 1340, § 1, effective May 30.

6-1-1114. Notice of cancellation. (1) (a) The contract shall contain, as the last provision before the space reserved for the home owner's signature, a conspicuous statement in at least twelve-point bold-faced type, as follows:

You may cancel this contract for the sale of your house without any penalty or obligation at any time before _____ (Date and time of day). See the attached notice of cancellation form for an explanation of this right.

(b) The equity purchaser shall accurately specify the date and time of day on which the cancellation right ends.

(2) The contract shall be accompanied by duplicate completed forms, captioned "notice of cancellation" in at least nine-point bold-faced type if the contract is printed or in capital letters if the contract is typed, followed by a space in which the equity purchaser shall enter the date on which the home owner executed the contract. Such form shall:

(a) Be attached to the contract;

(b) Be easily detachable; and

(c) Contain the following statement, in at least nine-point type if the contract is printed or in capital letters if the contract is typed:

NOTICE OF CANCELLATION

_____ (Enter date contract signed). You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before _____ (Enter date and time of day). To cancel this transaction, personally deliver a signed and dated copy of this Notice of Cancellation in the United States mail, postage prepaid, to _____, (Name of purchaser) at _____ _____ (Street address of purchaser's place of business) NOT LATER THAN _____ (Enter date and time of day). I hereby cancel this transaction _____ (Date) _____ (Seller's signature)

(3) The equity purchaser shall provide the home owner with a copy of the contract and the attached notice of cancellation.

(4) Until the equity purchaser has complied with this section, the home owner may cancel the contract.

Source: L. 2006: Entire part added, p. 1340, § 1, effective May 30. **L. 2010:** IP(2) and IP(2)(c) amended, (HB 10-1133), ch. 350, p. 1617, § 6, effective January 1, 2011.

6-1-1115. Options through reconveyances. (1) A transaction in which a home owner purports to grant a residence in foreclosure to an equity purchaser by an instrument that appears to be an absolute conveyance and reserves to the home owner or is given by the equity purchaser an option to repurchase shall be permitted only where all of the following conditions have been met:

(a) The reconveyance contract complies in all respects with section 6-1-1112;

(b) The reconveyance contract provides the home owner with a nonwaivable thirty-day right to cure any default of said reconveyance contract and specifies that the home owner may exercise this right to cure on at least three separate occasions during such reconveyance contract;

(c) The equity purchaser fully assumes or discharges the lien in foreclosure as well as any prior liens that will not be extinguished by such foreclosure, which assumption or discharge shall be accomplished without violation of the terms and conditions of the liens being assumed or discharged;

(d) The equity purchaser verifies and can demonstrate that the home owner has or will have a reasonable ability to make the lease payments and to repurchase the residence in foreclosure within the term of the option to repurchase under the reconveyance contract. For purposes of this section, there is a rebuttable presumption that the home owner has a reasonable ability to make lease payments and to repurchase the residence in foreclosure if the home owner's payments for primary housing expenses and regular principal and interest payments on other personal debt do not exceed sixty percent of the home owner's monthly gross income; and

(e) The price the home owner must pay to exercise the option to repurchase the residence in foreclosure is not unconscionable. Without limitation on available claims under section 6-1-1119, a repurchase price exceeding twenty-five percent of the price at which the equity purchaser acquired the residence in foreclosure creates a rebuttable presumption that the reconveyance contract is unconscionable. The acquisition price paid by the equity purchaser may include any actual costs incurred by the equity purchaser in acquiring the residence in foreclosure.

Source: L. 2006: Entire part added, p. 1341, § 1, effective May 30.

6-1-1116. Waiver of rights - void. (1) A provision in a contract between an equity purchaser and home owner is void as against public policy if it attempts or purports to:

(a) Waive any of the rights specified in this subpart 3 or the right to a jury trial;

(b) Consent to jurisdiction for litigation or choice of law in a state other than Colorado;

(c) Consent to venue in a county other than the county in which the property is located; or

(d) Impose any costs or fees greater than the actual costs and fees.

Source: L. 2006: Entire part added, p. 1342, § 1, effective May 30.

6-1-1117. Prohibited conduct. (1) The contract provisions required by sections 6-1-1111 to 6-1-1114 shall be provided and completed in conformity with such sections by the equity purchaser.

(2) Until the time within which the home owner may cancel the transaction has fully elapsed, the equity purchaser shall not do any of the following:

(a) Accept from a home owner an execution of, or induce a home owner to execute, an instrument of conveyance of any interest in the residence in foreclosure;

(b) Record with the county recorder any document, including, but not limited to, the contract or any lease, lien, or instrument of conveyance, that has been signed by the home owner;

(c) Transfer or encumber or purport to transfer or encumber an interest in the residence in foreclosure to a third party; or

(d) Pay the home owner any consideration.

(3) Within ten days following receipt of a notice of cancellation given in accordance with sections 6-1-1113 and 6-1-1114, the equity purchaser shall return without condition the original contract and any other documents signed by the home owner.

(4) An equity purchaser shall make no untrue or misleading statements of material fact regarding the value of the residence in foreclosure, the amount of proceeds the home owner will receive after a foreclosure sale, any contract term, the home owner's rights or obligations incident to or arising out of the sale transaction, the nature of any document that the equity purchaser induces the home owner to sign, or any other untrue or misleading statement concerning the sale of the residence in foreclosure to the equity purchaser.

Source: L. 2006: Entire part added, p. 1342, § 1, effective May 30.

6-1-1118. Criminal penalties. A person who violates section 6-1-1117 (2) or (3) or who intentionally violates section 6-1-1117 (4) is guilty of a misdemeanor, as defined in section 18-1.3-504, C.R.S., and shall be subject to imprisonment in county jail for up to one year, a fine of up to twenty-five thousand dollars, or both.

Source: L. 2006: Entire part added, p. 1343, § 1, effective May 30.

6-1-1119. Unconscionability.</CATCH_LI NE> (1) An equity purchaser or associate may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction.

(2) (a) If a court, as a matter of law, finds an equity purchaser contract or any clause of such contract to have been unconscionable at the time it was made, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or so limit the application of any unconscionable clause as to avoid an unconscionable result.

(b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect, to aid the court in making the determination.

(c) In order to support a finding of unconscionability, there must be evidence of some bad faith overreaching on the part of the equity purchaser or associate such as that which results from an unreasonable inequality of bargaining power or under other circumstances in which there is an absence of meaningful choice for one of the parties, together with contract terms that are, under standard industry practices, unreasonably favorable to the equity purchaser or associate.

Source: L. 2006: Entire part added, p. 1343, § 1, effective May 30.

6-1-1120. Language. (1) Any contract, rental agreement, lease, option or right to repurchase, and any notice, conveyance, lien, encumbrance, consent, or other document or instrument signed by a home owner, shall be written in English; except that, if the equity purchaser has actual or constructive knowledge that the home owner's principal language is other than English, the home owner shall be provided with a notice, written in the home owner's principal language, substantially as follows:

This transaction involves important and complex legal consequences, including your right to cancel this transaction within three business days following the date you sign this contract. You should consult with an attorney or seek assistance from a housing counselor by calling the Colorado foreclosure hotline at _____ [current, correct telephone number].

(2) If a notice in the home owner's principal language is required to be provided under subsection (1) of this section, the notice shall be given to the home owner as a separate document accompanying the written contract required by section 6-1-1111.

Source: L. 2006: Entire part added, p. 1343, § 1, effective May 30. **L. 2010:** Entire section amended, (HB 10-1133), ch. 350, p. 1617, § 7, effective January 1, 2011.

6-1-1121. Short sales - subsequent purchaser - definition. (1) With respect to any short sale transaction in which an equity purchaser intends to resell the residence in foreclosure to a subsequent purchaser, the equity purchaser shall:

(a) Provide full disclosure to the home owner and to the holders of the evidence of debt on the residence in foreclosure, or such holders' representatives, of the terms of the agreement between the equity purchaser and any subsequent purchaser, including but not limited to the purchase price to be paid by the subsequent purchaser for the residence in foreclosure, which disclosure shall be made within one business day of identifying any such subsequent purchaser and in no event later than closing on the short sale transaction;

(b) Provide full disclosure to any subsequent purchaser and to any subsequent purchaser's lender, or such lender's representative, at the time of contract with the equity purchaser, of the terms of the agreement between the equity purchaser and the home owner, including but not limited to the purchase price paid by the equity purchaser for the residence in foreclosure;

(c) Comply with all applicable rules adopted by the Colorado real estate commission with regard to short sales; and

(d) Comply with section 38-35-125, C.R.S.

(2) As used in this section, a "subsequent purchaser" means any person who enters into a contract with an equity purchaser prior to the disbursement of the short sale transaction to acquire the residence in foreclosure and who acquires the residence in foreclosure within fourteen days after the disbursement of the short sale transaction.

Source: L. 2010: Entire section added, (HB 10-1133), ch. 350, p. 1618, § 8, effective January 1, 2011.

ARTICLE 2

Unfair Practices Act

6-2-101. Short title. This article shall be known and may be cited as the "Unfair Practices Act".

Source: L. 37: p. 1287, § 14. **CSA:** C. 48, § 302(13). **L. 41:** p. 824, § 13. **L. 49:** p. 349, § 17. **CRS 53:** § 55-2-17. **C.R.S. 1963:** § 55-2-17.

6-2-102. Legislative declaration. The general assembly declares that the purpose of this article is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This article shall be liberally construed so that its beneficial purposes may be subserved.

Source: L. 41: p. 824, § 12. **CSA:** C. 48, § 302(12). **L. 49:** p. 349, § 16. **CRS 53:** § 55-2-16. **C.R.S. 1963:** § 55-2-16.

6-2-103. Discriminatory sales - exceptions. (1) It is unlawful for any person, firm, or corporation doing business in the state of Colorado and engaged in the production, manufacture, distribution, or sale of any commodity, product, or service of general use or consumption, or the sale of any merchandise or product by any public utility, with the intent to destroy the competition of any regular established dealer in such commodity, product, or service, or to prevent the competition of any person, firm, private corporation, or municipal or other public corporation that in good faith intends and attempts to become a dealer, to discriminate between different sections, communities, or cities, or portions thereof, or between different locations in such sections, communities, cities, or portions thereof in this state by selling or furnishing a commodity, product, or service at a lower rate in one section, community, or city, or any portion thereof, or in one location in such section, community, or city, or any portion thereof than in another after making allowance for the difference, if any, in the grade or quality, quantity, and actual cost of transportation from the point of production, if a raw product or commodity, or from the point of manufacture, if a manufactured product or commodity. Motion picture films when delivered under a lease to motion picture houses shall not be deemed to be a commodity or product of general use or consumption.

(2) Nothing in this article shall be construed to affect or apply to any service or product sold, rendered, or furnished by any public utility, the sale, rendition, or furnishing of which is subject to regulation by the Colorado public utilities commission or by any municipal regulatory body. This article shall not be construed to prohibit the meeting in good faith of a competitive rate.

(3) The inhibition in this section against locality discrimination shall embrace any scheme of special rebates, collateral contracts, or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this article.

(4) It is an unfair trade practice for any person, firm, or corporation doing business in this state and engaged in the production, manufacture, or distribution of either written or printed

material or motion pictures to require a buyer or lessee, as a condition of the purchase or lease of such material or motion pictures, to accept other material or motion pictures which the buyer or lessee deems objectionable and written objection is made thereto by such buyer or lessee to the seller or lessor of said material or motion pictures within thirty days after delivery to said buyer or lessee. If such written objection is made within the time provided in this subsection (4), and the seller or lessor does not, within ten days of the receipt of said objection, repurchase or recall such objectionable material or motion pictures from the buyer or lessee, all the remedies provided in this article shall be applicable against said seller or lessor. The provisions of this subsection (4) shall apply whether the material or motion pictures are acquired by the buyer or lessee for resale, sublease, or for any other purpose.

Source: L. 37: p. 1280, § 1. **CSA:** C. 48, § 302(1). **L. 41:** p. 820, § 1. **L. 49:** p. 342, § 1. **CRS 53:** § 55-2-1. **C.R.S. 1963:** § 55-2-1. **L. 69:** p. 368, § 1. **L. 2007:** (1) amended, p. 513, § 1, effective April 16.

6-2-104. Personal responsibility. (1) Any person who, either as director, officer, or agent of any firm or corporation or as agent of any person violating the provisions of this article, assists or aids, directly or indirectly, in such violation shall be responsible equally with the person, firm, or corporation for which he acts.

(2) In the prosecution of any person as officer, director, or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm, or corporation for which he acts.

Source: L. 37: p. 1281, § 2. **CSA:** C. 48, § 302(2). **L. 41:** p. 821, § 2. **L. 49:** p. 343, § 2. **CRS 53:** § 55-2-2. **C.R.S. 1963:** § 55-2-2.

6-2-105. Unlawful to sell below cost - definition. (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 product or service for less than the cost of the product or service with the intent to both injure competitors and destroy competition and where the likely result of such sale would be the acquisition or maintenance of a monopoly. 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) (Deleted by amendment, L. 2007, p. 514, § 2, effective April 16, 2007.)

(2) For purposes of this section, "cost" means an appropriate determination of cost that is consistent with federal court interpretations of cost in federal predatory pricing cases under the federal "Sherman Act", 15 U.S.C. sec. 1 et seq.

(3) (Deleted by amendment, L. 2008, p. 2244, § 1, effective June 5, 2008.)

Source: L. 37: p. 1282, § 3. **CSA:** C. 48, § 302(3). **L. 41:** p. 821, § 3. **L. 49:** p. 343, § 3. **CRS 53:** § 55-2-3. **C.R.S. 1963:** § 55-2-3. **L. 93:** (1) amended, p. 1273, § 1, effective July 1. **L. 2007:** (1) and (2) amended, p. 514, § 2, effective April 16. **L. 2008:** Entire section amended, p. 2244, § 1, effective June 5.

6-2-106. How cost established. In establishing the cost of a given product to the distributor and vendor, the invoice cost of the product purchased at a forced, bankrupt, closeout

sale, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of date of said sale of the product replaced through the ordinary channels of trade, unless the product is kept separate from goods purchased in the ordinary channels of trade and unless the product is advertised and sold as merchandise purchased at a forced, bankrupt, closeout sale, or by means other than through the ordinary channels of trade. The advertising shall state the conditions under which said goods were purchased and the quantity of such merchandise to be sold or offered for sale.

Source: L. 37: p. 1283, § 4. **CSA:** C. 48, § 302(4). **L. 41:** p. 822, § 4. **L. 49:** p. 344, § 4. **CRS 53:** § 55-2-4. **C.R.S. 1963:** § 55-2-4. **L. 2007:** Entire section amended, p. 514, § 3, effective April 16.

6-2-107. Allegation and proof - evidence. In any injunction proceeding or in the prosecution of any person as officer, director, or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm, or corporation for which he acts. Where a particular trade or industry of which the person, firm, or corporation complained against is a member has an established cost survey for the locality and vicinity in which the offense is committed, the cost survey shall be deemed competent evidence to be used in proving the costs of the person, firm, or corporation complained against within the provisions of this article.

Source: L. 37: p. 1283, § 5. **CSA:** C. 48, § 302(5). **L. 41:** p. 822, § 5. **L. 49:** p. 344, § 5. **CRS 53:** § 55-2-5. **C.R.S. 1963:** § 55-2-5.

6-2-108. Secret rebates or refunds prohibited. The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers upon like terms and conditions, to the injury of a competitor and where such payment or allowance tends to destroy competition, is an unfair trade practice. Any person, firm, partnership, corporation, or association resorting to such unfair trade practice is guilty of a misdemeanor and, upon conviction thereof, shall be subject to the penalties provided in section 6-2-116.

Source: L. 37: p. 1284, § 7. **CSA:** C. 48, § 302(7). **L. 41:** p. 823, § 7. **L. 49:** p. 345, § 7. **CRS 53:** § 55-2-7. **C.R.S. 1963:** § 55-2-7.

6-2-109. Contract illegal - when. Any contract, express or implied, made by any person, firm, or corporation in violation of any of the provisions of sections 6-2-103 to 6-2-108 is an illegal contract, and no recovery thereon shall be had; except that no part of this article shall prevent the payment of patronage refunds by cooperative agencies or associations existing and operating under the laws of this state.

Source: L. 37: p. 1285, § 9. **CSA:** C. 48, § 302(8). **L. 41:** p. 823, § 8. **L. 49:** p. 345, § 8. **CRS 53:** § 55-2-8. **C.R.S. 1963:** § 55-2-8.

6-2-110. When provisions not applicable. (1) The provisions of sections 6-2-105 to 6-2-107 shall not apply to any sale made:

(a) In closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any such stock or commodity, and in the case of the sale of seasonal goods or the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation, if notice is given to the public thereof;

(b) When the goods are damaged or deteriorated in quality and notice is given to the public thereof;

(c) By an officer acting under the orders of any court;

(d) In an endeavor made in good faith to meet the prices of a competitor selling the same product or service in the same locality or trade area.

(2) Any person, firm, or corporation who performs work upon, renovates, alters, or improves any personal property belonging to another person, firm, or corporation shall be construed to be a vendor within the meaning of this article.

Source: L. 37: p. 1283, § 6. **CSA:** C. 48, § 302(6). **L. 41:** p. 822, § 6. **L. 49:** p. 344, § 6. **CRS 53:** § 55-2-6. **C.R.S. 1963:** § 55-2-6. **L. 2007:** (1)(d) amended, p. 514, § 4, effective April 16.

6-2-111. Unlawful acts - remedy - license - rules. (1) Any person, firm, private corporation, municipal corporation, public corporation, or trade association may maintain an action to enjoin a continuance of any act in violation of sections 6-2-103 to 6-2-108 or section 6-2-110 and, if injured thereby, for the recovery of damages. If, in such action, the court finds that the defendant is violating or has violated any of the provisions of sections 6-2-103 to 6-2-108 or section 6-2-110, it shall enjoin the defendant from a continuance of the violations. It shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant three times the amount of the actual damages, if any, sustained.

(2) Without prejudice to the rights of any person, firm, private corporation, municipal corporation, public corporation, or trade association to bring an action, the attorney general of the state of Colorado, as an incident to and power of his or her office, has like powers to those provided in subsection (1) of this section, and it is his or her duty, upon showing by any person, firm, private corporation, municipal corporation, public corporation, or trade association that there is reason to believe that any person subject to the terms of this article is violating any term of sections 6-2-103 to 6-2-108 or section 6-2-110, to prosecute actions for violation of any provisions of this article, and to seek injunctions or restraining orders to enjoin the continuance thereof by any defendant.

(3) If any person, firm, private corporation, municipal corporation, public corporation, or trade association, in writing and under oath, submits to the attorney general a statement setting forth facts sufficient to constitute a prima facie case of violation of any of the provisions of sections 6-2-103 to 6-2-108 or any other provisions of this article, it is mandatory upon the attorney general to seek injunctive relief or restraining orders to enjoin the continuance of such violation by any person, firm, private corporation, or other organization so charged; and to this end, and for this purpose, the attorney general has the power to appear in his or her official capacity in any court in the state of Colorado, having jurisdiction in the premises, to seek relief.

(4) It is the duty of any district attorney in and for each of the judicial districts of the state of Colorado, when requested in writing by the attorney general, to advise and consult with the attorney general concerning the institution and prosecution of such actions, and to act for the attorney general in prosecution of any such action; but the attorney general has the power in his or her discretion to choose, select, appoint, and recompense from funds provided for the purposes of enforcement of the provisions of this article any attorney-at-law admitted to practice in the state of Colorado as a special prosecutor who has full and complete power to act for the attorney general.

(5) The attorney general, for the purposes of carrying out the terms and provisions of this article, has the power to promulgate rules and regulations for the enforcement of this article, not inconsistent with its terms, and to publish the same.

(6) The attorney general may appoint such personnel as may reasonably be required to carry out the functions prescribed for his or her office.

Source: L. 37: p. 1285, § 10. **CSA:** C. 48, § 302(9). **L. 41:** p. 823, § 9. **L. 49:** p. 345, § 9. **CRS 53:** § 55-2-9. **C.R.S. 1963:** § 55-2-9. **L. 69:** p. 369, § 1. **L. 2016:** (2), (3), (4), and (6) amended, (HB 16-1094), ch. 94, p. 264, § 4, effective August 10.

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.

Source: L. 93: Entire section added, p. 1273, § 2, effective July 1.

6-2-112. Testimony - books and records. In an action brought under this article, any defendant may be required to testify under subpoena duly issued in pursuance to the Colorado rules of civil procedure, and the books and records of any such defendant may be brought into court and introduced into evidence. No information so obtained may be used against the defendant as a basis for a misdemeanor prosecution under the provisions of this article.

Source: L. 49: p. 347, § 10. **CSA:** C. 48, § 302(9a). **CRS 53:** § 55-2-10. **C.R.S. 1963:** § 55-2-10.

6-2-113. Selling below cost. For the purposes of this article, in all sales involving more than one product or service and in all sales involving the giving of any concession of any kind, the combined total selling price of all products or services shall be compared to the combined total cost of all products or services involved in the sales to determine whether the vendor or distributor is selling below cost.

Source: L. 49: p. 347, § 11. **CSA:** C. 48, § 302(9b). **CRS 53:** § 55-2-11. **C.R.S. 1963:** § 55-2-11. **L. 2007:** Entire section amended, p. 514, § 5, effective April 16.

6-2-114. Advertising goods not available. It is unlawful for any person, firm, or corporation engaged in business within the state of Colorado to advertise goods, wares, or merchandise which they are not prepared and able to supply to the consuming public in pursuance of such advertisement.

Source: L. 49: p. 347, § 12. **CSA:** C. 48, § 309(9c). **CRS 53:** § 55-2-12. **C.R.S. 1963:** § 55-2-12.

6-2-115. Evidence to establish legal price. (Repealed)

Source: L. 49: p. 348, § 13. **CSA:** C. 48, § 302(9d). **CRS 53:** § 55-2-13. **C.R.S. 1963:** § 55-2-13. **L. 2007:** Entire section repealed, p. 515, § 6, effective April 16.

6-2-115.5. State agencies - authority to contract with private enterprise. (1) Any state agency which is provided goods or services or which provides goods to the public, including manufacturing, processing, selling, offering for sale, renting, leasing, delivering, distributing, or advertising, shall determine if such goods can also be provided for by contract with private persons, partnerships, or corporations or any other type of private enterprise.

(2) Whenever a state agency determines that goods provided by it to the public can be more cost-effectively delivered by contract with private enterprise, or whenever a state agency determines that goods can be provided to it more cost-effectively by contract with private enterprise, such state agency is authorized to enter into a contract, in accordance with the "Procurement Code", articles 101 to 112 of title 24, C.R.S., to obtain such goods.

(3) The provisions of subsections (1) and (2) of this section do not apply to the division of correctional industries products and services as long as such products and services are of comparable price and quality.

Source: L. 83: Entire section added, p. 395, § 1, effective June 3.

Cross references: For the requirements concerning purchasing by state agencies of correctional industries goods and services, see article 24 of title 17.

6-2-116. Penalty. Any person, firm, or corporation, whether as principal, agent, officer, or director, for himself or itself, or for another person, or for any firm or corporation who violates any of the provisions of sections 6-2-103 to 6-2-108 or section 6-2-110, is guilty of a misdemeanor for each single violation and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment.

Source: L. 37: p. 1286, § 11. **CSA:** C. 48, § 302(10). **L. 41:** p. 824, § 10. **L. 49:** p. 349, § 14. **CRS 53:** § 55-2-14. **C.R.S. 1963:** § 55-2-14.

6-2-117. Remedies cumulative. The remedies prescribed in this article are cumulative.

Source: L. 41: p. 824, § 11. **CSA:** C. 48, § 302(11). **L. 49:** p. 349, § 15. **CRS 53:** § 55-2-15. **C.R.S. 1963:** § 55-2-15.

ARTICLE 2.5

Colorado Junk Email Law

6-2.5-101 to 6-2.5-105. (Repealed)

Source: L. 2008: Entire article repealed, p. 596, § 3, effective August 5.

Editor's note: This article was added in 2000 and was not amended prior to its repeal in 2008. For the text of this article prior to 2008, consult the 2007 Colorado Revised Statutes.

Cross references: For the "Spam Reduction Act of 2008", see § 6-1-702.5.

ARTICLE 2.7

Internet Evidence for
Law Enforcement Investigations

6-2.7-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Court order" means an order for the release of information, including but not limited to a subpoena, court order, search warrant, or summons.

(2) "Internet access provider" means an entity that provides electronic communications or remote computing as defined in 18 U.S.C. sec. 119 and sec. 121, to customers in Colorado. "Internet access provider" shall not include noninternet-based communications.

Source: L. 2006: Entire article added, p. 2057, § 9, effective October 1.

6-2.7-102. Internet evidence for law enforcement - preserve and release evidence - reports - training materials. (1) (a) An internet access provider, upon the request of a law enforcement agency, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other legal process. The internet access provider shall comply with the request as soon as possible following receipt.

(b) Records referred to in paragraph (a) of this subsection (1) shall be retained for a period of ninety days, which shall be extended for an additional ninety-day period upon a renewed request by the law enforcement agency.

(2) (a) An internet access provider shall release evidence regarding all categories of information identified in 18 U.S.C. sec. 2703 (c)(2) that are in its possession within ten days after receiving a court order requiring the internet access provider to release such evidence to law enforcement. If the internet access provider demonstrates to the requesting law enforcement agency within five days of the request that, for bona fide technical reasons, it cannot comply with the order within ten days of the request, it shall make every reasonable effort to comply with the request as soon as reasonably possible.

(b) In connection with any criminal investigation regarding possible sex offenses involving a child under section 18-1.3-1003, C.R.S., that involves immediate danger of death or serious bodily harm, a law enforcement agency in this state may issue a request, without compulsory legal process or court order, to a designated recipient of the internet access provider to disclose, consistent with 18 U.S.C. sec. 2702 (c)(4), the information identified in paragraph (a) of this subsection (2). The internet access provider shall comply with the request immediately and without delay, or if unable to immediately comply, communicate with the requesting agency to discuss the nature of the request and to coordinate a timely response.

(3) An internet access provider doing business in this state shall report incidents of apparent child pornography to the national center for missing and exploited children pursuant to 42 U.S.C. sec. 13032. The report shall include, if available, the subscriber's city and state or zip code.

(4) Each internet access provider with more than fifteen thousand subscribers who are residents of this state shall, upon request of the attorney general, provide training materials to law enforcement agencies in this state regarding best practices for investigating internet-related crimes involving sexual exploitation of children, the internet access provider's law enforcement compliance practices, and contact information for the internet access provider and its designated recipient for law enforcement requests.

(5) Subsections (1) and (2) of this section shall be interpreted consistent with the requirements of federal law that apply to internet access providers, including but not limited to 18 U.S.C. 2701 et seq. and 42 U.S.C. 13032.

Source: L. 2006: Entire article added, p. 2058, § 9, effective October 1.

6-2.7-103. Internet evidence - failure to release or preserve - civil penalty. (1) An internet access provider that fails to comply with the requirements in section 6-2.7-102 (1) or (2) shall be liable for payment of a civil penalty of up to two thousand five hundred dollars for each incidence of noncompliance; except that the internet access provider shall be liable for payment of up to ten thousand dollars for a third and subsequent incidence of noncompliance that occurs within a twelve-month period. The state attorney general is authorized to bring suit in a court of competent jurisdiction for enforcement of the provisions of this subsection (1).

(2) Except as otherwise provided in subsection (1) of this section, an internet access provider's failure to comply with the requirements specified in section 6-2.7-102 shall not result in further civil liability to the state.

Source: L. 2006: Entire article added, p. 2059, § 9, effective October 1.

ARTICLE 3

Fair Trade Act

6-3-101 to 6-3-106. (Repealed)

Source: L. 75: Entire article repealed, p. 261, § 1, effective July 1.

Editor's note: This article was numbered as article 1 of chapter 55, C.R.S. 1963. For amendments to this article prior to its repeal in 1975, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 4

Colorado Antitrust Act of 1992

Editor's note: This article was numbered as article 4 of chapter 55, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1992, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Law reviews: For article, "The 1992 Colorado Antitrust Act: Per Se Bidrigging and Key Issues", see 22 Colo. Law. 2229 (1993); for article, "The Colorado Antitrust Act of 1992", see 22 Colo. Law. 695 (1993); for article, "Antitrust Questions and Answers: A Primer for Practitioners", see 24 Colo. Law. 521 (1995); for article, "Criminal Enforcement of State and Federal Antitrust Laws", see 43 Colo. Law. 59 (Oct. 2014).

6-4-101. Short title. This article shall be known and may be cited as the "Colorado Antitrust Act of 1992".

Source: L. 92: Entire article R&RE, p. 236, § 1, effective July 1.

6-4-102. Legislative declaration. The general assembly hereby finds and determines that competition is fundamental to the free market system and that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality commodities and services, and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic, political, and social institutions.

Source: L. 92: Entire article R&RE, p. 236, § 1, effective July 1.

6-4-103. Definitions. (1) "Commodity" includes, but is not limited to, any goods, merchandise, wares, produce, chose in action, land, articles of commerce, or any other tangible or intangible property, real, personal, or mixed, for use, consumption, production, enjoyment, or resale.

(2) "Governmental or public entity" means the state and any of its departments, boards, agencies, instrumentalities, authorities, and commissions and any political subdivisions, including but not limited to counties, city and counties, municipalities, school districts, local improvement districts, law enforcement authorities, water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special districts, and any other municipal, quasi-

municipal, or public corporation organized pursuant to the constitution or other law, and any of the political subdivision's respective departments, boards, agencies, instrumentalities, authorities, and commissions.

(3) "Person" includes any natural person, any firm, association, organization, business or other trust, company, corporation, joint venture, partnership, proprietorship, or other business entity, whether or not for profit, and any governmental or public entity.

(4) "Service" includes, but is not limited to, any kind of activity performed in whole or in part for economic or noneconomic benefit.

(5) "Trade or commerce" means any and all economic activity carried on wholly or partially in this state which involves or relates to any commodity or service.

Source: L. 92: Entire article R&RE, p. 236, § 1, effective July 1.

6-4-104. Illegal restraint of trade or commerce. Every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce is illegal.

Source: L. 92: Entire article R&RE, p. 237, § 1, effective July 1.

Editor's note: This section is similar to former § 6-4-101, as it existed prior to 1992.

6-4-105. Monopolization and attempt to monopolize. It is illegal for any person to monopolize, attempt to monopolize, or combine or conspire with any other person to monopolize any part of trade or commerce.

Source: L. 92: Entire article R&RE, p. 237, § 1, effective July 1.

Editor's note: This section is similar to former § 6-4-102, as it existed prior to 1992.

6-4-106. Bid-rigging. (1) It is illegal for any person to contract, combine, or conspire with any person to rig any bid, or any aspect of the bidding process, in any way related to the provision of any commodity or service.

(2) For purposes of this section, each separate instance of bid-rigging shall constitute a separate violation of this section, regardless of whether a single conspiracy is found to exist encompassing more than one such violation.

Source: L. 92: Entire article R&RE, p. 237, § 1, effective July 1.

Editor's note: This section is similar to former § 6-4-102, as it existed prior to 1992.

6-4-107. Mergers - acquisitions. (1) It is unlawful for any person engaged in trade or commerce to acquire, directly or indirectly, the whole or any part of the stock or other share capital, or to acquire the whole or any part of the assets, of another person engaged in trade or commerce where the effect of such acquisition may be to substantially lessen competition or may tend to create a monopoly.

(2) Nothing in this section shall prohibit any person from acquiring stock of another person solely for investment purposes, so long as such acquisition of stock is not used, by voting or otherwise, to bring about, or to attempt to bring about, the substantial lessening of competition; nor shall anything in this section prohibit any person from causing the formation of subsidiary corporations or from owning and holding all or any part of the stock of such subsidiary corporation.

(3) The attorney general shall not challenge any merger or acquisition under the provisions of this section which has been reviewed by any federal department, agency, or commission under section 7A of the federal "Clayton Act" and for which all applicable waiting periods have expired or have been terminated without a challenge to such merger or acquisition by that department, agency, or commission.

(4) The attorney general shall not challenge the merger or acquisition of any bank or bank holding company by or with any other bank or bank holding company that is subject to the provisions of any of the federal banking laws, except as specifically provided in those laws.

Source: L. 92: Entire article R&RE, p. 237, § 1, effective July 1.

Cross references: For the "Clayton Act", see 38 Stat. 730; for section 7A of the "Clayton Act", as referred to in subsection (3), see 15 U.S.C. sec. 18a.

6-4-108. Exemptions. (1) The labor of a human being is not a commodity, service, or article of trade or commerce.

(2) Nothing contained in this article shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for purposes of mutual help, or engaged in making collective sales or marketing for its members or shareholders, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof.

(3) A professional review committee constituted and conducting its reviews and activities in accordance with the provisions of part 1 of article 36.5 of title 12, C.R.S., or the members thereof, shall not be held nor construed to be illegal combinations or conspiracies in restraint of trade under this article.

(4) Any person, activity, or conduct exempt or immune under the laws of this state or exempt or immune from the provisions of the federal antitrust laws shall be exempt or immune from the provisions of this article without regard to any monetary threshold imposed by federal law; except that nothing in this article shall be deemed to modify the specific provisions of part 4 of article 4 of title 10, C.R.S.

(5) Nothing in this article shall prohibit or be construed to prohibit:

(a) The formation of a cooperative health care agreement that has been approved in whole or in part in accordance with the provisions of part 5 of article 1 of title 25.5, C.R.S.;

(b) Any conduct or activity reasonably necessary and reasonably foreseeable to implement a board-approved cooperative health care agreement or a decision or order issued by the cooperative health care agreements board pursuant to part 5 of article 1 of title 25.5, C.R.S.;

(c) The negotiation of or entering into any cooperative health care agreement which is filed with the cooperative health care agreements board; or

(d) Community planning, discussions, or negotiations intended in good faith to culminate in a cooperative health care agreement to be filed with the cooperative health care agreements board. Such agreements, conduct, or activities shall not be held or construed to be illegal combinations or conspiracies in restraint of trade under this article.

(6) Nothing in this article shall prohibit or be construed to prohibit the formation and operation of health care coverage cooperatives or provider networks pursuant to part 3 of article 18 of this title or part 10 of article 16 of title 10, C.R.S.

Source: L. 92: Entire article R&RE, p. 238, § 1, effective July 1. **L. 93:** (5) added, p. 1898, § 2, effective July 1. **L. 94:** (6) added, p. 1941, § 5, effective July 1. **L. 95:** (5)(a) and (5)(b) amended, p. 511, § 6, effective May 16. **L. 2004:** (6) amended, p. 1009, § 16, effective August 4.

Editor's note: This section is similar to former § 6-4-103, as it existed prior to 1992.

6-4-109. Jurisdiction - venue. (1) Primary jurisdiction of any cause of action brought pursuant to this article shall be vested in the district courts of this state.

(2) Any cause of action brought pursuant to this article may be brought in any judicial district in which said violation occurred, in which any injury was suffered, or in which any defendant resides.

Source: L. 92: Entire article R&RE, p. 239, § 1, effective July 1.

Editor's note: This section is similar to former § 6-4-105, as it existed prior to 1992.

6-4-110. Civil discovery request. (1) When the attorney general has reasonable cause to believe that any person has engaged in or is engaging in a violation of any provision of this article or of any provision of the federal antitrust statutes that may be enforced by the attorney general, 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 section; 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; and

(e) Grant such other or further relief as may be necessary to obtain compliance by such person.

Source: L. 92: Entire article R&RE, p. 239, § 1, effective July 1. **L. 2000:** IP(1) amended, p. 245, § 4, effective March 30.

6-4-111. Enforcement by the attorney general. (1) The attorney general shall have the authority to institute actions or proceedings to prevent or restrain violations of this article.

(2) The attorney general may bring a civil action on behalf of any governmental or public entity, with the written consent of such entity, injured, either directly or indirectly, in its business or property by reason of any violation of this article and, if successful, shall recover any actual damages sustained by such entity. If the violation alleged and proved is determined by the court to be a *per se* violation of this article, the attorney general may recover three times the actual damages sustained by such entity.

(3) (a) The attorney general may bring a civil action as *parens patriae* on behalf of natural persons residing within the state injured in their business or property by reason of any violation of this article and, if successful, shall recover any actual damages sustained by such natural persons. If the violation alleged and proved is determined by the court to be a *per se* violation of this article, the attorney general may recover three times the actual damages sustained by such natural persons.

(b) In any *parens patriae* action brought pursuant to paragraph (a) of this subsection (3), the attorney general shall cause notice to be given to the proposed *parens* group by publication or as otherwise directed by the court, and all proposed *parens* group members shall have the right to elect to have their particular claim excluded from that proceeding. No dismissal or compromise settlement of an action brought by the attorney general as *parens patriae* shall be entered without the approval of the court and notice to all proposed *parens* group members.

(c) In any *parens patriae* action in which actual or treble damages are recovered, the court, in its discretion, may determine that the amount of damages recovered is too small to make a refund to *parens* group members practicable. In that event, the court may direct such damages to be paid to the general fund of the state or to some other governmental or public entity as the court deems appropriate or may require that damages be paid as rebates or price reductions to future consumers.

(4) In any action brought pursuant to this section, the attorney general, if successful, shall be entitled to recover the costs of investigation, expert fees, costs of the action, and reasonable attorney fees.

Source: L. 92: Entire article R&RE, p. 241, § 1, effective July 1. **L. 93:** (1) amended, p. 1574, § 4, effective July 1.

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 two hundred fifty 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) and (3).

(2) In determining the amount of a civil penalty, the court shall consider, among other things: The nature and extent of the violation; the number of consumers affected by the violation; whether the violation was an isolated incident or a continuous pattern and practice of behavior; whether the violation was the result of willful conduct; whether the defendant took affirmative steps to conceal such violations; and whether, given the size and wealth of the defendant, the civil penalty will be an effective deterrent against future violations.

Source: L. 92: Entire article R&RE, p. 242, § 1, effective July 1. **L. 93:** (1) amended, p. 1574, § 5, effective July 1. **L. 2009:** (1) amended, (SB 09-054), ch. 138, p. 597, § 2, effective August 5.

Editor's note: This section is similar to former § 6-4-107, as it existed prior to 1992.

6-4-113. Enforcement - injunction. (1) Any person injured in its business or property by reason of any violation of this article may file an action to prevent or restrain any such violation.

(2) In any action brought pursuant to this section, the court, in its discretion, may award the prevailing party its expert witness fees, the costs of the action, and reasonable attorney fees.

Source: L. 92: Entire article R&RE, p. 242, § 1, effective July 1.

Editor's note: This section is similar to former § 6-4-105, as it existed prior to 1992.

6-4-114. Enforcement - civil damages. (1) Any person injured in its business or property by reason of any violation of this article may sue therefor and, if successful, shall recover any actual damages sustained by such person. If the violation alleged and proved is determined by the court to be a *per se* violation of this article, such person may recover three times the actual damages sustained by such person.

(2) In any action brought pursuant to this section, the court, in its discretion, may award the prevailing party its expert fees, the costs of the action, and reasonable attorney fees.

(3) No damages, costs, expert fees, costs of investigation, civil penalties, or attorney fees may be recovered from a governmental or public entity, or from any official, agent, or employee thereof acting in an official capacity, or from any person based on any official action directed by such governmental or public entity.

Source: L. 92: Entire article R&RE, p. 242, § 1, effective July 1.

Editor's note: This section is similar to former § 6-4-108, as it existed prior to 1992.

6-4-115. Notice to the attorney general. Any person who files a civil action which includes any allegation of a violation of this article shall, simultaneously with the filing of such action in district court, serve a copy of said complaint on the attorney general.

Source: L. 92: Entire article R&RE, p. 243, § 1, effective July 1.

6-4-116. Computation of damages. In any action brought pursuant to sections 6-4-111 and 6-4-114, the amount of damages may be calculated and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damages to, persons on whose behalf the action was brought.

Source: L. 92: Entire article R&RE, p. 243, § 1, effective July 1.

Editor's note: This section is similar to former § 6-4-108, as it existed prior to 1992.

6-4-117. Enforcement - criminal proceedings. (1) The attorney general shall prosecute all criminal proceedings for violations of this article, whether by indictment or direct information filed in the appropriate district court.

(2) Any natural person who violates section 6-4-104, 6-4-105, or 6-4-106 commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(3) Any person, other than a natural person and a governmental or public entity, that violates section 6-4-104, 6-4-105, or 6-4-106 is guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than one million dollars.

Source: L. 92: Entire article R&RE, p. 243, § 1, **L. 2002:** (2) amended, p. 1466, § 15, effective October 1.

Editor's note: This section is similar to former § 6-4-104, as it existed prior to 1992.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

6-4-118. Statute of limitations. (1) Any civil action commenced pursuant to this article shall be brought within four years from the date that such cause of action accrued. For purposes of this article, a cause of action accrues when the circumstances giving rise to the cause of action are discovered or should have been discovered in the exercise of reasonable diligence.

(2) Any criminal proceeding brought pursuant to this article shall be commenced within six years after the act complained of occurred.

(3) If any proceeding or action is commenced by the attorney general for any violation of this article, the running of the statute of limitations with respect to every cause of action based in whole or in part on any matter complained of therein shall be suspended during the pendency thereof and for one year thereafter.

Source: L. 92: Entire article R&RE, p. 243, § 1, effective July 1.

Editor's note: This section is similar to former § 6-4-104, as it existed prior to 1992.

6-4-119. Interpretation. It is the intent of the general assembly that, in construing this article, the courts shall use as a guide interpretations given by the federal courts to comparable federal antitrust laws.

Source: L. 92: Entire article R&RE, p. 244, § 1, effective July 1.

6-4-120. Remedies - cumulative. The remedies provided in this article are cumulative except as otherwise expressly limited.

Source: L. 92: Entire article R&RE, p. 244, § 1, effective July 1.

Editor's note: This section is similar to former § 6-5-114, as it existed prior to 1992.

6-4-121. Void contracts - refund. All contracts or agreements made by any person while a member of any combination, conspiracy, trust, or pool prohibited under this article which are founded upon, or are the result of, or grow out of, or are connected with any violation of this article, either directly or indirectly, shall be void, and no recovery thereon or benefit therefrom shall be had by or for any such person. Any payments made upon, under, or pursuant to such contract or agreement to or for the benefit of such person may be recovered in an action by the party making the payment or his heirs, personal representatives, or assigns.

Source: L. 92: Entire article R&RE, p. 244, § 1, effective July 1.

Editor's note: This section is similar to former § 6-4-106, as it existed prior to 1992.

6-4-122. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application.

Source: L. 92: Entire article R&RE, p. 244, § 1, effective July 1.

ARTICLE 5

Unfair Cigarette Sales

6-5-101 to 6-5-114. (Repealed)

Source: L. 75: Entire article repealed, p. 261, § 1, effective July 1.

Editor's note: This article was numbered as article 3 of chapter 55, C.R.S. 1963. For amendments to this article prior to its repeal in 1975, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 6

Unsolicited Goods

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.

Source: L. 75: Entire article added, p. 262, § 1, effective July 14. **L. 93:** (1) amended, p. 1574, § 6, effective July 1.

6-6-102. Obligation of recipient. (1) Unless otherwise agreed, where unsolicited goods are delivered to a person, he has a right to refuse to accept delivery of the goods and is not bound to return such goods to the sender.

(2) If such unsolicited goods are either addressed to or intended for the recipient, they shall be deemed a gift to the recipient, who may use them or dispose of them in any manner he sees fit without any obligation to the sender.

Source: L. 75: Entire article added, p. 262, § 1, effective July 14.

6-6-103. Collections prohibited - penalty - definition. (1) No sender of any unsolicited goods shall mail or otherwise send to any recipient of such unsolicited goods a bill for such unsolicited goods or any dunning communications.

(2) (a) The sender of a magazine or other periodical shall cancel a subscription if any invoice is returned by the recipient marked "cancel". Cancellation shall also occur when the recipient gives written notice of cancellation to the sender at the sender's address or at the address of the subscription department printed in the periodical, or, if no such department is listed, at the general business address of the periodical.

(b) Notice of cancellation may be given by regular mail, and is effective on the date received by the sender. Notice of cancellation need not take any particular form and is sufficient if it indicates by any form of written expression that the recipient wishes to terminate the subscription. Within sixty days after notice of cancellation for prepaid subscriptions, the sender shall refund to the recipient any amount paid for the subscription less the amount owed by the recipient for any periodicals, together with the postage thereon, if postage has been charged separately, received before the effective date of the notice of cancellation.

(c) For purposes of this subsection (2), "sender" means the publisher of a periodical, any person acting as the agent of such publisher, and any person purporting to act as the agent of such publisher, and a seller of the periodical.

(3) 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.

Source: L. 75: Entire article added, p. 262, § 1, effective July 14. **L. 76:** Entire section amended, p. 297, § 11, effective May 20. **L. 93:** Entire section amended, p. 1574, § 7, effective July 1. **L. 95:** Entire section amended, p. 387, § 1, effective July 1.

ARTICLE 6.5

Soil and Hazard Analyses of Residential Construction

6-6.5-101. Disclosure to purchaser - penalty. (1) At least fourteen days prior to closing the sale of any new residence for human habitation, every developer or builder or their representatives shall provide the purchaser with a copy of a summary report of the analysis and the site recommendations. For sites in which significant potential for expansive soils is

recognized, the builder or his representative shall supply each buyer with a copy of a publication detailing the problems associated with such soils, the building methods to address these problems during construction, and suggestions for care and maintenance to address such problems.

(2) In addition to any other liability or penalty, any builder or developer failing to provide the report or publication required by subsection (1) of this section shall be subject to a civil penalty of five hundred dollars payable to the purchaser.

(3) The requirements of this section shall not apply to any individual constructing a residential structure for his own residence.

Source: L. 84: Entire article added, p. 294, § 1, effective July 1.

ENERGY AND WATER CONSERVATION

ARTICLE 7

Residential Building Energy Conservation

6-7-101. Short title. This article shall be known and may be cited as the "Residential Building Energy Conservation Act of 1977".

Source: L. 77: Entire article added, p. 354, § 1, effective July 1.

6-7-102. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The energy resources of this state and the nation are essential to the preservation of the public health, welfare, and safety and to the maintenance of a healthy economy;

(b) The conservation and efficient use of said energy resources are necessary if the quality of life in this state is to be maintained and continued;

(c) The purpose of this article is to provide minimum uniform statewide insulation standards to achieve energy conservation in the construction and renovation of residential buildings and to encourage energy conservation by other means in the construction and renovation of residential buildings, recognizing that such energy conservation by insulation or other means must be life cycle cost-effective in order to minimize the adverse impact on residential life-styles and to continue to strive to make reasonably priced housing available to all residents of this state;

(d) The general assembly recognizes the technological improvements developed by the home-building industry in connection with energy conservation for residential buildings and wishes to encourage continued technological improvement by the home-building industry in order to exceed the insulation energy conservation standards contained in this article;

(e) It is the further purpose to establish a process which will result in the development of residential energy conserving performance standards by September 1, 1977. Such standards shall consider all uses of energy generated by fossil fuels, used within a dwelling, including energy used for lighting, cooking, appliances, maintenance of air temperature, and heating water and the energy lost through the building envelope and exhaust pipes. It is consistent with public policy to

encourage the rehabilitation, preservation, and restoration of buildings built before September 1, 1977.

Source: L. 77: Entire article added, p. 354, § 1, effective July 1. **L. 79:** (1)(e) amended, p. 319, § 1, effective July 1.

6-7-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Heating degree day" means a unit, based upon temperature difference and time, used in estimating fuel consumption and specifying nominal heating load of a building in winter. For any one day, when the mean temperature is less than sixty-five degrees Fahrenheit, there exist as many heating degree days as there are Fahrenheit degrees difference in temperature between the mean temperature for the day and sixty-five degrees Fahrenheit.

(2) "Local government" means a county or municipality and may be used to refer to the governing body thereof or the area under the jurisdiction of said governing body.

(3) "Municipality" means any home rule city, town, or city and county, statutory city or town, territorial charter city, or municipal corporation which incorporated pursuant to territorial or general incorporation law and which has not reorganized.

(4) "Overall thermal transmittance"(U_0) means the overall average heat transmission of a gross area of the exterior building envelope, expressed in British thermal units per hour per square foot per degree Fahrenheit. The U_0 value applies to the combined effect of the time rate of heat flows through the various parallel paths, such as windows, doors, and opaque construction areas, comprising the gross area of one or more exterior building components, such as walls, floors, or roofs or ceilings.

(5) "Renovation" means any additions, alterations, or repairs to an existing building. When additions, alterations, or repairs exceed fifty percent of the value of an existing building, such building shall be made to conform to the renovation standards promulgated by the board for energy efficient building standards. The renovation standards promulgated shall recognize the individuality of each renovation project. Any additions shall conform to the energy conservation requirements for new buildings as they relate to the new construction only.

(6) "Residential building" includes all one- and two-family dwellings or multifamily dwellings not to exceed three stories above grade.

(7) "R-value" (R=1/U) means the reciprocal of the average overall coefficient of heat transmission in BTUs (British thermal units) per hour per square foot per degree Fahrenheit. The term is generally applied to usual combinations of insulation materials, as generally recognized and accepted in the residential building construction industry.

(8) "Thermal transmittance" ((U) (U = 1/R)) means the overall coefficient of heat transmission, air to air, expressed in British thermal units per hour per square foot per degree Fahrenheit. It is the time rate of heat flow. The U value applies to combinations of different materials used in series along the heat flow path, single materials that comprise a building section, cavity air spaces, and surfaces air films on both sides of a building element.

(9) "Value" means the estimated cost to replace the building in kind, based on current replacement costs, as determined by the local building official.

Source: L. 77: Entire article added, p. 354, § 1, effective July 1. **L. 79:** Entire section R&RE, p. 319, § 2, effective July 1.

6-7-104. Exemptions from this article. The standards set forth in this article shall not apply to the design and construction or renovation of private garages, carports, sheds, agricultural buildings, tanks, factory-constructed housing, towers, and those buildings which have been designated as historic by the governing body of a county or municipality or which have been included on the state register of historic properties pursuant to article 80.1 of title 24, C.R.S., or the national register of historic places maintained pursuant to 16 U.S.C. sec. 470a.

Source: L. 77: Entire article added, p. 355, § 1, effective July 1. **L. 79:** Entire section amended, p. 320, § 3, effective July 1.

6-7-105. Insulation and thermal performance standards and energy conserving alternatives. (1) (a) The following design parameters shall be used for calculations required under this section. Computations submitted by a licensed architect or engineer, contractors, builders, and owners shall be considered as acceptable when calculated by acceptable engineering procedures. Values for table 1 are to be selected from standard RS21 of the Colorado energy conservation standards (design temperatures for Colorado cities and towns, supplement to climate data for air conditioning design, ASHRAE Rocky Mountain region, April, 1978).

Table 1
Location
Winter design dry-bulb °F
Degree days heating

(b) Minimum thermal performance standards for residential buildings on which construction commences on or after November 1, 1979, shall conform to one of the alternatives provided in subsections (2), (3), and (4) of this section. Renovation that commences on or after November 1, 1979, shall conform to one of the alternatives provided in subsections (2), (3), and (4) of this section, or renovation standards promulgated by the board for energy efficient building standards.

(2) (a) Any separate envelope component of a residential building that is heated shall not exceed the combined thermal transmittance value (U_0) derived from equation 1 using values in table 2. Values for the purposes of table 2 shall be determined by using the graphs (figures 1, 2, and 5) contained in the Colorado energy conservation standards. The combined thermal transmittance (U_r) for roofs or ceilings shall not exceed 0.05 BTU/H FT² °F for geographic areas with eight thousand or less Fahrenheit heating degree days and shall not exceed 0.04 BTU/H FT² °F for geographic areas with more than eight thousand Fahrenheit heating degree days. Roof or ceiling assemblies in which the finished interior surface is the underside of the roof deck may have a maximum U_r value of 0.08 BTU/H FT² °F. Equation 1 shall be used to determine acceptable combinations to meet the required U_0 values.

Table 2

Element	**Required value**
Walls	U_w
Roof/ceiling	U_r
Floors over unheated spaces	U_f

Heated slab on grade R

(b) If all exposed concrete walls average less than two feet above grade, those walls are exempt from the calculations for U_w and insulation.

(c) Heating equipment shall be sized using climate data from table 1 in subsection (1) of this section.

(3) (a) If any segment (wall, floor, roof) of the exterior envelope does not comply with the standards prescribed in subsection (2) of this section, the thermal transmittance value (U_0) of any other segment (wall, floor, roof) may be decreased so that the resulting thermal transmittance value (U_0) of the envelope complies as if the building had been designed in compliance with subsection (2) of this section. For this purpose, reduction of the thermal transmittance value of any of the other exterior components of the envelopes may be used to achieve compliance.

Equation 1

$$U_0 \text{ Envelope} = \frac{U_{wall} A_{wall} + U_{roof} A_{roof} + U_{floor} A_{floor} \ldots}{A_{wall} + A_{roof} + A_{floor} \ldots} < T >$$

(b) Use of the equation provided in paragraph (a) of this subsection (3) requires two sets of calculations. The first calculation utilizes the U_0 values obtained from subsection (2) of this section and the actual areas of the proposed residential design. The second calculation utilizes the actual U_0 values and the actual areas of the proposed residential design.

(4) Computations submitted indicating that the total fossil fuel energy required in a residential building, through design or otherwise, equals or is less than the total fossil fuel energy used if the dwelling is built or renovated according to standards contained in subsections (1) and (2) of this section shall be considered an acceptable alternative. The total fossil fuel energy required shall be computed as the annual estimated BTUs necessary for the proposed residential building.

(5) Repealed.

Source: L. 77: Entire article added, p. 355, § 1, effective July 1. **L. 79:** Entire section R&RE, p. 321, § 4, effective July 1. **L. 2004:** (1)(b) amended, p. 1188, § 8, effective August 4.

Editor's note: Subsection (5)(e) provided for the repeal of subsection (5), effective March 31, 1980. (See L. 79, p. 321.)

6-7-106. Building permits. (1) No building permit shall be issued for the construction or renovation of any residential buildings in any area under the jurisdiction of a local government on or after October 1, 1977, unless such construction or renovation will conform to the provisions of this article. The local building inspector shall inspect all places not inspected by the division of housing pursuant to part 7 of article 32 of title 24, C.R.S., to determine whether such places are in compliance with the insulation standards required by this article.

(2) Nothing in this article shall be construed to restrict or limit the authority of a county or municipality to adopt and enforce standards for efficient construction and renovation which

are no less stringent than the standards contained in section 6-7-105. Any county or municipality adopting such standards may accept computations submitted by a licensed architect or licensed engineer that the design of the proposed building meets or exceeds the locally adopted energy efficiency standards.

Source: L. 77: Entire article added, p. 356, § 1, effective July 1.

ARTICLE 7.5

Water Efficiency

Editor's note: Section 6 of chapter 384 (HB 14-1037), Session Laws of Colorado 2014, provides that the act adding this article applies to lavatory faucets, shower heads, tank type toilets, and flushing urinals sold on or after September 1, 2016.

6-7.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Low-efficiency plumbing fixture" means any of the following plumbing fixtures that is not a watersense-listed plumbing fixture:

(a) A lavatory faucet;

(b) A shower head;

(c) A flushing urinal; or

(d) A tank-type toilet or tank-type water closet.

(2) "Watersense-listed plumbing fixture" means a plumbing fixture or plumbing fixture fitting that has been:

(a) Tested by an accredited third-party certifying body or laboratory in accordance with the federal environmental protection agency's WaterSense program or an analogous successor program;

(b) Certified by the body or laboratory as meeting the performance and efficiency requirements of the program; and

(c) Authorized by the program to use its label.

Source: L. 2014: Entire article added (SB 14-103), ch. 384, p. 1876, § 1, effective August 6.

6-7.5-102. Low-efficiency plumbing fixtures. (1) Effective September 1, 2016, a person shall not sell a new low-efficiency plumbing fixture in Colorado.

(2) This section does not preempt any action of a city, county, or city and county that prescribes additional or more restrictive water conservation requirements affecting the sale, installation, or use of plumbing fixtures if the requirements comply with the standard specified in subsection (1) of this section.

Source: L. 2014: Entire article added, (SB 14-103), ch. 384, p. 1877, § 1, effective August 6.

6-7.5-103. Reports - repeal. (Repealed)

Source: L. 2014: Entire article added, (SB 14-103), ch. 384, p. 1877, § 1, effective August 6.

Editor's note: Subsection (2) provided for the repeal of this section, effective September 1, 2017. (See L. 2014, p. 1877.)

AGRICULTURAL ASSISTANCE

ARTICLE 8

Assistance to the Agricultural Community

6-8-101 and 6-8-102. (Repealed)

Editor's note: (1) This article was added in 1986 and was not amended prior to its repeal in 1990. For the text of this article prior to 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 6-8-102 provided for the repeal of this article, effective January 31, 1990. (See L. 86, p. 434.)

ARTICLE 9

Agricultural Mediation

6-9-101 to 6-9-107. (Repealed)

Editor's note: (1) This article was added in 1987 and was not amended prior to its repeal in 1989. For the text of this article prior to 1989, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 6-9-107 provided for the repeal of this article, effective January 31, 1989. (See L. 87, p. 1356.)

ASSIGNMENTS IN GENERAL

ARTICLE 10

Assignments in General

Law reviews: For a discussion of Tenth Circuit decisions dealing with questions of bankruptcy law, see 67 Den. U. L. Rev. 631 (1990).

6-10-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Person" means individuals, partnerships, associations, and corporations.

(2) "Property" means all goods, chattels and effects, real, personal and mixed property, money, rights and credits, and choses in action except property which is by law not subject to levy and sale under execution.

Source: L. 1897: p. 94, § 1. **R.S. 08:** § 174. **C.L.** § 6241. **CSA:** C. 12, § 1. **CRS 53:** § 11-1-1. **C.R.S. 1963:** § 11-1-1.

6-10-102. General assignment. Any person may make a general assignment for the benefit of his creditors by deed duly acknowledged. When filed for record in the office of the clerk and recorder of the county where the assignor resides or, if a nonresident, where his principal place of business is in this state, such deed shall vest in the assignee in trust for the use and benefit of such creditors all the property of the assignor, excepting only such as is by law not subject to levy and sale under execution, subject, however, to all valid and subsisting liens.

Source: L. 1897: p. 94, § 2. **R.S. 08:** § 175. **C.L.** § 6242. **CSA:** C. 12, § 2. **CRS 53:** § 11-1-2. **C.R.S. 1963:** § 11-1-2.

6-10-103. Inventory - list of creditors. The assignor shall render to such assignee within four days from the date of said assignment an inventory under oath, of his property, to the best of his knowledge, with the estimated value thereof, and also a list of his creditors, giving their names, residence and post-office address, if known, and the amount of their respective demands. Such inventory shall not be conclusive of the amount of the assignor's estate nor shall the omission of any property from such inventory defeat the assignment or conveyance of the same.

Source: L. 1897: p. 94, § 3. **R.S. 08:** § 176. **C.L.** § 6243. **CSA:** C. 12, § 3. **CRS 53:** § 11-1-3. **C.R.S. 1963:** § 11-1-3.

6-10-104. Assignment for all creditors. No such deed of general assignment of property by an insolvent, or in contemplation of insolvency, for the benefit of creditors, shall be valid, unless by its terms it is made for the benefit of all his creditors in proportion to the amount of their respective claims.

Source: L. 1897: p. 95, § 4. **R.S. 08:** § 177. **C.L.** § 6244. **CSA:** C. 12, § 4. **CRS 53:** § 11-1-4. **C.R.S. 1963:** § 11-1-4.

6-10-105. Assent of creditors presumed. When an assignment of property for the benefit of all the creditors of the assignor is made, the assent of the creditors shall be presumed.

Source: L. 1897: p. 95, § 5. **R.S. 08:** § 178. **C.L.** § 6245. **CSA:** C. 12, § 5. **CRS 53:** § 11-1-5. **C.R.S. 1963:** § 11-1-5.

6-10-106. Inventory filed where - bond. The assignee shall file with the clerk of the district court of the county in which such deed of assignment is recorded a true and complete inventory and valuation of the property of the said assignor, under oath, so far as the same has

come to his knowledge, within a period not to exceed six days from the date of the filing of the deed of assignment; and shall make and file a bond to the state of Colorado, for the use of the creditors in double the amount of the inventory and valuation, with sureties to be approved by such clerk for the faithful performance of said trust and for a full and complete accounting for and of all property that may come into his hands as such assignee. Such assignee has no authority to sell or dispose of, or convert to the purposes of the trust any part of such estate, until he has complied with the provisions of this section.

Source: L. 1897: p. 95, § 6. **R.S. 08:** § 179. **C.L.** § 6246. **CSA:** C. 12, § 6. **CRS 53:** § 11-1-6. **C.R.S. 1963:** § 11-1-6. **L. 64:** p. 206, § 8.

6-10-107. Assignee an officer of court. An assignee named and qualified under this article shall be deemed to be an officer of court. Any interference with the assignee in the discharge of his duties is contempt of court, and no suit against the assignee in relation to or concerning the property assigned shall be instituted against the assignee without first obtaining permission of the court within and for the county in which the assignment is made.

Source: L. 1897: p. 95, § 7. **R.S. 08:** § 180. **C.L.** § 6247. **CSA:** C. 12, § 7. **CRS 53:** § 11-1-7. **C.R.S. 1963:** § 11-1-7.

6-10-108. Notice of assignment of realty. Where real property or any interest therein is by deed conveyed to the assignee, the assignee shall forthwith file with the clerk and recorder of each county where the real estate is situated a notice of the assignment, containing the names of the assignor and assignee, the date of the deed of assignment, when and where recorded, and a description of the property in that county affected thereby, and the same shall be constructive notice to a purchaser or encumbrancer of the transfer of the property in said county, described in such notice.

Source: L. 1897: p. 96, § 8. **R.S. 08:** § 181. **C.L.** § 6248. **CSA:** C. 12, § 8. **CRS 53:** § 11-1-8. **C.R.S. 1963:** § 11-1-8.

6-10-109. Priority of claims - notice. The assignee shall forthwith give notice of such assignment by publication for four weeks in some newspaper in the county, if any, and if none, then in the nearest county thereto. The assignee shall also forthwith send a notice by mail to each creditor of whom he shall be informed, directed to his usual place of residence, stating the estimate of the aggregate value of all the property of the assignor, the estimate of the amount of his liabilities, and notifying each creditor to present his claim, under oath, to the assignee within three months from the mailing of such notice. It is the duty of each creditor to present his claim in the manner and within the time mentioned in the notice. Claims filed within the first three months shall have priority over those filed thereafter, unless a creditor can show, to the satisfaction of the court, that he never received the notice. Proof of notice by mail shall be made by affidavit by the assignee giving a list of creditors and the name of the post office where notice was sent within ten days after the mailing of the same. Proof of the notice by publication shall be made by affidavit of the printer or publisher within ten days after the last publication or no fees shall be allowed the assignee for such notice by mail or publication.

Source: L. 1897: p. 96, § 9. **R.S. 08:** § 182. **C.L.** § 6249. **CSA:** C. 12, § 9. **CRS 53:** § 11-1-9. **C.R.S. 1963:** § 11-1-9.

Cross references: For clarification of publication terms, see § 24-70-106.

6-10-110. Report of assignee. At the expiration of three months from the time of the first publication and the mailing of notice, the assignee shall report and file with the clerk of the court a true and complete list, under oath, of all the creditors of the assignor who have filed their claims, the place of their residence, the amount claimed, and the amount and value, if any, of any security held by any such creditor. He shall also file a statement of all his proceedings with reference to the trust, showing what money has come into his hands and all the disbursements thereof.

Source: L. 1897: p. 97, § 10. **R.S. 08:** § 183. **C.L.** § 6250. **CSA:** C. 12, § 10. **CRS 53:** § 11-1-10. **C.R.S. 1963:** § 11-1-10.

6-10-111. Exceptions to claims - hearing. Any person interested may appear before a dividend is made and file with the clerk any exceptions to the claim or demand of any creditor. The clerk shall immediately cause notice thereof to be given to the creditor which shall be served and returned as in the case of a summons. Within the time allowed to answer in an action at law, the creditor shall file his reply. The court shall designate the time for the hearing, and shall at such time hear the allegations and proof offered and shall render a just judgment thereon.

Source: L. 1897: p. 97, § 11. **R.S. 08:** § 184. **C.L.** § 6251. **CSA:** C. 12, § 11. **CRS 53:** § 11-1-11. **C.R.S. 1963:** § 11-1-11.

6-10-112. Judgment - fee of assignee. If no exception is made to a claim filed or if the claim has been favorably adjudicated, the court shall enter judgment in favor of the creditor and against the assignor for the amount claimed and found due, and order the assignee to make from time to time fair and equal dividends among the creditors, of the assets in his hands, in proportion to their respective claims, and as soon as may be, to render a full account of said trust to the court. The court may allow such compensation or commissions, following as nearly as possible the compensation allowed executors for like services, as may be just and right.

Source: L. 1897: p. 97, § 12. **R.S. 08:** § 185. **C.L.** § 6252. **CSA:** C. 12, § 12. **CRS 53:** § 11-1-12. **C.R.S. 1963:** § 11-1-12.

6-10-113. Application of unclaimed dividends. The dividends of any unsettled assignment which remain unclaimed for such time as specified in this article after the final dividend has been decided, upon the application of one or more creditors of such assignor, shall be paid by the assignee under direction of the court to the known creditors of the assignor after giving notice to the creditors that a final distribution of all unclaimed dividends is to be made.

Source: L. 05: p. 155, § 1. **R.S. 08:** § 186. **C.L.** § 6253. **CSA:** C. 12, § 13. **CRS 53:** § 11-1-13. **C.R.S. 1963:** § 11-1-13.

6-10-114. Notice of distribution. Such notice shall be by advertisement in two or more local newspapers of general circulation and by written or printed notices mailed to the latest address of each creditor. The notice shall state that upon a certain day, not less than three months from the date of the notice, a final distribution of all the unclaimed dividends will be made to all creditors as can be found who have filed their respective claims with the assignee within the time specified by the notice for the filing of such claims. When the time for filing these claims has expired, the court, after deducting expenses of distribution, shall order the amount of the unclaimed dividends to be distributed pro rata among those creditors who have filed their claims for a share in the distribution of any unclaimed dividends in accordance with the provisions of this article.

Source: L. 05: p. 155, § 1. **R.S. 08:** § 187. **C.L.** § 6254. **CSA:** C. 12, § 12B. **CRS 53:** § 11-1-14. **C.R.S. 1963:** § 11-1-14.

6-10-115. Distribution of unclaimed dividends. Dividends remaining unclaimed for one year or longer after the final dividend has been declared by any assignee shall be distributed, under direction of the court, to the creditors whose claims have not been paid in full as provided in this article. If more than enough funds are on hand to pay these creditors in full, the balance shall be paid to the assignor.

Source: L. 05: p. 156, § 1. **R.S. 08:** § 188. **C.L.** § 6255. **CSA:** C. 12, § 12C. **CRS 53:** § 11-1-15. **C.R.S. 1963:** § 11-1-15.

6-10-116. Assignee under supervision of court. The assignee shall be subject to the order and supervision of the court at all times, and, by citation or attachment, may be compelled, from time to time, to file reports of his proceedings and the situation and condition of the trust and to proceed in the faithful execution of the duties required by this article, to keep correct books of account open to the inspection of the court or any person or his attorney interested in said estate. All conveyances of real estate and all sales of personal property by the assignee, not in the usual course of business, as conducted by the assignor, shall be approved by the court before such sale shall be valid.

Source: L. 1897: p. 98, § 13. **R.S. 08:** § 189. **C.L.** § 6256. **CSA:** C. 12, § 16. **CRS 53:** § 11-1-16. **C.R.S. 1963:** § 11-1-16.

6-10-117. Assignee appointed by court - when. If the assignee named in the deed fails or neglects to file an inventory and valuation and give bond for the period of ten days after the making of any assignment, or if he dies before the closing of his trust, or is removed from the execution of the trust, the court upon the application of any person interested may appoint an assignee to execute such trust. Such appointee, when he has qualified as provided in this article, shall have all the rights, powers, and authority and be subject to the same restrictions and obligations as an original assignee.

Source: L. 1897: p. 98, § 14. **R.S. 08:** § 190. **C.L.** § 6257. **CSA:** C. 12, § 17. **CRS 53:** § 11-1-17. **C.R.S. 1963:** § 11-1-17.

6-10-118. Removal of assignee by court. The court may remove the assignee for neglect in the execution of the trust, for fraud, for misapplying the trust, or wasting the estate, for failure to comply with the provisions of this article, or to obey the orders of, or to submit to the supervision of the court, or for any other good cause shown. The assignee may also be removed upon the petition of the majority in number and value of the creditors, unless the court is satisfied that such removal would not be for the best interest of the trust estate.

Source: L. 1897: p. 98, § 15. **R.S. 08:** § 191. **C.L.** § 6258. **CSA:** C. 12, § 18. **CRS 53:** § 11-1-18. **C.R.S. 1963:** § 11-1-18.

6-10-119. Powers of assignee. The assignee has all the rights, power, and authority of the assignor necessary to fully execute such trust, to demand and sue for any property belonging to such estate, and to execute valid receipts; and, by deed duly acknowledged by him, in his own name as assignee, may convey any of the estate, real and personal, subject to approval as stated in section 6-10-116. Where the assignee has been appointed by the court in place of an assignee removed, it shall be his duty to compel by suit, or the peremptory order of the court, the delivery of the trust estate and the property, or the value thereof, that has been wasted or misapplied by the previous assignee.

Source: L. 1897: p. 98, § 16. **R.S. 08:** § 192. **C.L.** § 6259. **CSA:** C. 12, § 19. **CRS 53:** § 11-1-19. **C.R.S. 1963:** § 11-1-19.

6-10-120. Insufficient sureties. If it is shown to the court at any time that the sureties on the assignee's bond are not sufficient, the court may order sufficient sureties to be given, and may compel obedience thereto by removal or otherwise.

Source: L. 1897: p. 99, § 17. **R.S. 08:** § 193. **C.L.** § 6260. **CSA:** C. 12, § 20. **CRS 53:** § 11-1-20. **C.R.S. 1963:** § 11-1-20.

6-10-121. Additional security - when. The assignee, from time to time, shall file with the clerk of the court an inventory and valuation of any additional property which may come into his hands after the first inventory; and the judge, or, in his absence, the clerk, may thereupon require the assignee to give additional security.

Source: L. 1897: p. 99, § 18. **R.S. 08:** § 194. **C.L.** § 6261. **CSA:** C. 12, § 21. **CRS 53:** § 11-1-21. **C.R.S. 1963:** § 11-1-21.

6-10-122. Appearance compelled - when. The court, upon the application of the assignee, or of any creditor, may compel the appearance in person of the debtor, or any other witness, before the court, or a commissioner appointed by the court, at any time designated, to answer under oath such matters as may be inquired of him. Such debtor or other witness may then be fully examined under oath as to the amount and situation of his property, the payments and conveyances made by him, and the names and places of residence of creditors and the amounts due to each. The court, upon like application, may compel the debtor to deliver to the assignee any property or estate embraced in the assignment.

Source: L. 1897: p. 99, § 19. **R.S. 08:** § 195. **C.L.** § 6262. **CSA:** C. 12, § 22. **CRS 53:** § 11-1-22. **C.R.S. 1963:** § 11-1-22.

6-10-123. Misappropriation by debtor. No assignment shall be invalid because of misappropriation of the property of the debtor by him prior to the assignment, but the assignee may recover such property, if so misappropriated in fraud of this article. Nothing in this article shall invalidate any conveyance or mortgage of property, real or personal, by the debtor before the assignment, made in good faith, for a valid and valuable consideration.

Source: L. 1897: p. 100, § 20. **R.S. 08:** § 196. **C.L.** § 6263. **CSA:** C. 12, § 23. **CRS 53:** § 11-1-23. **C.R.S. 1963:** § 11-1-23.

6-10-124. Debts not due - interest. Debts not due may be claimed, but if the same are not bearing interest, a suitable rebate shall be made. Interest shall be computed to the date of the assignment and not afterwards.

Source: L. 1897: p. 100, § 21. **R.S. 08:** § 197. **C.L.** § 6264. **CSA:** C. 12, § 24. **CRS 53:** § 11-1-24. **C.R.S. 1963:** § 11-1-24.

6-10-125. Creditors may appoint an attorney. The majority in number and value of the creditors may appoint, in writing, an attorney-at-law to represent the estate before the court. The attorney, if appointed, shall examine all reports and inventories and books of the assignee and inquire fully as to the conduct of the assignee in the discharge of his trust. He may appear for the assignee in all suits in behalf of the assignee in securing, preserving, or defending the estate, but shall appear in behalf of the creditors in all suits, examinations, or inquiries as to the accounts or the conduct of the assignee concerning the estate. The court may allow such compensation to the attorney as may be just and reasonable.

Source: L. 1897: p. 100, § 22. **R.S. 08:** § 198. **C.L.** § 6265. **CSA:** C. 12, § 25. **CRS 53:** § 11-1-25. **C.R.S. 1963:** § 11-1-25.

6-10-126. Waiver of proceedings by parties. At any time after an assignment has been made, the assignor, the creditors, and the assignee of such assignor may agree in writing that all proceedings to be had before the court under the provisions of this article, may be waived. Upon the filing of such agreement with the clerk of the proper court, the court shall cease to have any further jurisdiction over such assignment and the proceedings thereunder, and the assignee shall no longer be held accountable to the court. The creditors and the assignee, with the consent of the assignor, in writing, may make such disposition of the assigned estate and arrangements in reference thereto as to them shall seem proper in the premises.

Source: L. 1897: p. 100, § 23. **R.S. 08:** § 199. **C.L.** § 6266. **CSA:** C. 12, § 12. **CRS 53:** § 11-1-26. **C.R.S. 1963:** § 11-1-26.

6-10-127. Final report - notice - discharge. (Repealed)

Source: L. 1897: p. 101, § 24. **R.S. 08:** § 200. **C.L.** § 6267. **CSA:** C. 12, § 27. **CRS 53:** § 11-1-27. **C.R.S. 1963:** § 11-1-27. **L. 78:** Entire section repealed, p. 253, § 5, effective May 23.

6-10-128. Trust closed in one year. The assignee shall close his trust within one year from the filing of the deed of assignment unless the court for good cause shown, extends the time.

Source: L. 1897: p. 101, § 25. **R.S. 08:** § 201. **C.L.** § 6268. **CSA:** C. 12, § 28. **CRS 53:** § 11-1-28. **C.R.S. 1963:** § 11-1-28.

6-10-129. Property exempt from assignment. No deed of assignment shall be invalid which excepts from the operation thereof the property which by law is not subject to levy and sale under execution.

Source: L. 1897: p. 101, § 26. **R.S. 08:** § 202. **C.L.** § 6269. **CSA:** C. 12, § 29. **CRS 53:** § 11-1-29. **C.R.S. 1963:** § 11-1-29.

6-10-130. Preferred claims. The valid claims of servants, laborers, and employees of the assignor, for wages earned during the six months immediately preceding the date of the assignment, not to exceed fifty dollars, to any one person then unpaid, which claims are still held by the person who earned them, and all taxes assessed under the laws of this state, or of the United States, are preferred claims and shall be paid in full prior to the payment of the dividends in favor of other creditors.

Source: L. 1897: p. 101, § 27. **R.S. 08:** § 203. **C.L.** § 6270. **CSA:** C. 12, § 30. **CRS 53:** § 11-1-30. **C.R.S. 1963:** § 11-1-30.

6-10-131. Action on bond of assignee. Any creditor may maintain an action on the bond of the assignee, for any damages such creditor may have sustained, by reason of assignee's acts or his failure to act.

Source: L. 1897: p. 101, § 28. **R.S. 08:** § 204. **C.L.** § 6271. **CSA:** C. 12, § 31. **CRS 53:** § 11-1-31. **C.R.S. 1963:** § 11-1-31.

6-10-132. Foreclosure of mortgage on property. No mortgage, deed of trust, or other security, real or personal, securing the payment of claims against the assigned estate shall be foreclosed within one year from the making of the assignment except upon order of court. No such mortgage, deed of trust, or other security shall be foreclosed except by suit, unless the claim secured is first proved and allowed by such court. When such claim is so proved and allowed, the court may order a foreclosure of the mortgage, deed of trust, or other security within one year from the making of the assignment. The lien of the mortgage, trust deed, or other security affected by this article shall not be impaired by the suspension of the remedy provided in this section.

Source: L. 1897: p. 101, § 29. **R.S. 08:** § 205. **C.L.** § 6272. **CSA:** C. 12, § 32. **CRS 53:** § 11-1-32. **C.R.S. 1963:** § 11-1-32.

6-10-133. Effect of general assignment. (Repealed)

Source: L. 1897: p. 102, § 30. **R.S. 08:** § 206. **C.L.** § 6273. **CSA:** C. 12, § 33. **CRS 53:** § 11-1-33. **C.R.S. 1963:** § 11-1-33. **L. 77:** Entire section repealed, p. 292, § 1, effective May 26.

6-10-134. Application of assignor for discharge. (Repealed)

Source: L. 1897: p. 102, § 31. **R.S. 08:** § 207. **C.L.** § 6274. **CSA:** C. 12, § 34. **CRS 53:** § 11-1-34. **C.R.S. 1963:** § 11-1-34. **L. 77:** Entire section repealed, p. 292, § 1, effective May 26.

6-10-135. Form of affidavit annexed to application. (Repealed)

Source: L. 1897: p. 103, § 32. **R.S. 08:** § 208. **C.L.** § 6275. **CSA:** C. 12, § 35. **CRS 53:** § 11-1-35. **C.R.S. 1963:** § 11-1-35. **L. 77:** Entire section repealed, p. 292, § 1, effective May 26.

6-10-136. Order to show cause - when. (Repealed)

Source: L. 1897: p. 104, § 33. **R.S. 08:** § 209. **C.L.** § 6276. **CSA:** C. 12, § 36. **CRS 53:** § 11-1-36. **C.R.S. 1963:** § 11-1-36. **L. 77:** Entire section repealed, p. 292, § 1, effective May 26.

6-10-137. Hearing - proof of notice - issues. (Repealed)

Source: L. 1897: p. 105, § 34. **R.S. 08:** § 210. **C.L.** § 6277. **CSA:** C. 12, § 37. **CRS 53:** § 11-1-37. **C.R.S. 1963:** § 11-1-37. **L. 77:** Entire section repealed, p. 292, § 1, effective May 26.

6-10-138. Jury trial - when. (Repealed)

Source: L. 1897: p. 105, § 35. **R.S. 08:** § 211. **C.L.** § 6278. **CSA:** C. 12, § 38. **CRS 53:** § 11-1-38. **C.R.S. 1963:** § 11-1-38. **L. 77:** Entire section repealed, p. 292, § 1, effective May 26.

6-10-139. Jury drawn as in civil cases. (Repealed)

Source: L. 1897: p. 106, § 36. **R.S. 08:** § 212. **C.L.** § 6279. **CSA:** C. 12, § 39. **CRS 53:** § 11-1-39. **C.R.S. 1963:** § 11-1-39. **L. 77:** Entire section repealed, p. 292, § 1, effective May 26.

6-10-140. Verdict recorded - costs. (Repealed)

Source: L. 1897: p. 106, § 37. **R.S. 08:** § 213. **C.L.** § 6280. **CSA:** C. 12, § 40. **CRS 53:** § 11-1-40. **C.R.S. 1963:** § 11-1-40. **L. 77:** Entire section repealed, p. 292, § 1, effective May 26.

6-10-141. Court decides if jury disagrees. (Repealed)

Source: L. 1897: p. 106, § 38. **R.S. 08:** § 214. **C.L.** § 6281. **CSA:** C. 12, § 41. **CRS 53:** § 11-1-41. **C.R.S. 1963:** § 11-1-41. **L. 77:** Entire section repealed, p. 292, § 1, effective May 26.

6-10-142. Evidence at hearing. (Repealed)

Source: L. 1897: p. 106, § 39. **R.S. 08:** § 215. **C.L.** § 6282. **CSA:** C. 12, § 42. **CRS 53:** § 11-1-42. **C.R.S. 1963:** § 11-1-42. **L. 77:** Entire section repealed, p. 292, § 1, effective May 26.

6-10-143. Jurisdiction of creditors - when. (Repealed)

Source: L. 1897: p. 106, § 40. **R.S. 08:** § 216. **C.L.** § 6283. **CSA:** C. 12, § 43. **CRS 53:** § 11-1-43. **C.R.S. 1963:** § 11-1-43. **L. 77:** Entire section repealed, p. 292, § 1, effective May 26.

6-10-144. Discharge of assignor - when. (Repealed)

Source: L. 1897: p. 107, § 41. **R.S. 08:** § 217. **C.L.** § 6284. **CSA:** C. 12, § 44. **CRS 53:** § 11-1-44. **C.R.S. 1963:** § 11-1-44. **L. 77:** Entire section repealed, p. 292, § 1, effective May 26.

6-10-145. Discharge - qualifications - exceptions. (Repealed)

Source: L. 1897: p. 107, § 41. **R.S. 08:** § 217. **C.L.** § 6284. **CSA:** C. 12, § 44. **CRS 53:** § 11-1-45. **C.R.S. 1963:** § 11-1-45. **L. 77:** Entire section repealed, p. 292, § 1, effective May 26.

6-10-146. Judgment upon discharge - release. (Repealed)

Source: L. 1897: p. 108, § 42. **R.S. 08:** § 218. **C.L.** § 6285. **CSA:** C. 12, § 45. **CRS 53:** § 11-1-46. **C.R.S. 1963:** § 11-1-46. **L. 67:** p. 992, §§ 2, 4. **L. 77:** Entire section repealed, p. 292, § 1, effective May 26.

6-10-147. Discharge bars subsequent action. (Repealed)

Source: L. 1897: p. 109, § 43. **R.S. 08:** § 219. **C.L.** § 6286. **CSA:** C. 12, § 46. **CRS 53:** § 11-1-47. **C.R.S. 1963:** § 11-1-47. **L. 77:** Entire section repealed, p. 292, § 1, effective May 26.

6-10-148. Appeal - bond. (Repealed)

Source: L. 1897: p. 109, § 44. **R.S. 08:** § 220. **C.L.** § 6287. **CSA:** C. 12, § 47. **CRS 53:** § 11-1-48. **C.R.S. 1963:** § 11-1-48. **L. 77:** Entire section repealed, p. 292, § 1, effective May 26.

6-10-149. Joint debtor not released. (Repealed)

Source: L. 1897: p. 110, § 45. **R.S. 08:** § 221. **C.L.** § 6288. **CSA:** C. 12, § 48. **CRS 53:** § 11-1-49. **C.R.S. 1963:** § 11-1-49. **L. 77:** Entire section repealed, p. 292, § 1, effective May 26.

6-10-150. Property not affected. (Repealed)

Source: L. 1897: p. 110, § 46. **R.S. 08:** § 222. **C.L.** § 6289. **CSA:** C. 12, § 49. **CRS 53:** § 11-1-50. **C.R.S. 1963:** § 11-1-50. **L. 77:** Entire section repealed, p. 292, § 1, effective May 26.

6-10-151. Jurisdiction of district court. The district court in the proper county has jurisdiction in the matter of assignments and petitions for discharge under this article.

Source: L. 1897: p. 110, § 47. **R.S. 08:** § 223. **C.L.** § 6290. **CSA:** C. 12, § 50. **CRS 53:** § 11-1-51. **C.R.S. 1963:** § 11-1-51. **L. 64:** p. 206, § 9.

6-10-152. Colorado rules of civil procedure apply. The provisions of the Colorado rules of civil procedure shall be applicable, except as otherwise provided in this article, and shall control in all proceedings under this article.

Source: L. 1897: p. 110, § 49. **R.S. 08:** § 225. **C.L.** § 6292. **CSA:** C. 12, § 52. **CRS 53:** § 11-1-53. **C.R.S. 1963:** § 11-1-53.

6-10-153. Property under jurisdiction of court. In all assignments for the benefit of creditors made in this state, the district court in and for the county in which such deed of assignment is recorded as now provided by law has full power and complete jurisdiction over all the property, real, personal, and mixed, conveyed by such assignment from the date of the making of the same. The court may make any order in reference to any part or all of the property embraced in the estate and the disposition thereof by the assignee which to the court seems just and equitable, and all such orders shall be legal and binding upon the assignor, the assignee, and creditors of the estate whether or not any notice is given of the application therefor or the order so made; except that the court may in its discretion require notice of such an application so made to be given in reference to any matter that may come before it for hearing, and in such case it shall direct, by an order, the form and manner of giving such notice so required by it.

Source: L. 1897: p. 111, § 1. **R.S. 08:** § 226. **C.L.** § 6293. **CSA:** C. 12, § 53. **CRS 53:** § 11-1-54. **C.R.S. 1963:** § 11-1-54. **L. 64:** p. 207, § 10.

6-10-154. Disposition of property when no market. When any difficulty is encountered by the assignee in converting the assigned property of any assignment, or any part thereof, into cash on account of there being no sufficient market therefor, or for any other good reason, the court may direct by such order as described in section 6-10-153 the distribution of such property in kind among the creditors electing to take property. Creditors not electing to take property shall be paid an equal pro rata in cash, fixing by appraisement or sworn evidence in courts such price or value upon each piece, parcel, or item of property as shall make it bear and pay its proportion of the entire indebtedness of the estate, and as shall be just and equitable between the assignor and the creditors and all persons interested in the assigned estate. When the court authorizes the assignee to exchange such property in payment of the proved indebtedness of the estate at the prices so fixed, and when, in the opinion of the court, the best interests of the estate are promoted thereby, it may order the assignee to first offer such property at public auction; and, in that case, it shall provide by its order the kind and form of notice to be given of such sale. The assignee at such sale shall offer and sell the property to the highest and best

bidder therefor in proved accounts against the estate, and he shall not accept any bid lower than the price fixed by the court on the property so offered.

Source: L. 1897: p. 112, § 2. **R.S. 08:** § 227. **C.L.** § 6294. **CSA:** C. 12, § 54. **CRS 53:** § 11-1-55. **C.R.S. 1963:** § 11-1-55.

PATENTS - PROHIBITED COMMUNICATION

ARTICLE 12

Prohibited Communication Concerning Patents

Cross references: For the legislative declaration in HB 15-1063, see section 1 of chapter 309, Session Laws of Colorado 2015.

6-12-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Affiliated person" means a person under common ownership or control of an intended recipient.

(2) "Intended recipient" means a person who purchases, rents, leases, or otherwise obtains a product or service in the commercial market that is not for resale in the ordinary business and that is, or later becomes, the subject of a patent infringement allegation.

Source: L. 2015: Entire article added, (HB 15-1063), ch. 309, p. 1264, § 2, effective August 5.

6-12-102. Bad faith patent infringement communications - prohibition. (1) A person shall not, in connection with the assertion of a United States patent, send or cause any person to send any written or electronic communication that states that the intended recipient or any affiliated person is infringing or has infringed a patent and bears liability or owes compensation to another person, if such communication is in bad faith. A court may consider one or more of the following conditions as evidence that a person or the person's affiliate has, in bad faith, alleged, asserted, or claimed an infringement of a patent:

(a) The communication falsely states that litigation has been filed against the intended recipient or any affiliated person;

(b) The assertions contained in the communication lack a reasonable basis in fact or law. A court may consider one or more of the following factors as evidence that a communication lacks a reasonable basis in fact or law:

(I) The person asserting the patent is not the person, or does not represent the person, with the current right to license the patent to, or to enforce the patent against, the intended recipient or any affiliated person;

(II) The communication seeks compensation for a patent that has been held to be invalid or unenforceable in a final, unappealable or unappealed judicial or administrative decision;

(III) The communication seeks compensation on account of activities undertaken after the patent has expired; or

(IV) The content of the communication fails to include such information necessary to inform an intended recipient or any affiliated person about the patent assertion by failing to include any one of the following:

(A) The identity of the person asserting a right to license the patent to or enforce the patent against the intended recipient or any affiliated person;

(B) The patent number issued by the United States patent and trademark office alleged to have been infringed; or

(C) The factual allegations concerning the specific areas in which the intended recipient or affiliated person's products, services, or technology infringed the patent or are covered by the claims in the patent.

Source: L. 2015: Entire article added, (HB 15-1063), ch. 309, p. 1264, § 2, effective August 5.

6-12-103. Exclusions. (1) It is not a violation of this article for any person who owns or has the right of license or enforcement of a patent to:

(a) Notify another of that ownership or right of license or enforcement;

(b) Notify another that a patent is available for license or sale;

(c) Notify another that the claim for infringement of the patent is pursuant to 35 U.S.C. sec. 271 (e)(2) or 42 U.S.C. sec. 262; or

(d) Seek compensation on account of past or present infringement, or for a license to the patent, when, after an objectively good faith investigation, it is reasonable to believe that the person from whom compensation is sought may owe such compensation.

(2) The provisions of this article do not apply to any written or electronic communication sent by:

(a) Any owner of a patent who is using the patent in connection with substantial research, development, production, manufacturing, processing, or delivery of products or materials;

(b) Any institution of higher education; or

(c) Any technology transfer organization whose primary purpose is to facilitate the commercialization of technology developed by an institution of higher education.

(3) The provisions of this article do not apply to a demand letter or civil action that includes a claim for relief arising under 35 U.S.C. section 271 (e)(2) after an objectively good faith investigation.

Source: L. 2015: Entire article added, (HB 15-1063), ch. 309, p. 1265, § 2, effective August 5.

6-12-104. Enforcement. (1) The attorney general has the sole authority to enforce this article and to conduct civil investigations and bring civil actions for violations of this article.

(2) If the attorney general has reasonable cause to believe that a person has engaged in an act that is subject to this article, the attorney general may make an investigation to determine if the act has been committed, and, to the extent necessary for this purpose, may administer oaths or affirmations, and, upon his or her own motion or upon request of any party, may subpoena witnesses and compel their attendance, adduce evidence, and require the production of any

matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence. In any civil action brought by the attorney general as a result of such an investigation, the attorney general may recover the reasonable costs of making the investigation if the attorney general prevails in the action.

(3) If the person's records are located outside this state, the person at his or her option shall either make them available to the attorney general at a convenient location within this state or pay the reasonable and necessary expenses for the attorney general or the attorney general's representative to examine them at the place where they are maintained. The attorney general may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the attorney general's behalf.

(4) Upon failure without lawful excuse to obey a subpoena or to give testimony, the attorney general may apply to the district court for an order compelling compliance.

(5) The attorney general shall not make public the name or identity of a person whose acts or conduct he or she investigates pursuant to this section or the facts disclosed in the investigation, but this subsection (5) does not apply to disclosures in actions or enforcement proceedings pursuant to this article.

(6) Whenever the attorney general has cause to believe that a person has engaged in or is engaging in any violation of this article, the attorney general may apply for and obtain, in an action in the appropriate district court of this state, a temporary restraining order or injunction, or both, pursuant to the Colorado rules of civil procedure, prohibiting such person from continuing such practices, or engaging therein, or doing any act in furtherance thereof. The court may make such orders or judgments as may be necessary to prevent the violation of this article or which may be necessary to completely compensate or restore to the original position of any person injured by means of any such violation or to prevent any unjust enrichment by any person through the violation of this article.

(7) Any person who violates or causes another to violate any provision of this article shall forfeit and pay to the general fund of the state a civil penalty of not more than five thousand dollars for each such violation.

(8) A court shall award costs, attorney fees, and expert witness fees to the attorney general in all actions where the attorney general successfully enforces this article.

Source: L. 2015: Entire article added, (HB 15-1063), ch. 309, p. 1266, § 2, effective August 5.

ENFORCEMENT OF NONDRAMATIC MUSIC COPYRIGHTS

ARTICLE 13

Enforcement of Music Copyrights

PART 1

GENERAL PROVISIONS

6-13-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Copyright owner" means the owner of a copyright of a nondramatic musical or similar work recognized and enforceable under the copyright laws of the United States (17 U.S.C. sec. 101 et seq.). "Copyright owner" and "similar work" shall not include the owner of a copyright in a motion picture or audiovisual work, or in part of a motion picture or audiovisual work.

(2) "Nondramatic" means the public performance of a recorded, broadcast, or live musical work; except that "nondramatic" shall not mean the performance of a dramatic work including a play.

(3) "Performing rights society" means an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners such as the American society of composers, authors and publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.

(4) "Proprietor" means the owner of a retail establishment, including, but not limited to, a restaurant, bar, sports facility, or other place of business where nondramatic musical or similar copyrighted works may be performed, broadcast, or otherwise transmitted for the enjoyment of members of the general public.

(5) "Royalty" or "royalties" means the fees payable to a copyright owner or performing rights society for the public performance of nondramatic musical or other similar work.

Source: L. 95: Entire article added, p. 1263, § 1, effective July 1.

6-13-102. Scope of article. (1) (a) This article 13 applies only to the following:

(I) A contract entered into between a performing rights society and a proprietor; and

(II) Investigations and negotiations related to a contract or prospective contract between a performing rights society and a proprietor.

(b) The rights, remedies, and prohibitions accorded by this article 13 are in addition to any other right, remedy, or prohibition accorded by common law, federal law, or the laws of this state and do not deny, abrogate, or impair any such common-law or statutory right, remedy, or prohibition.

(2) This article shall not apply to:

(a) A contract entered into between a performing rights society and a broadcaster licensed by the federal communications commission;

(b) Conduct described in sections 18-4-602, 18-4-603, and 18-4-604, C.R.S.

Source: L. 95: Entire article added, p. 1264, § 1, effective July 1. **L. 2017:** (1) amended, (HB 17-1092), ch. 78, p. 245, § 1, effective August 9.

6-13-103. Payment of royalties - contract requirements. (1) A copyright owner or performing rights society may enter into a contract requiring the payment of royalties by a proprietor only if, at least three business days before the execution of the contract, the following information is provided to the proprietor, in writing:

(a) A description of the rules and terms of royalties required to be paid under the contract;

(b) A schedule of the rates and a description of the terms of royalties required to be paid under agreements executed by the copyright owner or performing rights society;

(c) In the case of a performing rights society, information concerning how to obtain a current list of the copyright owners represented by that society and the works licensed under the contract. Such list shall be made available within fourteen days by electronic means. A proprietor shall not be charged an amount in excess of the actual cost incurred by the performing rights society for providing such list.

(d) Notice, in a form prescribed by the attorney general, that the proprietor is entitled to the information contained in paragraphs (a), (b), and (c) of this subsection (1), and that the failure to provide such information shall make the performing rights society subject to the penalty provisions in section 6-13-104.

(2) Notwithstanding subsection (1) of this section, a proprietor may, in its sole discretion and without coercion or undue influence, execute a contract for the payment of royalties before the expiration of the three-business-day review period.

(3) A proprietor has the right to rescind a contract for the payment of royalties for three business days after execution of the contract.

(4) To be enforceable, a contract for the payment of royalties by a proprietor to a copyright owner or performing rights society must:

(a) Be in writing;

(b) Be signed by the parties;

(c) Include at least the following information:

(I) The proprietor's name and business address and the name and location of each place of business to which the contract applies;

(II) The name and address of the performing rights society authorized to act on behalf of a copyright owner;

(III) The duration of the contract, which shall not exceed one year, but which may be automatically extended for additional terms which do not exceed one year, unless otherwise mutually agreed upon;

(IV) The schedule of rates and terms of royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of such rates for the duration of the contract;

(V) Notice of the three-business-day rescission period described in subsection (3) of this section.

(d) Not charge a proprietor royalties for public performances, at the establishment, of nondramatic musical works for which another entity has entered into a license with the performing rights society that covers the performances by the proprietor.

(5) A copyright owner, a performing rights society, or an agent, representative, or employee of a copyright owner or performing rights society shall not:

(a) Enter onto the premises of a proprietor's business for the purpose of discussing with the proprietor or the employees of the proprietor a contract for the payment of royalties or the use of copyrighted works without first identifying himself or herself to the proprietor or the employees of the proprietor and making known the purpose of the visit;

(b) Collect or attempt to collect a royalty payment or other fee pursuant to a contract that does not meet the requirements of this section;

(c) Engage in any coercive conduct or unfair or deceptive act or practice that is substantially disruptive of a proprietor's business;

(d) Use or attempt to use any unfair or deceptive act or practice in negotiating with a proprietor.

(6) Nothing in this article shall be construed to prohibit a performing rights society from conducting investigations to determine the existence of music use by a proprietor or informing a proprietor of the proprietor's obligations under the copyright laws of the United States (17 U.S.C. sec. 101 et seq.).

Source: L. 95: Entire article added, p. 1264, § 1, effective July 1. **L. 2017:** IP(1), (2), (3), IP(4), (4)(c)(V), and IP(5) amended and (4)(d) added, (HB 17-1092), ch. 78, p. 245, § 2, effective August 9.

6-13-104. Violations - penalties. (1) A proprietor may bring an action in a court of competent jurisdiction or assert a counterclaim against a copyright owner or performing rights society to enjoin a violation of this article and recover any damages sustained as a result of such violation.

(2) The prevailing party in any action brought under this article 13 shall be awarded reasonable attorney fees. If the prevailing party is a proprietor, the proprietor may also recover the reasonable costs of the action and treble damages, but in no event shall the proprietor be awarded less than two thousand dollars.

(3) A proprietor shall not bring a counterclaim against any party except the original complainant, and if such complainant is a performing rights society, a counterclaim shall not be brought against any copyright owner in his or her individual capacity.

Source: L. 95: Entire article added, p. 1266, § 1, effective July 1. **L. 2017:** (2) amended, (HB 17-1092), ch. 78, p. 246, § 3, effective August 9.

PART 2

REQUIRED DISCLOSURES

6-13-201. Filing and online publication of contracts and royalty schedules. (1) A performing rights society shall annually file with the secretary of state an electronic copy of each form contract licensing the public performance of the nondramatic musical works in the performing rights society's repertory to proprietors in the state of Colorado, together with the applicable schedule of royalty rates payable under each form contract. The secretary of state shall post the information filed in accordance with this subsection (1) on the secretary of state's website. The secretary of state has no duty to determine whether the documents filed comply with the requirements of this article 13 or to determine the performing rights society's compliance with this article 13.

(2) A performing rights society shall also make available, at no charge, both the contracts and schedules of royalty rates that are required to be filed with the secretary of state in accordance with subsection (1) of this section to any proprietor within Colorado via a link to the society's website from the secretary of state's website.

(3) Upon request of the secretary of state, each performing rights society shall provide to the secretary of state information on a proprietor's rights and responsibilities regarding the public performance of nondramatic musical works, and the secretary of state shall post the information on the secretary of state's website.

Source: L. 2017: Entire part added, (HB 17-1092), ch. 78, p. 246, § 4, effective August 9.

6-13-202. Catalog of musical works - publication by performing rights society. (1) (a) A performing rights society shall publish a list online of all nondramatic musical works the performing rights society licenses for performance in a retail establishment.

(b) To comply with this section, the list of nondramatic musical works must be:

(I) Updated within thirty business days after adding or subtracting a nondramatic musical work; and

(II) Made available, without charge, to any proprietor within Colorado and to the secretary of state on a website or using a substantially similar or superior technology for communicating the information, at no charge, to the public.

(2) A performing rights society licensing musical works in Colorado shall file the address of the website or substantially similar or superior technology with the secretary of state, who shall publish the website address of the list published in accordance with subsection (1)(a) of this section on the secretary of state's website or using a substantially similar or superior technology for communicating the information, at no charge, to the public.

Source: L. 2017: Entire part added, (HB 17-1092), ch. 78, p. 247, § 4, effective August 9.

6-13-203. Violations. (1) A performing rights society shall not enter into a contract that is subject to this article 13 without either:

(a) Publishing the disclosures required by this part 2; or

(b) Making the filings required by this part 2.

Source: L. 2017: Entire part added, (HB 17-1092), ch. 78, p. 247, § 4, effective August 9.

6-13-204. Royalties and catalog of musical works - material information. The contracts and schedule of royalties submitted to the secretary of state in accordance with section 6-13-201 and the list of all nondramatic musical works published online in accordance with section 6-13-202 constitute material information for purposes of section 6-1-105 (1)(u).

Source: L. 2017: Entire part added, (HB 17-1092), ch. 78, p. 247, § 4, effective August 9.

ART TRANSACTIONS

ARTICLE 15

PART 1

CONSIGNMENT OF WORKS OF FINE ART

6-15-101. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Art dealer" means a person engaged in the business of selling works of fine art, other than a person exclusively engaged in the business of selling goods at public auction.

(2) "Artist" means the creator of a work of fine art.

(3) "On consignment" means that no title to or estate in the goods or right to possession thereof superior to that of the consignor vests in the consignee, notwithstanding the consignee's power or authority to transfer and convey all of the right, title, and interest of the consignor, in and to such goods to a third person.

(4) "Work of fine art" or "work" means:

(a) A work of visual art such as a painting, sculpture, drawing, mosaic, or photograph;

(b) A work of calligraphy;

(c) A work of graphic art such as an etching, a lithograph, an offset print, a silk screen, or any other work of similar nature;

(d) A craft work in materials, including but not limited to clay, textile, fiber, wood, metal, plastic, or glass;

(e) A work in mixed media such as collage or any combination of the art media set forth in this subsection (4).

Source: L. 82: Entire article added, p. 229, § 1, effective March 25. **L. 2017:** IP amended, (HB 17-1241), ch. 163, p. 605, § 2, effective August 9.

6-15-102. Art dealers and artists - consignment of works of fine art. (1) Notwithstanding any custom, practice, or usage of the trade and any of the provisions of section 4-2-326, C.R.S., to the contrary, whenever an artist delivers or causes to be delivered a work of fine art of his own creation to an art dealer for the purpose of exhibition or sale on a commission, fee, or other basis of compensation, the delivery to and acceptance thereof by the art dealer is deemed to place the work on consignment and:

(a) Such art dealer shall thereafter, with respect to the work, be deemed to be the agent of such artist;

(b) Such work is trust property in the hands of the consignee for the benefit of the consignor; and

(c) Any proceeds from the sale of the work are trust funds in the hands of the consignee for the benefit of the consignor.

(2) Notwithstanding the subsequent purchase of a work of fine art by the consignee directly or indirectly for his own account, the work initially received on consignment shall be deemed to remain trust property until the price is paid in full to the consignor. If such work is thereafter resold to a bona fide third party before the consignor has been paid in full, the proceeds of the resale are trust funds in the hands of the consignee for the benefit of the

consignor to the extent necessary to pay any balance still due to the consignor, and such trusteeship shall continue until the fiduciary obligation of the consignee with respect to such transaction is discharged in full.

(3) Notwithstanding the provisions of the "Uniform Commercial Code - Sales", no such trust property or trust funds shall be subject to or subordinate to any claims, liens, or security interests of the consignee's creditors.

(4) An art dealer is strictly liable for the loss of or damage to a work of fine art while it is in his possession. The value of the work of fine art is, for the purposes of this subsection (4), the value established in a written agreement between the artist and the art dealer prior to the loss or damage of the work.

Source: L. 82: Entire article added, p. 230, § 1, effective March 25. **L. 95:** (4) amended, p. 192, § 2, effective April 13.

Editor's note: Changes in the internal numbering and lettering of subsection (1) were made on revision in 1998 to conform to standard C.R.S. format.

Cross references: For the provisions in the "Uniform Commercial Code" concerning sales, see article 2 of title 4.

6-15-103. Penalties. A violation by an art dealer of any of the provisions of this part 1 shall render the art dealer liable for damages to the artist in an amount equal to fifty dollars plus the actual damages sustained by the artist, including incidental and consequential damages. In such an action reasonable attorney fees and court costs shall be paid to the prevailing party.

Source: L. 82: Entire article added, p. 230, § 1, effective March 25. **L. 2017:** Entire section amended, (HB 17-1241), ch. 163, p. 605, § 3, effective August 9.

6-15-104. Applicability. (1) This part 1 shall not apply to any contract or arrangement in existence prior to March 25, 1982, nor to any extensions or renewals thereof; except that the parties to the contract or arrangement may thereafter elect to be governed by the provisions of this part 1.

(2) Any provision, whether oral or written, in or pertaining to the placing of a work of fine art on consignment whereby any provision of this part 1 is waived shall be deemed to be against public policy and shall be void.

Source: L. 82: Entire article added, p. 230, § 1, effective March 25. **L. 2017:** Entire section amended, (HB 17-1241), ch. 163, p. 605, § 4, effective August 9.

PART 2

INDIAN ARTS AND CRAFTS SALES

Editor's note: This part 2 was added with relocations in 2017. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this part 2, see the comparative tables located in the back of the index.

6-15-201. Short title. The short title of this part 2 is the "Indian Arts and Crafts Sales Act".

Source: L. 2017: Entire part added, (HB 17-1241), ch. 163, p. 602, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44.5-101 as it existed prior to 2017.

6-15-202. Legislative declaration. The purpose of this part 2 is to protect the public from false representation in the sale or offering for sale of authentic Indian and other arts and crafts.

Source: L. 2017: Entire part added, (HB 17-1241), ch. 163, p. 602, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44.5-102 as it existed prior to 2017.

6-15-203. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Authentic Indian arts and crafts" means any product that is handcrafted by Indian labor or workmanship and is not made from synthetic or artificial materials.

(2) "Findings" means the smaller component parts of a handcrafted item, such as clasps, glass, silver, or synthetic beads, stamped parts not used as a major part of a handcrafted item, leather backings, binding materials, and other ingredient parts not a major part of a handcrafted item.

(3) "Handcrafted" means the production of a product wholly by hand tools, with the exception of buffing or polishing and the findings used upon the products.

(4) "Other arts and crafts" means any product that is represented as an Indian design or product but is not handcrafted by Indian labor or workmanship or that is made by machine or from synthetic or artificial materials.

(5) "Imitation turquoise" means any artificial compound or mineral manufactured or treated so as to closely approximate turquoise in composition or color or any other mineral represented as turquoise when in fact it is not.

(6) "Indian" means any person who is enrolled or is a lineal descendent of one enrolled upon an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian tribe domiciled in the United States or a person recognized by any Indian tribe as being Indian.

(7) "Indian tribe" means any Indian tribe, organized band, or pueblo that is domiciled in the United States.

(8) "Natural" means the status of a mineral component, used in the preparation of authentic Indian arts and crafts, that does not include any chemical alteration or discoloration.

(9) "Plasticized" means the process through which natural turquoise of a soft, porous nature is altered by impregnating it with acrylic resin or any other substance of a similar nature to produce a change in coloration of the turquoise and allow it to accept a polished finish.

(10) "Represented" means the presentation of a product in words, description, state of being, or symbols when the product is offered for sale, trade, exchange, or purchase.

(11) "Spin cast" means the casting of jewelry components, other than findings, by means of centrifugal force.

(12) "Stabilized" means the chemical process through which natural turquoise of a soft, porous nature is altered to produce a change in the coloration of the natural mineral.

(13) "Treated" means any chemical process through which a natural turquoise is altered to produce a change in coloration of the natural mineral.

(14) "Turquoise" means a blue, green, greenish-blue, or sky-blue mineral, containing phosphorus, aluminum, copper, and iron, used as a gemstone in its cut and polished form.

(15) "Unnatural" means the status of any mineral compound or substance that is not natural or that has been chemically altered, including a stabilized, plasticized, or treated mineral and imitation turquoise.

Source: L. 2017: Entire part added, (HB 17-1241), ch. 163, p. 602, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44.5-103 as it existed prior to 2017.

6-15-204. Inquiry as to producer. (1) It is the duty of every person selling or offering for sale at retail authentic Indian arts and crafts or other arts and crafts to the general public to make due inquiry of their suppliers concerning the methods used in producing the arts and crafts and to determine whether the arts and crafts are in fact authentic.

(2) It is hereby made the duty of every person selling or offering for sale at retail to the general public natural or unnatural turquoise to make due inquiry of their suppliers concerning the source, grade, and quality of the turquoise for resale.

(3) If the supplier cannot authenticate to the seller the origin and process of manufacture regarding the Indian arts and crafts to be sold or traded to the seller, the seller shall not sell the arts and crafts to the general public as authentic Indian arts and crafts.

Source: L. 2017: Entire part added, (HB 17-1241), ch. 163, p. 604, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44.5-104 as it existed prior to 2017.

6-15-205. Unlawful acts. (1) A person shall not knowingly:

(a) Sell or offer for sale any products represented as authentic Indian arts and crafts unless the products are in fact authentic Indian arts and crafts;

(b) Sell or offer to sell any authentic Indian arts and crafts purporting to be silver unless the products are made of coin silver or sterling silver that is not less than ninety-percent pure silver by weight or unless the person provides a statement to the purchaser at retail concerning the content of the silver used in the arts or crafts;

(c) Sell or offer to sell any authentic Indian arts and crafts that are not separately displayed from other arts and crafts and the authentic Indian arts and crafts are not clearly designated with a tag attached to each product and containing the words "Authentic Indian" in letters not less than one-quarter inch high or, if the authentic Indian arts and crafts can clearly be labeled by the use of a display card, then in lieu of tagging each article the person may label the authentic Indian arts and crafts with a printed display card in letters not less than one-half inch in height and containing the words "Authentic Indian". The label or display card shall be maintained with the related crafts in an area separate from other arts and crafts so as to clearly designate the authentic Indian arts and crafts.

(d) Sell or offer to sell spin cast components of authentic Indian jewelry, other than findings, or use spin cast components in authentic Indian jewelry unless the jewelry is labeled as being so cast in its manufacture.

Source: L. 2017: Entire part added, (HB 17-1241), ch. 163, p. 604, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44.5-105 as it existed prior to 2017.

6-15-206. Unfair trade practices. (1) A person shall not:

(a) Use a false or misleading statement, written or oral, or the lack thereof, a visual description or the lack thereof, or any representation or lack thereof made in connection with the sale or trade of Indian arts and crafts in the regular course of trade or commerce with the intent to deceive or mislead any person;

(b) Falsely represent turquoise being sold as having characteristics, elements, or qualities it does not have;

(c) Falsely represent turquoise being sold as natural turquoise if in fact it is in an unnatural state;

(d) Make a false or misleading statement of fact concerning the price or value for the purpose of selling or trading turquoise.

Source: L. 2017: Entire part added, (HB 17-1241), ch. 163, p. 604, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44.5-106 as it existed prior to 2017.

6-15-207. Violations - penalty. Any person who knowingly violates any of the provisions of section 6-15-205 or 6-15-206 commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501.

Source: L. 2017: Entire part added, (HB 17-1241), ch. 163, p. 605, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44.5-107 as it existed prior to 2017.

6-15-208. Right of action - damages. In addition to any judicial relief, any person who suffers financial injury or damages by reason of anything forbidden in this part 2 may sue in district court and may recover actual damages sustained by him or her and the cost of suit, including reasonable attorney fees.

Source: L. 2017: Entire part added, (HB 17-1241), ch. 163, p. 605, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44.5-108 as it existed prior to 2017.

CHARITABLE SOLICITATIONS

ARTICLE 16

Colorado Charitable Solicitations Act

6-16-101. Short title. This article shall be known and may be cited as the "Colorado Charitable Solicitations Act".

Source: L. 88: Entire article added, p. 350, § 1, effective July 1.

6-16-102. Legislative declaration. The general assembly hereby finds that fraudulent charitable solicitations are a widespread practice in this state that results in millions of dollars of losses to contributors and legitimate charities each year. Legitimate charities are harmed by such fraud because the money available for contributions continually is being siphoned off by fraudulent charities, and the goodwill and confidence of contributors continually is being undermined by the practices of unscrupulous solicitors. The general assembly further finds that legitimate charities provide many public benefits and that charitable donations are a direct result of public trust in charities. The general assembly therefore finds that the provisions of this article, including those involving pertinent information to be filed in a timely manner by charitable organizations and disclosures to be made by paid solicitors, are necessary to protect the public's interest in making informed choices as to which charitable causes should be supported. Furthermore, these provisions are intended to help the secretary of state investigate allegations of wrongdoing in charities, without having a chilling effect on donors who wish to give anonymously or requiring public disclosure of confidential information about charities.

Source: L. 88: Entire article added, p. 350, § 1, effective July 1. **L. 2008:** Entire section amended, p. 806, § 1, effective September 1.

6-16-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Charitable organization" means any person who is or holds himself out to be established for any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary purpose, any person who operates for the benefit of the objectives of law enforcement officers, firefighters, other persons who protect the public safety, or veterans, or any person who in any

manner employs a charitable appeal or an appeal which suggests that there is a charitable purpose as the basis for any solicitation. "Charitable organization" does not include the department of revenue collecting voluntary contributions for organ and tissue donations under the provisions of sections 42-2-107 (4)(b)(V) and 42-2-118 (1)(a)(II), C.R.S.

(2) "Charitable purpose" means any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary purpose, any objective of law enforcement officers, firefighters, other persons who protect the public safety, or veterans, or any objective of sponsoring the free or subsidized attendance of persons at any event.

(3) "Charitable sales promotion" means an advertising or sales campaign which is conducted by a commercial coventurer and which represents that the purchase or use of goods or services offered by the commercial coventurer will benefit, in whole or in part, a charitable organization or purpose.

(4) "Commercial coventurer" means a person who, for profit, is regularly and primarily engaged in trade or commerce other than in connection with soliciting for charitable organizations or purposes and who conducts a charitable sales promotion.

(5) "Contribution" means the grant, promise, or pledge of money, credit, property, financial assistance, or any other thing of value in response to a solicitation. "Contribution" does not include voluntary contributions for organ and tissue donations under the provisions of sections 42-2-107 (4)(b)(V) and 42-2-118 (1)(a)(II), C.R.S., and bona fide fees, dues, or assessments paid by members of a charitable organization if membership is not conferred primarily as consideration for making a contribution in response to a solicitation.

(6) Repealed.

(7) "Paid solicitor" means a person who, for monetary compensation, performs any service in which contributions will be solicited in this state by such compensated person or by any compensated person he or she employs, procures, or engages to solicit for contributions. The following persons are not "paid solicitors":

(a) A person whose sole responsibility is to print or mail fund-raising literature;

(b) A lawyer, investment counselor, or banker who renders professional services to a charitable organization or advises a person to make a charitable contribution during the course of rendering such professional services or advice to the charitable organization or person;

(c) A bona fide volunteer;

(d) A director, officer, or compensated employee who is directly employed by a charitable organization which, at the time of the solicitation, had received a determination letter from the internal revenue service granting the organization tax-exempt status pursuant to 26 U.S.C. sec. 501 (c)(3), (c)(4), (c)(8), (c)(10), or (c)(19). For purposes of this paragraph (d), such a determination letter shall not have retroactive effect.

(e) Any employee of the department of revenue collecting voluntary contributions for organ and tissue donations under sections 42-2-107 (4)(b)(V) and 42-2-118 (1)(a)(II), C.R.S.;

(f) A person whose only responsibility in connection with a charitable contribution is to provide a merchant account to process credit card payments using the internet;

(g) A person who prepares a grant application for a charitable organization or purpose, unless the person's compensation is computed on the basis of funds to be raised or actually raised as a result of the grant application; or

(h) A person who provides any service or product to a charitable organization who does not directly solicit for a charitable contribution.

(8) "Person" means an individual, a corporation, an association, a partnership, a trust, a foundation, or any other entity however organized or any group of individuals associated in fact but not a legal entity.

(9) Repealed.

(9.3) "Professional fundraising consultant" means any person, other than a bona fide officer or regular employee of a charitable organization, who is retained by a charitable organization for a fixed fee or rate under a written agreement to plan, manage, advise, consult, or prepare material for or with respect to the solicitation in this state of contributions for a charitable organization but who does not solicit contributions or employ, procure, or engage any compensated person to solicit contributions. No lawyer, investment counselor, or banker who renders professional services to a charitable organization or advises a person to make a charitable contribution during the course of rendering professional services to the person shall be deemed, as a result of such professional services or advice, to be a "professional fundraising consultant".

(9.5) "Records" means books, financial statements, papers, correspondence, memoranda, agreements, or other documents or records that the secretary of state deems relevant or material to an inquiry.

(10) "Solicit" or "solicitation" means to request, or the request for, directly or indirectly, money, credit, property, financial assistance, or any other thing of value on the plea or representation that such money, credit, property, financial assistance, or other thing of value, or any portion thereof, will be used for a charitable purpose or will benefit a charitable organization. The term "solicit" or "solicitation" shall include, but need not be limited to, the following methods of requesting or securing such money, credit, property, financial assistance, or other thing of value:

(a) Any oral or written request; or

(b) Any sale or attempted sale of or any offer to sell any advertisement, advertising space, book, card, tag, coupon, device, magazine, membership, merchandise, subscription, flower, ticket, candy, cookies, or other tangible item in which any appeal is made for any charitable organization or purpose, or for which the name of any charitable organization is used or referred to in any such appeal as an inducement or reason for making any such sale, or for which any statement is made that the proceeds or any portion thereof from such sale will be used for any charitable purpose or will benefit any charitable organization. A "solicitation" shall be deemed to have taken place whether or not the person making the "solicitation" receives any contribution.

(11) "Solicitation campaign" means a series of solicitations which are made by the same person and which are similar in content or are based on a similar pitch or sales approach, which series leads up to or is represented to lead up to an event or lasts or is intended to last for a definite period of time. If the series of solicitations lasts or is intended to last for an indefinite period of time or for more than one year, a "solicitation campaign" means all similar solicitations made by the same person occurring within a particular calendar year.

(11.5) "Suspend" means that a charitable organization, professional fund-raising consultant, or paid solicitor is prohibited from soliciting contributions, providing consulting

services in connection with a solicitation campaign, or conducting a solicitation campaign in Colorado.

(12) "Volunteer" means a person who renders services to a charitable organization or for a charitable purpose and who neither receives nor is expressly or impliedly promised financial remuneration for said services.

Source: L. 88: Entire article added, p. 350, § 1, effective July 1. **L. 89:** (6) and (9) repealed and IP(7) amended, pp. 367, 364, §§ 8, 1, effective July 1. **L. 96:** (1) and (5) amended and (7)(e) added, p. 1135, §§ 3, 4, effective July 1. **L. 2001:** IP(7) amended and (9.3) added, p. 1236, § 1, effective May 9, 2002. **L. 2003:** (7)(f) added, p. 2496, § 1, effective June 5. **L. 2005:** (7)(b) and (9.3) amended, p. 1286, § 1, effective June 3. **L. 2008:** (9.5) and (11.5) added, p. 806, § 2, effective September 1. **L. 2012:** (7)(e) and (7)(f) amended and (7)(g) added, (HB 12-1236), ch. 133, p. 456, § 1, effective January 1, 2013. **L. 2016:** IP(7), (7)(f), and (7)(g) amended and (7)(h) added, (HB 16-1129), ch. 262, p. 1076, § 2, effective August 10.

6-16-104. Charitable organizations - initial registration - annual filing - fees. (1) Every charitable organization, except those exempted under subsection (6) of this section, that intends to solicit contributions in this state by any means or to have contributions solicited in this state on its behalf by any other person or entity or that participates in a charitable sales promotion shall, prior to engaging in any of these activities, file a registration statement with the secretary of state upon a form prescribed by the secretary of state. Each chapter, branch, or affiliate of a charitable organization that is required to file a registration statement under this section either shall file a separate registration statement or shall report the necessary information to its parent charitable organization, which then shall file a consolidated registration statement.

(2) The registration statement must be signed and affirmed under penalty of perjury as defined in section 18-8-503 by an officer of the charitable organization, which may include its chief fiscal officer, and must contain the following information:

(a) The name of the charitable organization, the purpose for which it is organized, and the name or names under which it intends to solicit contributions;

(b) The address and telephone number of the principal place of business of the charitable organization and the address and telephone number of any offices in this state, or, if the charitable organization does not maintain an office in this state, the name, address, and telephone number of the person that has custody of its financial records;

(c) The names of the officers, directors, trustees, and executive personnel of the charitable organization;

(d) The last day of the fiscal year of the charitable organization;

(e) The place and date when the charitable organization was legally established, the form of its organization, and its tax-exempt status;

(f) A financial report for the most recent fiscal year, upon a form prescribed by the secretary of state, or, in the discretion of the secretary of state, a copy of the charitable organization's federal form 990, with all schedules except schedules of donors, for the most recent fiscal year. If, at the time of the initial registration, the charitable organization does not have the required financial report or form 990 for the most recent fiscal year, the charitable organization shall submit a financial report or form 990 for the most recent fiscal year in which such information is available. An organization that was first legally established within the past

year and thus does not have financial information or a form 990 for its most recent fiscal year shall provide to the secretary of state a financial report based on good faith estimates for its current fiscal year on a form prescribed by the secretary of state. Any organization that files a good faith estimate for its first fiscal year shall amend its initial registration statement to report actual financial information on or before the earlier of the fifteenth day of the eighth month after the close of the organization's first fiscal year or the date authorized for filing a form 990 with the internal revenue service.

(g) The names and addresses of any paid solicitors, professional fundraising consultants, and commercial coventurers who are acting or have agreed to act on behalf of the charitable organization. If the paid solicitor, professional fundraising consultant, or commercial coventurer is a partnership, corporation, limited liability company, or other legal entity, the charitable organization shall list only the name and address of the legal entity.

(3) The secretary of state may promulgate rules concerning the acceptance of a uniform multistate registration statement, such as a unified registration statement, in lieu of the registration statement described in subsection (2) of this section. As soon as practicable, the secretary of state shall take steps to cooperate in a joint state and federal electronic filing project involving state charity offices and the internal revenue service to enable and promote electronic filing of uniform multistate registration statements and federal annual information returns.

(4) (a) A charitable organization's registration is valid until the day on which the financial report required in subsection (2)(f) or (5) of this section is due and may be renewed upon application to the secretary of state and payment of the registration fee and any assessed fines.

(b) A charitable organization that withdraws its registration or allows its registration to expire must, on or before the date of withdrawal or expiration, file a final financial report, in a form prescribed by the secretary of state, that includes information through the last date on which the organization solicited contributions in Colorado.

(c) A charitable organization shall report any changes of name, address, principals, corporate forms, tax status, and any other changes that materially affect the identity or business of the charitable organization to the secretary of state within thirty days after the change.

(5) (a) Every charitable organization required to register under this section shall annually file with the secretary of state a financial report for the most recent fiscal year on a form prescribed by the secretary of state, or, in the discretion of the secretary of state, a copy of the charitable organization's federal form 990, with all schedules except schedules of donors, for the most recent fiscal year. The financial report must be filed on or before the earlier of the fifteenth day of the eighth calendar month after the close of each fiscal year in which the charitable organization solicited in this state or the date authorized for filing a form 990 with the internal revenue service. A charitable organization that is unable to file a copy of its form 990 return or the secretary of state's financial form by the prescribed deadline may request an extension of the filing deadline from the secretary of state. The secretary of state, upon receipt of an application to extend the filing deadline, may grant a three-month extension of time to file the financial report. All requests for extension of time must:

(I) Be in a form prescribed by the secretary of state;

(II) Include a statement describing in detail the reasons causing the delay in filing the financial report;

(III) Include an affirmation that the charitable organization has filed with the internal revenue service an application for a corresponding extension of time to file the organization's form 990; and

(IV) Be signed and affirmed under penalty of perjury as defined in section 18-8-503.

(b) Upon request, the charitable organization shall provide the secretary of state with a copy of its application for extension of time to file with the internal revenue service in order to verify the date authorized for filing its form 990 with the internal revenue service.

(6) The following are not required to file a registration statement:

(a) Persons that are exempt from filing a federal annual information return pursuant to 26 U.S.C. sec. 6033 (a)(3)(A)(i), (a)(3)(A)(iii), or (a)(3)(C)(i) or pursuant to 26 CFR 1.6033-2 (g)(1)(i) to (g)(1)(iv) or (g)(1)(vii);

(b) Political parties, candidates for federal or state office, and political action committees required to file financial information with federal or state elections commissions;

(c) Charitable organizations that do not intend to and do not actually raise or receive gross revenue, excluding grants from governmental entities or from organizations exempt from federal taxation under section 501(c)(3) of the federal "Internal Revenue Code of 1986", as amended, in excess of twenty-five thousand dollars during a fiscal year or do not receive contributions from more than ten persons during a fiscal year. The exemption authorized in this paragraph (c) shall not apply to a charitable organization that has contracted with a paid solicitor to solicit contributions in this state for the organization.

(d) Persons exclusively making appeals for funds on behalf of a specific individual named in the solicitation, but only if all of the proceeds of the solicitation are given to or expended for the direct benefit of the specified individual.

(7) Filing fees for the annual registration of a charitable organization and for amendments thereto shall be established by the secretary of state in an amount that reflects the costs of the secretary of state in administering the provisions of this article. All such fees collected shall be deposited in the department of state cash fund created in section 24-21-104 (3)(b), C.R.S.

(8) The secretary of state shall examine each registration to determine whether the applicable requirements of this section are satisfied. The secretary of state shall notify the charitable organization within ten days after receipt of its application of any deficiencies therein, otherwise the registration shall be deemed approved as filed. The secretary of state shall issue each approved applicant a registration number.

(9) A charitable organization that is required to register under this article 16 shall not:

(a) Prior to registration or renewal of an expired registration, solicit contributions in this state by any means, have contributions solicited in this state on its behalf by any other person or entity, or participate in a charitable sales promotion; or

(b) Aid, abet, or otherwise permit any paid solicitor to solicit contributions on its behalf in this state unless the paid solicitor soliciting contributions has complied with the requirements of this article.

(10) All information filed pursuant to this section, except for residential addresses and telephone numbers of individuals, account numbers at banks or other financial institutions, and schedules of contributors listed on the federal form 990 or its equivalent, is a public record for purposes of the public records law, part 2 of article 72 of title 24, C.R.S.

Source: L. 88: Entire article added, p. 352, § 1, effective July 1. **L. 89:** (1)(d), (1)(e), and (2) amended and (5) and (6) repealed, pp. 364, 367, §§ 2, 8, effective July 1. **L. 2001:** Entire section R&RE, p. 1237, § 2, effective May 9, 2002. **L. 2002:** (2)(f), (4), and (5) amended, p. 948, § 1, effective June 1. **L. 2003:** IP(2) and (6)(a) amended, p. 2496, § 2, effective June 5. **L. 2005:** (2)(f), (3), and (6)(c) amended and (2)(g) added, p. 1287, § 2, effective June 3. **L. 2009:** (6)(a) amended, (SB 09-292), ch. 369, p. 1986, § 133, effective August 5. **L. 2012:** IP(2), (2)(f), (5), IP(6), and (6)(b) amended and (6)(d) added, (HB 12-1236), ch. 133, p. 457, § 2, effective January 1, 2013. **L. 2013:** (6)(a) amended, (HB 13-1300), ch. 316, p. 1663, § 7, effective August 7. **L. 2014:** (2)(c), (9), and (10) amended, (HB 14-1206), ch. 118, p. 420, § 1, effective August 6. **L. 2017:** IP(2), (2)(c), (4), (5), IP(9), and (9)(a) amended, (HB 17-1158), ch. 160, p. 592, § 1, effective October 1, 2018.

Editor's note: Section 8(2) of chapter 160 (HB 17-1158), Session Laws of Colorado 2017, provides that the act changing this section applies to regulation of charitable solicitations by the secretary of state on or after October 1, 2018.

6-16-104.3. Professional fundraising consultants - annual registration - fees. (1) No person shall act as a professional fundraising consultant without first complying with the requirements of this section.

(2) Every contract between a professional fundraising consultant and a charitable organization or sponsor shall be in writing and signed by an authorized official of the charitable organization. The professional fundraising consultant shall provide a copy of the contract to the charitable organization prior to the performance of any material services under the contract and shall make a copy of the contract available to the secretary of state upon request. The contract shall contain all of the following provisions:

(a) A statement of the charitable purpose for which the solicitation campaign is being conducted;

(b) A statement of the respective obligations of the professional fundraising consultant and the charitable organization;

(c) Whether the professional fundraising consultant will at any time have custody or control of contributions;

(d) A clear statement of the fees that will be paid to the professional fundraising consultant or, if the fees are to be calculated based on a percentage of contributions or other formula, a clear statement of the percentage or other formula; and

(e) The effective and termination dates of the contract.

(3) A professional fundraising consultant who at any time has or will have custody or control of contributions from a solicitation conducted on behalf of a charitable organization in this state shall also comply with the registration requirements of this section before performing any material services with respect to such solicitation.

(4) Applications for registration or renewal of registration must be submitted on a form prescribed by the secretary of state, signed and affirmed under penalty of perjury as defined in section 18-8-503, and must include the following information:

(a) The address and telephone number of the principal place of business of the applicant and the address and telephone number of any office located in this state if the principal place of business is located outside the state;

(a.5) The form of the applicant's business and, if the applicant is not an individual, the place and date when the applicant was incorporated or otherwise legally established;

(b) The name, address, and telephone number of the person that has custody of the applicant's financial records;

(c) If the applicant is not an individual, the names and addresses of the owners, officers, and executive personnel of the applicant;

(d) Whether the applicant or any of its owners, officers, directors, trustees, or employees have, within the immediately preceding five years, been convicted of, found guilty of, pled guilty or nolo contendere to, been adjudicated a juvenile violator of, or been incarcerated for any felony involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, under the laws of this or any other state or of the United States, and if so, the name of such person, the nature of the offense, the date of the offense, the court having jurisdiction in the case, the date of conviction or other disposition, and the disposition of the offense;

(e) Whether the applicant or any of its owners, officers, directors, trustees, or employees have been enjoined from violating any law relating to a charitable solicitation or from engaging in charitable solicitation and, if so, the name of such person, the date of the injunction, and the court issuing the injunction;

(f) Whether the applicant is registered with or otherwise authorized by any other state to act as a professional fundraising consultant; and

(g) Whether the applicant has had such registration or authority denied, suspended, revoked, or enjoined by any court or other governmental authority in this state or another state.

(5) The application for registration or for renewal shall be accompanied by the fee established pursuant to subsection (12) of this section. A professional fundraising consultant that is a partnership, corporation, or limited liability company may register for and pay a single fee on behalf of all its partners, members, officers, directors, agents, and employees. In such case, the names and street addresses of all the partners, members, officers, directors, employees, and agents of the fundraising consultant and all other persons with whom the fundraising consultant has contracted to work under its direction shall be listed in the application or furnished to the secretary of state within five days after the date of employment or contractual arrangement.

(6) Each registration is valid for a period of one year and may be renewed, on or before the anniversary date, for an additional one-year period upon application to the secretary of state and payment of the registration fee. Any material changes to the information contained in the application for registration shall be reported in writing to the secretary of state within thirty days.

(7) The secretary of state shall examine each registration to determine whether the applicable requirements of this section are satisfied. The secretary of state shall notify the applicant within ten days after receipt of its application of any deficiencies therein, otherwise the application shall be deemed approved as filed. The secretary of state shall issue each approved applicant a registration number.

(8) If a professional fundraising consultant will have custody of any contribution received during a solicitation campaign, each such contribution shall be deposited within two business days after its receipt in an account at a bank or other federally insured financial institution. The account shall be in the name of the charitable organization with whom the professional fundraising consultant has contracted, and the charitable organization shall have sole control over all withdrawals from the account.

(9) Within ninety days after a solicitation campaign has been concluded, and on the anniversary of the commencement of a solicitation campaign lasting more than one year, the professional fundraising consultant shall provide to the charitable organization a financial report of the campaign, including gross proceeds and an itemization of all expenses or disbursements for any purpose. The report shall be signed by the professional fundraising consultant or, if the professional fundraising consultant is not an individual, by an authorized officer or agent of the professional fundraising consultant, who shall certify that the financial report is true and complete to the best of the person's knowledge. The professional fundraising consultant shall provide a copy of the report to the secretary of state upon request.

(10) No person may act as a professional fundraising consultant and no professional fundraising consultant required to be registered under this section shall knowingly employ any person as an officer, trustee, director, or employee if such person, within the immediately preceding five years, has been convicted of, found guilty of, pled guilty or nolo contendere to, been adjudicated a juvenile violator of, or been incarcerated for any felony involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, under the laws of this or any other state or of the United States, or has been enjoined within the immediately preceding five years under the laws of this or any other state or of the United States from engaging in deceptive conduct relating to charitable solicitations.

(11) Information filed pursuant to this section, except for residential addresses and telephone numbers of individuals and account numbers at banks or other financial institutions, is a public record for purposes of the public records law, part 2 of article 72 of title 24, C.R.S.

(12) Filing fees for the annual registration of a professional fundraising consultant and for amendments thereto shall be established by the secretary of state in an amount that reflects the costs of the secretary of state in administering the provisions of this article. All such fees collected shall be deposited in the department of state cash fund created in section 24-21-104 (3)(b), C.R.S.

Source: L. 2001: Entire section added, p. 1239, § 3, effective May 9, 2002. **L. 2003:** IP(2) amended, p. 2497, § 3, effective June 5. **L. 2005:** (4)(a.5) added and (4)(c) amended, p. 1288, § 3, effective June 3. **L. 2014:** (11) amended, (HB 14-1206), ch. 118, p. 421, § 2, effective August 6. **L. 2017:** IP(4) amended, (HB 17-1158), ch. 160, p. 594, § 2, effective October 1, 2018.

Editor's note: Section 8(2) of chapter 160 (HB 17-1158), Session Laws of Colorado 2017, provides that the act changing this section applies to regulation of charitable solicitations by the secretary of state on or after October 1, 2018.

6-16-104.5. Additional reporting requirements. (Repealed)

Source: L. 92: Entire section added, p. 235, § 1, effective June 1.

Editor's note: Subsection (2) provided for the repeal of this section, effective December 31, 1994. (See L. 92, p. 235.)

6-16-104.6. Paid solicitors - annual registration - filing of contracts - fees. (1) (a) No person shall act as a paid solicitor without first complying with the requirements of this section.

(b) Every paid solicitor shall register in accordance with subsection (3) of this section before soliciting contributions in this state.

(2) Every contract between a paid solicitor and a charitable organization or sponsor for each solicitation campaign shall be in writing and shall be signed by an authorized official of the charitable organization or sponsor, who shall be a member of the organization's governing body, and by the paid solicitor if the paid solicitor is an individual or by the authorized contracting officer for the paid solicitor if the paid solicitor is not an individual. The paid solicitor shall provide a copy of the contract to the charitable organization prior to the performance of any material services under the contract and shall make a copy of the contract available to the secretary of state upon request. The contract shall contain all of the following provisions:

(a) A statement of the charitable purpose for which the solicitation campaign is being conducted;

(b) A statement of the respective obligations of the paid solicitor and the charitable organization;

(c) A statement of the specified minimum percentage, if any, of the gross receipts from contributions that will be remitted to the charitable organization, or, if the solicitation involves the sale of goods, services, or tickets to a fundraising event, the specified minimum percentage, if any, of the purchase price that will be remitted to the charitable organization. Any stated percentage shall exclude any amount payable by the charitable organization as fundraising costs.

(d) A statement of the specified percentage, if any, of gross revenue that constitutes the paid solicitor's compensation. If the paid solicitor's compensation is not contingent upon the number of contributions or the amount received, the paid solicitor's compensation shall be expressed as a reasonable estimate of the percentage of gross revenue, and the contract shall clearly disclose the assumptions upon which such estimate is based. The stated assumptions shall be based upon all the relevant facts known to the paid solicitor regarding the solicitation to be conducted.

(e) The effective and termination dates of the contract.

(3) Applications for registration or renewal of registration must be submitted on a form prescribed by the secretary of state, signed and affirmed under penalty of perjury as defined in section 18-8-503, and must include the following information:

(a) The address and telephone number of the principal place of business of the applicant and the address and telephone number of any office located in this state if the principal place of business is located outside the state;

(b) The form of the applicant's business and, if the applicant is not an individual, the place and date when the applicant was incorporated or otherwise legally established;

(c) The name, address, and telephone number of the person that has custody of the applicant's financial records;

(d) If the applicant is not an individual, the names and addresses of the owners, officers, and executive personnel of the applicant;

(e) The names of all persons in charge of any solicitation activity conducted in this state by the applicant or on the applicant's behalf;

(f) Whether the applicant, any person with a controlling interest in the applicant, or any of the applicant's owners, officers, directors, trustees, employees, or agents has, within the

immediately preceding five years, been convicted of, found guilty of, pled guilty or nolo contendere to, been adjudicated a juvenile violator of, or been incarcerated for any felony involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, under the laws of this or any other state or of the United States, and if so, the name of such person, the nature of the offense, the date of the offense, the court having jurisdiction in the case, the date of conviction or other disposition, and the disposition of the offense;

(g) Whether the applicant or any of its owners, officers, directors, trustees, or employees have been enjoined from violating any law relating to a charitable solicitation and, if so, the name of such person, the date of the injunction, and the court issuing the injunction;

(h) Whether the applicant is registered with or otherwise authorized by any other state to act as a paid solicitor;

(i) Whether the applicant has had such registration or authority denied, suspended, revoked, or enjoined by any court or other governmental authority in this state or another state; and

(j) Whether the applicant or any officer, director, or employee of the applicant serves on the board of directors of a charitable organization, directs the operations of a charitable organization, or otherwise has a financial interest in a charitable organization for which the applicant solicits contributions. If this relationship exists between the applicant and the charitable organization, the application must include a statement that the relationship meets the standards set forth in section 7-128-501 (3), C.R.S., regarding conflict of interest transactions.

(3.5) (a) Before any paid solicitor is registered, the applicant shall procure and file with the secretary of state evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, C.R.S., or a good and sufficient bond in the amount of fifteen thousand dollars issued by a corporate surety duly licensed to do business within the state, approved as to form by the attorney general of the state, and conditioned that the applicant shall perform in good faith as a paid solicitor without fraud or fraudulent representation and without the violation of any provision of this article.

(b) No corporate surety is required to make any payment to any person claiming a bond issued under this subsection (3.5) until a final determination of fraud or fraudulent representation has been made by the secretary of state or by a court of competent jurisdiction.

(c) All bonds required under this section must be renewed annually at the same time as the bondholder's license is renewed. Renewal of the bond may be done through a continuation certificate issued by the surety.

(4) The application for registration or for renewal shall be accompanied by the fee established pursuant to subsection (12) of this section. A paid solicitor that is a partnership, corporation, or limited liability company may register for and pay a single fee on behalf of all its partners, members, officers, directors, agents, and employees. In such case, the names and street addresses of all the partners, members, officers, directors, employees, and agents of the paid solicitor and all other persons with whom the paid solicitor has contracted to work under its direction shall be listed in the application or furnished to the secretary of state within five days after the date of employment or contractual arrangement.

(5) Each registration is valid for a period of one year and may be renewed, on or before the anniversary date, for an additional one-year period upon application to the secretary of state and payment of the registration fee and any assessed fines. Any material changes to the

information contained in the application for registration must be reported in writing to the secretary of state within thirty days.

(6) The secretary of state shall examine each registration to determine whether the applicable requirements of this section are satisfied. The secretary of state shall notify the applicant within ten days after receipt of its application of any deficiencies therein, otherwise the application shall be deemed approved as filed. The secretary of state shall issue each approved applicant a registration number.

(7) No later than fifteen days before the commencement of a solicitation campaign, the paid solicitor shall file with the secretary of state a completed solicitation notice, on forms prescribed by the secretary of state, containing the following information:

(a) A summary of the governing contract, as specified in subsection (2) of this section;

(b) The full legal name and address of the paid solicitor who will be conducting the solicitation campaign and the full legal name and address of each person responsible for directing and supervising the conduct of the campaign;

(c) A statement, in accordance with section 6-16-111 (1)(f) and (1)(g), of the nature of the intended solicitation campaign, including the means of communication to be used in the campaign, the projected commencement and conclusion dates of the campaign, and a description of any event the campaign will lead up to;

(d) A full and fair statement, in accordance with section 6-16-111 (1)(f) and (1)(g), of the charitable purpose for which the solicitation campaign is being carried out;

(e) Each location and telephone number, if applicable, from which the solicitation is to be conducted;

(f) A statement as to whether the paid solicitor will at any time have custody of contributions;

(g) The account number and location of each bank account where receipts from the campaign are to be deposited;

(h) The address where records and accounting concerning the solicitation campaign are being kept; and

(i) A certification statement, signed and affirmed under penalty of perjury as defined in section 18-8-503 by an officer of the charitable organization on the behalf of whom the solicitation campaign is to occur, stating that the solicitation notice and accompanying material are true and complete to the best of his or her knowledge.

(8) If a paid solicitor will have custody of any monetary contribution received during a solicitation campaign, each such contribution must be deposited within two business days after its receipt in an account at a bank or other federally insured financial institution. The account must be in the name of the charitable organization with whom the paid solicitor has contracted, and the charitable organization must have sole control over all withdrawals from the account.

(9) Within ninety days after a solicitation campaign has been concluded, and on the anniversary of the commencement of a solicitation campaign lasting more than one year, the paid solicitor shall provide to the charitable organization and file with the secretary of state a financial report of the campaign, including gross proceeds and an itemization of all expenses or disbursements for any purpose. The report must be on a form prescribed by the secretary of state and must be signed and affirmed under penalty of perjury as defined in section 18-8-503 by the paid solicitor, or, if the paid solicitor is not an individual, by an authorized official of the paid

solicitor, and by an authorized official of the charitable organization. The persons signing the report shall certify that the financial report is true and complete to the best of their knowledge.

(10) No person may act as a paid solicitor and no paid solicitor required to be registered under this section shall knowingly employ any person as an officer, trustee, director, or employee if such person, within the immediately preceding five years, has been convicted of, found guilty of, pled guilty or nolo contendere to, been adjudicated a juvenile violator of, or been incarcerated for any felony involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, under the laws of this or any other state or of the United States, or has been enjoined within the immediately preceding five years under the laws of this or any other state or of the United States from engaging in deceptive conduct relating to charitable solicitations.

(11) Information filed pursuant to this section, except for residential addresses and telephone numbers of individuals and account numbers at banks or other financial institutions, is a public record for purposes of the public records law, part 2 of article 72 of title 24, C.R.S.

(12) Filing fees for the annual registration of a paid solicitor, amendments thereto, solicitation notices, and financial reports shall be established by the secretary of state in amounts that reflects the costs of the secretary of state in administering the provisions of this article. All such fees collected shall be deposited in the department of state cash fund created in section 24-21-104 (3)(b), C.R.S.

Source: L. 2001: Entire section added, p. 1239, § 3, effective May 9, 2002. **L. 2003:** IP(2) amended, p. 2497, § 4, effective June 5. **L. 2005:** IP(2) amended, p. 1288, § 4, effective June 3. **L. 2012:** (8) amended, (HB 12-1236), ch. 133, p. 458, § 3, effective January 1, 2013. **L. 2014:** (11) amended, (HB 14-1206), ch. 118, p. 421, § 3, effective August 6. **L. 2016:** (3)(h) and (3)(i) amended and (3)(j) and (3.5) added, (HB 16-1129), ch. 262, p. 1076, § 3, effective August 10. **L. 2017:** IP(3), (5), (7)(i), and (9) amended, (HB 17-1158), ch. 160, p. 594, § 3, effective October 1, 2018.

Editor's note: Section 8(2) of chapter 160 (HB 17-1158), Session Laws of Colorado 2017, provides that the act changing this section applies to regulation of charitable solicitations by the secretary of state on or after October 1, 2018.

6-16-105. Written confirmation of contribution - disclosures. (1) A paid solicitor who makes an oral solicitation by telephone, door-to-door, or otherwise must furnish to each contributor, prior to collecting or attempting to collect any contribution, a written confirmation of the expected contribution, which confirmation shall contain the following information clearly and conspicuously:

(a) The full legal name, address, telephone number, and registration number of the employer of the individual paid solicitor who directly communicated with the contributor;

(b) A disclosure that the contribution is not tax-deductible, if such disclosure is applicable, or, if the solicitor maintains that the contribution is tax-deductible in whole or in part, the portion of the contribution that the solicitor maintains is tax-deductible;

(c) A disclosure in capital letters of no less than ten-point, bold-faced type identifying the paid solicitor as a paid solicitor and containing the statement: "Registration by the secretary

of state is not an endorsement of either the paid solicitor or the organization or cause the solicitor represents.";

(d) The address and telephone number of the telephone room or other location from which the solicitation has been or is being conducted if such information is different than that which is provided pursuant to paragraph (a) of this subsection (1); except that this information is not required to be provided if telephone solicitations are being conducted from more than one location and from the residences of the individual paid solicitor;

(e) The name, address, telephone number, and registration number of any charitable organization connected with the solicitation or any organization the name or symbol of which has been used in aid of or in the course of such solicitation;

(f) The amount of any expected monetary contribution;

(g) The name and address of the contributor, as well as the date of the individual solicitation, or spaces where this information may be filled in by the contributor;

(h) A statement that Colorado residents may obtain copies of registration and financial documents from the office of the secretary of state, with the website address for obtaining such documents from the secretary of state.

(2) If the contributor is absent when the contribution is to be collected, the paid solicitor may comply with subsection (1) of this section by furnishing the written confirmation in a manner previously agreed upon between said solicitor and the contributor.

(3) Except for the amount of the expected contribution, a written solicitation shall contain the same information as is required in subsection (1) of this section.

Source: L. 88: Entire article added, p. 353, § 1, effective July 1. **L. 89:** Entire section R&RE, p. 365, § 3, effective July 1. **L. 2001:** IP(1), (1)(a), (1)(b), (1)(c), (1)(d), and (1)(e) amended and (1)(h) added, p. 1246, § 4, effective May 9, 2002. **L. 2014:** IP(1) and (1)(h) amended, (HB 14-1206), ch. 118, p. 421, § 4, effective August 6.

Editor's note: For discussion of language in the North Carolina Charitable Solicitations Act relating to the disclosure of information concerning the amount of gross receipts turned over to charities, a requirement of this section prior to the 1989 amendment, see Riley v. National Federation of the Blind of North Carolina, 487 U.S. 781, 108 S. Ct. 2667, 101 L. Ed.2d 669 (1988).

6-16-105.3. Solicitations by telephone. (1) In addition to any other disclosure required for solicitations by telephone under section 6-16-105, a paid solicitor who makes an oral solicitation to any person by a telephone call received in Colorado regarding a charitable contribution shall make the following oral disclosures as part of the telephone solicitation:

(a) A statement that the person soliciting the charitable contribution by telephone is paid to make such solicitation;

(b) The name of the telemarketing company that employs the paid solicitor;

(c) The name and telephone number of the charitable organization on whose behalf the paid solicitor is making the solicitation;

(d) (Deleted by amendment, L. 2001, p. 1247, § 5, effective May 9, 2002.)

(d.5) The first name and surname of the paid solicitor, which must be given in the opening greeting;

(e) A statement, which must be made prior to the person's agreement to make a contribution, that the charitable contribution is not tax deductible, if such is the case;

(f) Upon request by a person from whom a charitable contribution is sought, the percentage of the contribution that will be paid to the charitable organization as a result of such person's contribution; and

(g) Upon request by a person from whom a charitable contribution is sought, the registration numbers of the charitable organization and the paid solicitor.

(2) A volunteer as defined in section 6-16-103 (12) who makes an oral solicitation to any person by a telephone call received in Colorado regarding a charitable contribution is subject to the disclosure required under paragraph (e) of subsection (1) of this section.

(3) Nothing in this section shall be construed as restricting, superseding, abrogating, or contravening any state or federal law or regulation regarding charitable solicitations.

Source: L. 97: Entire section added, p. 404, § 1, effective July 1. **L. 2001:** (1)(d) amended and (1)(g) added, p. 1247, § 5, effective May 9, 2002. **L. 2012:** IP(1) and (1)(e) amended and (1)(d.5) added, (HB 12-1236), ch. 133, p. 458, § 4, effective January 1, 2013.

6-16-105.5. Solicitations by container - disclosures. (1) (a) No person or charitable organization, or agent of a person or charitable organization, whether paid or not paid, shall place any container offering a product for sale or distribution in a public place for solicitation purposes unless the container is affixed with a disclosure label conspicuously displaying the information set forth in subsection (2) of this section in a typed or printed clearly legible form.

(b) (I) A person other than an organization that has received a determination that it is exempt under section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, who places a container in a public place for solicitation purposes and who does not direct all of the items placed in the container to a charitable purpose or, if the items are sold, does not direct all proceeds of such sale to a charitable purpose, shall affix to the container a disclosure label that clearly and conspicuously displays the following legend:

DONATED ITEMS WILL BE SOLD FOR PROFIT

The value of items placed in this container is NOT tax-deductible.

(II) This paragraph (b) shall not apply to containers used exclusively for the collection of used paper, cardboard, motor oil, bottles, cans, or other containers or materials for recycling or waste diversion purposes.

(2) The disclosure label required pursuant to paragraph (a) of subsection (1) of this section shall state the following:

(a) The percentage of annual contributions that are paid to any person or organization to maintain, service, or collect the contributions deposited in all the containers used by the person or charitable organization;

(b) The percentage of annual contributions that are paid to the charitable organization specified on the container;

(c) Whether the person maintaining, servicing, or collecting the contributions deposited in the container is a volunteer or is paid for the services.

(3) For purposes of this section, "container" means a box, carton, package, receptacle, canister, jar, dispenser, or machine.

(4) Nothing in this section shall be construed as restricting, superseding, abrogating, or contravening any state or federal law or regulation regarding charitable solicitations.

Source: L. 96: Entire section added, p. 291, § 1, effective July 1. **L. 2009:** (1) and IP(2) amended, (HB 09-1052), ch. 50, p. 178, § 1, effective August 5.

6-16-106. Contributor's right to cancel. (1) In addition to any right otherwise provided by law with respect to the binding nature of an agreement or pledge to make a charitable contribution, a contributor shall have the right to cancel his agreement or pledge to contribute as follows:

(a) With respect to a solicitation in which the paid solicitor knowingly fails to comply with this article, at any time; or

(b) Until 12 midnight of the third business day, or with respect to a nonmonetary contribution, until 12 midnight of the first business day after the day on which the contributor receives a written confirmation of contribution pursuant to section 6-16-105.

(2) Cancellation occurs when the contributor gives written or oral notice of the cancellation to the paid solicitor at the address or telephone number stated in the written confirmation of contribution.

(3) Notice of cancellation, if given by mail, is given at the time it is properly addressed and deposited in a mail box with proper postage.

(4) A particular form shall not be required for a notice of cancellation, and such notice shall be sufficient if it indicates the intention of the contributor to cancel his pledge to contribute.

(5) Within ten days after a notification of cancellation has been received by the paid solicitor, the paid solicitor shall tender to the contributor any contribution made and any note or other evidence of indebtedness.

(6) Allowing for ordinary wear and tear or consumption of the goods contemplated by the transaction, within a reasonable time after an agreement or pledge to contribute has been cancelled, the contributor upon demand must tender to the paid solicitor any goods or items delivered by the paid solicitor in connection with the contribution but shall not be under obligation to tender at any other place than where the goods or items were delivered. If the paid solicitor fails to demand possession of the goods or items within a reasonable time after cancellation, the goods or items become the property of the contributor without obligation to contribute. For purposes of this subsection (6), forty days is presumed to be a reasonable time.

Source: L. 88: Entire article added, p. 355, § 1, effective July 1. **L. 89:** Entire section R&RE, p. 365, § 4, effective July 1.

6-16-107. Donated tickets - sponsored attendance. No person, in the course of or in aid of a solicitation, shall represent that a contribution will purchase a ticket or tickets to be donated for use by another, sponsor the attendance of another at an event, or sponsor the receipt of a benefit by another while knowing that the donated tickets or sponsorships will not actually be used or received by the donees or beneficiaries in the quantity represented.

Source: L. 88: Entire article added, p. 355, § 1, effective July 1. **L. 89:** Entire section R&RE, p. 366, § 5, effective July 1.

6-16-108. Publications. (Repealed)

Source: L. 88: Entire article added, p. 356, § 1, effective July 1. **L. 89:** Entire section repealed, p. 367, § 8, effective July 1.

6-16-109. Records - accounts. (1) During each solicitation campaign, a paid solicitor shall create and maintain, for not less than two years after the completion of such campaign, the following records:

(a) Copies of all written confirmations or any standardized written confirmations provided pursuant to section 6-16-105;

(b) The name and residence address of each employee, agent, or other person involved in the solicitation as is on record at the time of such solicitation;

(c) The locations and account numbers of all bank or other financial institution accounts into which the paid solicitor has deposited receipts from the solicitation;

(d) Records indicating the quantity of donated tickets or sponsorships, as described in section 6-16-107, which were actually used or received by donees or beneficiaries;

(e) A complete record and accounting of the receipts and disbursements of funds derived from any solicitation campaign. Said record and accounting shall clearly identify any person or organization to whom or to which any part of such funds are transferred and shall describe with specificity the purpose for which any expenditure is made and the amount of each expenditure. Funds spent directly for any charitable purpose or transferred to any charitable organization as represented in the solicitations shall be clearly delineated as such.

(f) All written records relating to pitches, sales approaches, or disclosures used during any solicitation campaign and all instructions provided to paid solicitors concerning the content or solicitations;

(g) All contracts or agreements made with charitable organizations or other represented beneficiaries of solicitations; and

(h) For each contribution, records indicating the name and address of the contributor, the amount of the contribution if monetary, and the date of the contribution, together with the name of the individual paid solicitor who solicited the contribution.

(2) Any person involved in solicitations who claims an exemption from the definition of paid solicitor in section 6-16-103 (7) shall maintain records of ruling letters and other communications from the internal revenue service regarding tax-exempt status. Failure to produce such records on written demand of the district attorney pursuant to section 6-16-111 (1)(e) shall give rise to a rebuttable presumption that the person does not have a ruling letter granting tax-exempt status pursuant to 26 U.S.C. sec. 501 (c)(3).

(3) Repealed.

Source: L. 88: Entire article added, p. 356, § 1, effective July 1. **L. 89:** IP(1), (1)(a), (1)(d), (1)(f), (1)(g), (2), and (3) amended and (1)(h) added, p. 366, § 6, effective July 1. **L. 2001:** (3) repealed, p. 1247, § 6, effective May 9, 2002.

6-16-110. Charitable sales promotions. (1) The provisions of this article relating to commercial coventurers and charitable sales promotions shall apply only when a commercial coventurer reasonably expects that more than one-half of all proceeds of a solicitation campaign will be derived from transactions within the state of Colorado.

(2) A commercial coventurer shall disclose in each advertisement for a charitable sales promotion the dollar amount or percent per unit of goods or services purchased or used that will benefit the charitable organization or purpose. If the actual dollar amount or percentage cannot reasonably be determined prior to the final date of the charitable sales promotion, the commercial coventurer shall disclose an estimated dollar amount or percentage. Any such estimate shall be reasonable and shall be based upon all of the relevant facts known to the commercial coventurer regarding the charitable sales promotion.

(3) A commercial entity which purchases at wholesale a product which is created, manufactured, or produced by a charitable organization for resale to the general public as part of the commercial entity's general stock of merchandise shall be exempt from the provisions of this article relating to commercial coventurers and charitable sales promotions.

Source: L. 88: Entire article added, p. 357, § 1, effective July 1.

6-16-110.5. Secretary of state - dissemination of information - cooperation with other agencies - rules. (1) The secretary of state shall take steps to:

(a) Publicize the requirements of this article and otherwise assist charitable organizations, professional fundraising consultants, and paid solicitors in complying with this article;

(b) Compile and publish, on an annual basis, the information provided by charitable organizations, professional fundraising consultants, and paid solicitors under this article to assist the public in making informed decisions about charitable solicitation and to assist charitable organizations in making informed decisions about contracting with paid solicitors;

(c) Participate in a national online charity information system as soon as a system is established, if the secretary determines that participation will further advance the purposes of this subsection (1) and subsection (2) of this section.

(2) The secretary of state may exchange with appropriate authorities of this state, any other state, and the United States information with respect to charitable organizations, professional fundraising consultants, commercial coventurers, and paid solicitors.

(3) The secretary of state may promulgate rules as needed for the effective implementation of this article 16, including:

(a) Providing for the extension of filing deadlines;

(b) Providing for the online availability of forms required to be filed pursuant to sections 6-16-104 to 6-16-104.6;

(c) Providing for the electronic filing of required forms, including the acceptance of electronic signatures;

(d) Mandating electronic filing and providing, in the secretary of state's discretion, for exceptions to mandatory electronic filing;

(e) Setting fines for noncompliance with this article or rules promulgated pursuant to this article; and

(f) Providing for the withdrawal of an active registration by a charitable organization, professional fundraising consultant, or paid solicitor.

Source: L. 2001: Entire section added, p. 1239, § 3, effective May 9, 2002. **L. 2002:** (3) amended, p. 949, § 2, effective June 1. **L. 2005:** (1)(c) added, p. 1288, § 5, effective June 3. **L. 2008:** (3) amended, p. 807, § 3, effective September 1. **L. 2014:** IP(3) and (3)(e) amended, (HB 14-1206), ch. 118, p. 421, § 5, effective August 6. **L. 2017:** IP(3) amended and (3)(f) added, (HB 17-1158), ch. 160, p. 594, § 4, effective October 1, 2018.

Editor's note: Section 8(2) of chapter 160 (HB 17-1158), Session Laws of Colorado 2017, provides that the act changing this section applies to regulation of charitable solicitations by the secretary of state on or after October 1, 2018.

6-16-111. Violations - rules. (1) A person commits charitable fraud if he or she:

(a) Knowingly solicits any contribution and in the course of such solicitation knowingly performs any act or omission in violation of any of the provisions of sections 6-16-104 to 6-16-107 and 6-16-110;

(b) Knowingly solicits any contribution and, in aid of or in the course of such solicitation, utilizes the name or symbol of another person or organization without written authorization from such person or organization for such use;

(c) Solicits any contribution and, in aid of or in the course of such solicitation, utilizes a name, symbol, or statement which is closely related or similar to that used by another person or organization with the intent to mislead the person to whom the solicitation is made that said solicitation is on the behalf of or is affiliated with such other person or organization;

(d) With the intent to defraud, knowingly solicits contributions and, in aid of such solicitation, assumes, or allows to be assumed, a false or fictitious identity or capacity, except for a trade name or trademark registered in this state by that person or his employer;

(e) Knowingly fails to create and maintain all records required by section 6-16-109 to be created and maintained or knowingly fails to make available said records for examination and photocopying at the office of the district attorney or at his own office in this state with copying facilities furnished free of charge, within five days after a written demand for the production of said records by the district attorney, or within twenty days with respect to records kept out of state;

(f) Knowingly makes a misrepresentation of a material fact in any notice, report, or record required to be filed, maintained, or created by this article;

(g) With the intent to defraud, devises or executes a scheme or artifice to defraud by means of a solicitation or obtains money, property, or services by means of a false or fraudulent pretense, representation, or promise in the course of a solicitation. A representation may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a material fact.

(h) Represents or causes another to represent that contributions are tax-deductible unless they so qualify under the federal internal revenue code;

(i) Represents or causes another to represent that a contribution to a charitable organization will be used for a purpose other than the purpose for which the charitable organization actually intends to use such contribution;

(j) Represents or causes another to represent that a greater portion of the contribution will go to a charitable organization than the actual portion that will go to such organization;

(k) Represents or causes another to represent that the solicitor is located in a geographic area that is different from the geographic area in which the solicitor is actually located;

(l) Represents or causes another to represent that the solicitor has a sponsorship, approval, status, affiliation, or connection with an organization or purpose that the solicitor does not actually have;

(m) Represents or causes another to represent that the person to whom a solicitation is made is under an obligation to make a contribution;

(n) Represents or causes another to represent that failure to make a contribution will adversely affect the person's credit rating;

(o) Represents or causes another to represent that the person has previously approved or agreed to make a contribution when in fact the person has not given such approval or agreement; or

(p) Represents or causes another to represent that the person has previously contributed to the same organization or for the same purpose when in fact the person has not so contributed.

(1.5) A person commits charitable fraud if he or she, in the course of or in furtherance of a solicitation, misrepresents to, misleads, makes false statements to, or uses a name other than the solicitor's legal name in communicating with a person being solicited in any manner that would lead a reasonable person to believe that:

(a) If the person being solicited makes a contribution, he or she will receive special benefits or favorable treatment from a police, sheriff, patrol, firefighting, or other law enforcement agency or department of government;

(b) If the person being solicited fails to make a contribution, he or she will receive unfavorable treatment from a police, sheriff, patrol, firefighting, or other law enforcement agency or department of government; or

(c) The membership organization for which the person is soliciting has a significant membership of a certain type, including active police, sheriff, patrol, firefighters, first responders, or veterans when the organization does not have a significant membership of that type. For purposes of this paragraph (c), "significant membership" means ten percent of the membership of the organization or one hundred members, whichever is less. For purposes of this paragraph (c), "membership organization" means an organization that is a tax-exempt nonprofit organization under 26 U.S.C. sec. 501 (c) of the federal "Internal Revenue Code of 1986", as amended, and has members who pay regular membership dues.

(2) Any person who commits charitable fraud in violation of paragraph (b), (c), (d), (f), or (g) of subsection (1) of this section is guilty of a class 5 felony, and upon conviction thereof, shall be punished in accordance with section 18-1.3-401, C.R.S.

(3) Any person who commits charitable fraud in violation of paragraph (a), (e), or (h) to (p) of subsection (1) of this section, or of subsection (1.5) of this section, is guilty of a class 2 misdemeanor and, upon conviction thereof, shall be punished in accordance with section 18-1.3-501, C.R.S.; except that a person who commits a violation of any one or more of said paragraphs with respect to solicitations involving three separate contributors in any one solicitation campaign is guilty of a class 5 felony, and upon conviction thereof, shall be punished in accordance with section 18-1.3-401, C.R.S.

(4) Charitable fraud which is a felony shall be deemed a class 1 public nuisance and subject to the provisions of part 3 of article 13 of title 16, C.R.S.

(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.

(6) (a) In addition to any other applicable penalty, the secretary of state may deny, suspend, or revoke the registration of any charitable organization, professional fund-raising consultant, or paid solicitor that makes a false statement or omits material information in any registration statement, annual report, or other information required to be filed by this article or that acts or fails to act in such a manner as otherwise to violate any provision of this article. The secretary of state may also deny, suspend, or revoke the registration of any person who does not meet the requirements for registration set forth in this article.

(b) Upon notice from the secretary of state that a registration has been denied or is subject to suspension or revocation, the aggrieved party may request a hearing. The request for hearing must be made within thirty days after the date of the notice. Proceedings for any such denial, suspension, or revocation hearing are governed by the "State Administrative Procedure Act", article 4 of title 24; except that the secretary of state shall promulgate rules to provide for expedited deadlines to govern such proceedings and shall bear the burden of proof. The status quo concerning the ability of the aggrieved party to solicit funds is maintained during the pendency of the proceedings. Judicial review is available pursuant to section 24-4-106.

(c) In addition to other remedies authorized by law, the secretary of state may bring a civil action in the district court of any judicial district in which venue is proper for the purpose of obtaining injunctive relief against any person who violates, or threatens to violate, the provisions of this article.

(d) The rights and remedies available to the secretary of state pursuant to this subsection (6) shall not affect the rights and remedies available to any other person seeking relief for violations of this article or any other applicable law.

(7) If a paid solicitor commits charitable fraud in the course of making a solicitation for a charitable organization, the charitable organization shall also be liable for any applicable remedies and penalties if the charitable organization knew or should have known that the paid solicitor was engaged in charitable fraud. This subsection (7) does not extend personal liability to board members of a charitable organization beyond the personal liability allowed by section 13-21-116 (2)(b)(I), C.R.S., or as otherwise allowed by law prior to August 10, 2016.

Source: L. 88: Entire article added, p. 357, § 1, effective July 1. **L. 89:** (1)(a) and (1)(e) amended, p. 367, § 7, effective July 1. **L. 93:** (5) added, p. 1575, § 8, effective July 1. **L. 2001:** IP(1) and (3) amended and (1)(h), (1)(i), (1)(j), (1)(k), (1)(l), (1)(m), (1)(n), (1)(o), (1)(p), (1.5), and (6) added, pp. 1247, 1248, §§ 7, 8, effective May 9, 2002. **L. 2004:** (2) and (3) amended, p. 1188, § 9, effective August 4. **L. 2016:** (1.5) amended and (7) added, (HB 16-1129), ch. 262, p. 1077, § 4, effective August 10. **L. 2017:** (6)(b) amended, (HB 17-1158), ch. 160, p. 595, § 5, effective October 1, 2018.

Editor's note: (1) Prior to its repeal in 1988, provisions concerning charitable fraud were found in § 18-5-115.

(2) Section 8(2) of chapter 160 (HB 17-1158), Session Laws of Colorado 2017, provides that the act changing this section applies to regulation of charitable solicitations by the secretary of state on or after October 1, 2018.

6-16-111.5. Investigations.</CATCH_LIN E> Whenever the secretary of state or the secretary of state's designee believes that a violation of this article has occurred, the secretary of state or the secretary of state's designee may investigate any such violation. Upon demand, records shall be made available and produced to the secretary of state for inspection. Such records shall not be subject to disclosure pursuant to part 2 of article 72 of title 24, C.R.S.; except that public records about persons subject to this article prepared by the secretary of state or the secretary of state's designee are subject to disclosure pursuant to part 2 of article 72 of title 24, C.R.S.

Source: L. 2008: Entire section added, p. 807, § 4, effective September 1.

6-16-112. Address of record - service of process. (1) Any person required under this article 16 to register with the secretary of state shall, in his or her initial registration or application and in every renewal, provide an address of record. Unless the registrant designates an alternative address, the address of record is the registrant's principal place of business.

(2) Any notice, order, or document issued by the secretary of state in accordance with this article 16 is properly served if mailed to the registrant's or applicant's address of record.

(3) Any foreign corporation performing an act prohibited under this article 16 through a salesperson or agent is subject to service of process either upon the registered agent specified by the corporation or upon the corporation itself if the corporation fails to maintain a registered agent as required by part 7 of article 90 of title 7. Service of process upon any individual outside this state based upon any action arising out of matters prohibited by this article 16 must be effected pursuant to section 13-1-125.

Source: L. 88: Entire article added, p. 358, § 1, effective July 1. **L. 93:** Entire section amended, p. 853, § 2, effective July 1, 1994. **L. 2003:** Entire section amended, p. 2356, § 345, effective July 1, 2004. **L. 2014:** Entire section amended, (HB 14-1206), ch. 118, p. 422, § 6, effective August 6. **L. 2017:** Entire section amended, (HB 17-1158), ch. 160, p. 595, § 6, effective October 1, 2018.

Editor's note: Section 8(2) of chapter 160 (HB 17-1158), Session Laws of Colorado 2017, provides that the act changing this section applies to regulation of charitable solicitations by the secretary of state on or after October 1, 2018.

6-16-113. Severability. If any provision of this article is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of this article shall be valid, unless it appears to the court that the valid provisions of this article are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed that the general assembly would have enacted the valid provisions without the void provision or unless the court determines that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Source: L. 88: Entire article added, p. 358, § 1, effective July 1.

6-16-114. Fines - required notification - rules. (1) (a) Any charitable organization, professional fundraising consultant, or paid solicitor who, after sufficient notification by the secretary of state, fails to properly register, renew a registration, file a financial report required by section 6-16-104 (2)(f), (4)(b), or (5), or file a financial report of a solicitation campaign under this article 16 by the end of the seventh day following the issuance of the final notice, is liable for a fine in an amount to be established by rule promulgated by the secretary of state.

(b) The secretary of state provides sufficient notification under this section if the secretary:

(I) Mails at least two notices by first-class mail to the address of record for the charitable organization, professional fundraising consultant, or paid solicitor; and

(II) If the charitable organization, professional fundraising consultant, or paid solicitor has provided the secretary with an e-mail address, sends at least two notices to that e-mail address.

(c) The fine for filing a registration renewal, financial report required by section 6-16-104 (2)(f), (4)(b), or (5), or solicitation campaign financial report late must not exceed one hundred dollars per year for charities or two hundred dollars per year for paid solicitors; except that a charitable organization that fails to timely renew its registration and fails to file the financial report required by section 6-16-104 (5) is only subject to a single fine for the failure to renew its registration.

(d) The fine for soliciting before registering must not exceed three hundred dollars per year for a charitable organization or one thousand dollars per year for paid solicitors.

(2) If a paid solicitor fails to file a solicitation notice at least fifteen days before commencing a solicitation campaign, the secretary of state shall assess against the paid solicitor, at the time the paid solicitor files the solicitation notice, a fine in an amount established in rules promulgated by the secretary of state.

(3) A fine imposed under this section is in addition to any other filing fee provided by this article.

Source: L. 2008: Entire section added, p. 807, § 4, effective September 1. **L. 2010:** Entire section amended, (HB 10-1403), ch. 404, p. 1993, § 1, effective August 11. **L. 2014:** Entire section amended, (HB 14-1206), ch. 118, p. 422, § 7, effective August 6. **L. 2017:** (1)(a), (1)(b), and (1)(c) amended, (HB 17-1158), ch. 160, p. 596, § 7, effective October 1, 2018.

Editor's note: Section 8(2) of chapter 160 (HB 17-1158), Session Laws of Colorado 2017, provides that the act changing this section applies to regulation of charitable solicitations by the secretary of state on or after October 1, 2018.

RECORDS RETENTION

ARTICLE 17

Uniform Records Retention Act

6-17-101. Short title. This article shall be known and may be cited as the "Uniform Records Retention Act".

Source: L. 90: Entire article added, p. 384, § 1, effective July 1.

6-17-102. Legislative declaration. The general assembly hereby finds that there is a need to minimize the paperwork burden associated with the retention of business records for individuals, small businesses, state and local agencies, corporations, and other persons, and there is a need to minimize the costs of collecting, maintaining, using, storing, and disseminating information and business records. The general assembly therefore finds that the provisions of this article are necessary to promote efficiency and economy.

Source: L. 90: Entire article added, p. 384, § 1, effective July 1.

6-17-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Business record" means books of account; vouchers; documents; cancelled checks; payrolls; correspondence; records of sales, personnel, equipment, and production; reports relating to any or all of such records; and other business papers.

(2) "Record" means any letter, word, sound, number, or its equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical, or electronic recording of other forms of data compilation. Unless otherwise specified, reproductions are records for purposes of this article.

(3) "Reproduction" means any counterpart produced by the same impression as the original or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic rerecording or by chemical reproduction or by any equivalent technique which accurately reproduces the original.

Source: L. 90: Entire article added, p. 384, § 1, effective July 1.

6-17-104. Records retention period. Any record required to be created or kept by any state or local law or regulation may be destroyed after three years from the date of creation, unless such law or regulation establishes a specified records retention period or a specific procedure to be followed prior to destruction.

Source: L. 90: Entire article added, p. 385, § 1, effective July 1.

6-17-105. Form of record. Retention of reproductions produced pursuant to this article shall constitute compliance with any state or local law requiring that any record be created or kept.

Source: L. 90: Entire article added, p. 385, § 1, effective July 1.

6-17-106. Scope of article. This article shall apply to all records prepared by private individuals, partnerships, corporations, or any other association, whether carried on for profit or

not, and to any government entity operating under the laws of this state and shall apply to all records created before and after July 1, 1990.

Source: L. 90: Entire article added, p. 385, § 1, effective July 1.

HEALTH CARE COVERAGE COOPERATIVES

ARTICLE 18

Health Care Coverage Cooperatives -
Provider Networks

Editor's note: Parts 1, 2, and 4 of this article were relocated to part 10 of article 16 of title 10 in 2004.

Cross references: For general provisions relating to health care insurance, see article 16 of title 10.

Law reviews: For article, "H.B. 94-1193: Health Care Purchasing Reform", see 23 Colo. Law. 2763 (1994).

PART 1

GENERAL PROVISIONS

6-18-101 to 6-18-103. (Repealed)

Source: L. 2004: Entire part repealed, p. 1011, § 23, effective August 4.

Editor's note: This article was added in 1994, and this part 1 was subsequently repealed in 2004. For amendments to this part 1 prior to its repeal in 2004, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

PART 2

HEALTH CARE COVERAGE COOPERATIVES

6-18-201 to 6-18-208. (Repealed)

Source: L. 2004: Entire part repealed, p. 1011, § 23, effective August 4.

Editor's note: (1) This article was added in 1994, and this part 2 was subsequently repealed in 2004. For amendments to this part 2 prior to its repeal in 2004, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and

supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 6-18-206 (1)(e) and (2)(c) were amended in Senate Bill 04-239. Those amendments were superseded by the repeal of this part 2 in Senate Bill 04-105.

PART 3

PROVIDER NETWORKS

6-18-301. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that the rapidly changing health care market provides unique opportunities for health care providers to organize themselves into new forms of collaborative systems to deliver high quality health care at competitive market prices to cooperatives and other purchasers. This part 3 is enacted to encourage such collaborative arrangements and to further market-based competition among health care providers.

(2) The general assembly further recognizes that in order to achieve the most effective use of resources and medical technology to respond to changing market conditions, providers who would otherwise be competitors with each other will need to horizontally integrate in order to develop collaborative arrangements to guarantee an adequate number of providers to service the market and to vertically integrate in order to guarantee that those who receive services will have a continuum of care as appropriate to their care needs.

(3) The general assembly also recognizes that to effect such new forms of collaborative systems and integration of providers to service the market will require an analysis of existing methods of providing services, contracting, collaborating, and networking among providers and the extent and type of regulatory oversight of licensed provider networks or licensed individual providers which is appropriate to protect the public.

Source: L. 94: Entire article added, p. 1937, § 1, effective July 1.

6-18-301.5. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Licensed provider network" or "licensed individual provider" means a provider network or individual provider that is authorized to transact insurance business pursuant to title 10, C.R.S.

(2) "Provider" means a state-licensed, state-certified, or state-authorized facility or a practitioner delivering health care services to individuals.

(3) "Provider network" means a group of health care providers formed to provide health care services to individuals.

Source: L. 2004: Entire section added, p. 1009, § 17, effective August 4.

6-18-302. Creation of provider networks - requirements. (1) (a) Providers are hereby authorized to conduct business collaboratively as provider networks. Such networks are entities existing on or before July 1, 1994, that meet the definition of a provider network or may be created as any lawful entity under title 7, C.R.S., or as otherwise allowed by law. Provider networks existing on or before July 1, 1994, and provider networks created on and after July 1,

1994, conducting business pursuant to this part 3, in addition to the matters otherwise required, shall be subject to this article.

(b) (I) Except as provided in subparagraph (II) of this paragraph (b), if a provider network or individual provider organized on or after July 1, 1994, or organized prior to said date, proposes or is engaged in the transaction of insurance business, as defined in section 10-3-903, C.R.S., or the activities of a health maintenance organization as defined in section 10-16-102 (35), C.R.S., such provider network or individual provider must hold a certificate of authority from the commissioner of insurance to do business as an insurance company under title 10, C.R.S., or to establish a health maintenance organization under section 10-16-402, C.R.S.

(II) The fact that a provider network or individual provider has a capitated contract or other agreement with a carrier, pursuant to which the provider network or individual provider shares some of the risk of providing services to groups or individuals covered under a health care coverage plan issued by a carrier, shall not, in and of itself, be grounds for a determination by the commissioner of insurance that the provider network or individual provider is engaged in the transaction of insurance business.

(III) The commissioner of insurance, in consultation with providers and other appropriate persons, shall evaluate the need for specific legislation or rules for the licensure of provider networks and individual providers and, if determined appropriate, shall make recommendations thereon to the general assembly and governor and shall adopt such rules that are specific to licensed provider networks and licensed individual providers as provided in section 10-1-108 (13), C.R.S. A licensed provider network or licensed individual provider shall be subject to applicable provisions of title 10, C.R.S., except as otherwise provided in statute or rule adopted pursuant to section 10-1-108 (13), C.R.S.

(IV) Every licensed provider network that conducts insurance business in the state of Colorado shall:

(A) Obtain from the commissioner of insurance, before the start of business, a certificate of authority authorizing the provider network to conduct business in the state of Colorado;

(B) Maintain its principal and home office in the state of Colorado, maintain such books and records in this state, and maintain principal banking relationships with a bank chartered by the state of Colorado or a member bank of the federal reserve system;

(C) Hold at least one board of directors' meeting each year in the state of Colorado;

(D) Include in the provider network's management and administrative agreements, for essential insurance services, a provision that allows the commissioner reasonable access to examine such books and records; and

(E) For purposes of this paragraph (b), substantially perform in the state of Colorado the essential functions of the licensed provider network's principal and home office, including, but not limited to, the provision and administration of health care services, the issuance of health care plans, the maintenance of health care provider relations, and the provision of consumer information and services.

(2) If applicable, a network organized on and after July 1, 1994, is organized when the articles of organization are filed by the secretary of state or, if a delayed effective date is specified in the articles as filed with the secretary of state and a certificate of withdrawal is not filed, on such delayed effective date. The existence of the network begins upon organization.

(3) If applicable, each provider network shall file a report pursuant to section 7-136-107, C.R.S., and pay a fee to the secretary of state which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., in lieu of all franchise or corporation license taxes.

(4) A provider network or individual provider may request that specified information submitted to the division of insurance be kept confidential because it is a trade secret as defined in section 7-74-102 (4), C.R.S. The division shall honor such request unless the commissioner determines that the information is already public knowledge or that its confidentiality would be contrary to the public interest or the provider subsequently authorized the commissioner to release such information.

Source: L. 94: Entire article added, p. 1937, § 1, effective July 1. **L. 97:** (3) amended, p. 756, § 6, effective July 1, 1998. **L. 2001:** (1)(b)(IV) added, p. 13, § 1, effective March 1. **L. 2003:** (1)(b)(III) amended, p. 614, § 3, effective July 1. **L. 2004:** (1)(b)(II) amended, p. 979, § 1, effective August 4. **L. 2013:** (1)(b)(I) amended, (HB 13-1266), ch. 217, p. 985, § 39, effective May 13.

6-18-303. Effect on scope of practice - limited exception to prohibitions on corporate practice of licensed health care providers. (1) Except as provided in subsection (2) of this section, the fact that an entity or provider is a member of a provider network shall not exempt such entity or provider from any licensure or regulatory statute, nor shall any scope of practice of any provider be expanded, reduced, or otherwise modified by virtue of membership in or affiliation with any provider network.

(2) Any provision of article 29.5, 32, or 33 of title 12, C.R.S., or any of the provisions of articles 35, 36, and 38 to 43 of title 12, C.R.S., prohibiting the practice of any licensed or certificated health care profession as the partner, agent, or employee of or in joint venture with a person who does not hold a license or certificate to practice such profession within this state shall not apply to professional practice if a professional is participating in a provider network organized pursuant to this part 3 and:

(a) The partnership, agency, employment, or joint venture is evidenced by a written agreement containing language to the effect that the relationship created by the agreement may not affect the exercise of the licensed or certified professional's independent judgment in the practice of the profession;

(b) The licensed or certificated professional's independent judgment in the practice of such profession is in fact unaffected by the relationship; and

(c) The licensed professional is not required to exclusively refer any patient to a particular provider or supplier or take any other action the licensed professional determines not to be in the patient's best interest.

Source: L. 94: Entire article added, p. 1938, § 1, effective July 1.

6-18-304. Competitive behavior - restraints of trade prohibited. Organization or operation as a provider network is authorized under this article for the purpose of more cost-effective delivery of health care services, and shall not be construed as permitting any such collaborative system or any member of such provider network to act in a concerted way to

restrain trade or otherwise engage in practices which are otherwise prohibited by federal or state antitrust law.

Source: L. 94: Entire article added, p. 1939, § 1, effective July 1.

PART 4

TECHNICAL ASSISTANCE TO AUTHORIZED
COOPERATIVES FROM DEPARTMENT OF
HEALTH CARE POLICY AND FINANCING

6-18-401. (Repealed)

Source: L. 2004: Entire part repealed, p. 1011, § 23, effective August 4.

Editor's note: This article was added in 1994, and this part 4 was not amended prior to its repeal in 2004. For the text of this part 4 prior to 2004, consult the 2003 Colorado Revised Statutes.

TRANSACTIONS INVOLVING LICENSED HOSPITALS

ARTICLE 19

Transactions Involving Licensed Hospitals

Law reviews: For article, "Attorney General Review of Asset Transfers by Nonprofit Hospitals", see 28 Colo. Law. 37 (Feb. 1999).

PART 1

GENERAL PROVISIONS

6-19-101. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that all licensed and certified hospitals provide a service to the public by making health care services available to the communities they serve.

(2) Furthermore, for purposes of the attorney general's authority over the transfer of nonprofit hospital assets, all nonprofit hospitals shall be deemed to hold all of their assets in trust, and those assets shall be deemed to be dedicated to the specific charitable purposes set forth in the articles of incorporation or other organic documents of the nonprofit entities that hold them in trust. The public is the beneficiary of this trust. Nonprofit hospitals have a substantial and beneficial effect on the provision of health care to the people of Colorado, providing as part of their charitable purposes uncompensated care to the uninsured or underinsured and including, but not limited to, providing moneys and support for health-related research and education or other community benefits. The general assembly also finds that transfers of the assets of nonprofit hospitals to the for-profit sector may directly affect the

character and extent of the charitable use of those assets or the proceeds from the assets. The public also has an interest in knowing that the transfer of the assets of a nonprofit hospital, or the proceeds from the assets, preserves, to the extent practicable, their charitable purpose. The general assembly believes it is in the best interest of the public to ensure that the public interest is fully protected whenever the assets of a hospital are transferred to a for-profit entity except in the ordinary course of business.

(3) The general assembly further finds and declares that all transfers of hospital assets or control have the potential to impact the communities they serve. This article is intended to protect the public interest, to assure that nonprofit assets of hospitals are preserved to serve the charitable purposes to which they were dedicated, and to provide the public notice of all transfers of assets of hospitals that constitute covered transitions as defined in this article and shall be construed with these purposes in mind.

(4) The general assembly further finds and declares that the addition of the factors to be considered in relation to the term "material change" in section 6-19-203 (1) is intended to clarify the provisions of this article.

Source: L. 98: Entire article added, p. 520, § 1, effective April 30. **L. 2008:** (4) added, p. 1342, § 1, effective August 5.

6-19-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Covered transaction" means any transaction that would result in the sale, transfer, lease, exchange, or other disposition of fifty percent or more of the assets of a hospital. A series of transactions taking place in any five-year period, which would result in the aggregate of the transfer of fifty percent or more of a hospital's assets, shall in all circumstances be deemed to be a covered transaction. "Covered transaction" shall also include the sale, transfer, or other disposition of the control of a parent company, holding company, or other entity controlling a hospital. For the purposes of this subsection (1), "fifty percent or more of the assets" shall be based on the fair market value of all of the assets of the hospital.

(2) "For-profit entity" means a business corporation, general partnership, limited partnership, limited liability limited partnership, limited liability partnership, limited liability company, limited partnership association, and cooperative.

(3) "Hospital" means a licensed or certified hospital as described in section 25-1.5-103 (1)(a)(I) and (1)(a)(II), C.R.S.

Source: L. 98: Entire article added, p. 521, § 1, effective April 30. **L. 2003:** (3) amended, p. 700, § 4, effective July 1.

6-19-103. Procedures for covered transactions - notice - attorney general powers. (1) The parties to a covered transaction shall provide notice of such transaction to the attorney general no later than sixty days prior to the transaction closing or effective date of the transaction. The notice to the attorney general shall be in writing, shall include the information required in section 6-19-202, 6-19-302, or 6-19-402, as applicable, and shall contain a certification that public notice of the transaction will be given within seven days after the notification to the attorney general.

(2) Whenever the attorney general has reason to believe that a person has engaged in or is engaging in a covered transaction without complying with the provisions of this article, the attorney general may apply for and obtain, in an action in the appropriate district court of this state, a temporary restraining order or injunction, or both, pursuant to the Colorado rules of civil procedure prohibiting such person from continuing such noncompliance or engaging therein or doing any act in furtherance thereof. The court may make such further orders or judgments, at law or in equity, as may be necessary to remedy such noncompliance.

Source: L. 98: Entire article added, p. 521, § 1, effective April 30.

6-19-104. Attorney general - effect on powers. (1) Nothing in this article shall be construed as limiting the attorney general's common law powers.

(2) Nothing in this article shall affect the regulatory authority of any government agency other than the department of law.

Source: L. 98: Entire article added, p. 522, § 1, effective April 30.

PART 2

NONPROFIT TO NONPROFIT TRANSACTIONS

6-19-201. Scope of part 2. This part 2 applies to covered transactions involving a nonprofit hospital and another nonprofit entity.

Source: L. 98: Entire article added, p. 522, § 1, effective April 30.

6-19-202. Notice. Notice shall be provided by the parties to a covered transaction according to section 6-19-103 and shall include a statement on the charitable purposes of each nonprofit entity entering into the covered transaction as well as a statement concerning the relationship of these purposes to the hospital involved in the transaction. The statement may include a certification by the chief executive officer as approved by the board of directors or board of trustees of the nonprofit entity transferring its assets that there will be no material change in the charitable purposes to which the transferred assets are dedicated as a result of the transaction.

Source: L. 98: Entire article added, p. 522, § 1, effective April 30.

6-19-203. Attorney general review and assessment. (1) A covered transaction under this part 2 that will not result in a material change in the charitable purposes to which the assets of the hospital have been dedicated, and will not result in a termination of the attorney general's jurisdiction over those assets caused by a transfer of a material amount of those assets outside of the state of Colorado, shall proceed without further review. In considering whether a material change results from the transaction, the attorney general shall consider, among other factors, reductions in the availability and accessibility of health care services in the communities served by the hospital.

(2) When a transaction covered by this part 2 will result in a material change in the charitable purposes to which the assets of the hospital have been dedicated, or a termination of the attorney general's jurisdiction over the hospital assets caused by a transfer of a material amount of those assets outside the state of Colorado, the attorney general may exercise his or her common law authority to assess and review or challenge the transaction as deemed appropriate by the attorney general. If the attorney general decides to conduct an assessment or review the following provisions shall apply to such actions of the attorney general:

(a) The attorney general shall perform a review and assessment to the extent practicable and with due consideration to the financial circumstances of the parties to the transaction. The attorney general is further authorized to:

(I) Hire experts, at the expense of the parties to the transaction, as similarly provided for in section 6-19-406 (1)(b) and to accept and expend grants or donations, or both, as similarly provided for in section 6-19-406 (1)(e);

(II) Contract and consult with other state agencies as similarly provided for in section 6-19-406 (1)(a);

(III) Require production of material documentation, such as the proposed agreements relating to the proposed transaction, agreements regarding collateral transactions relating to the proposed transaction, and any reports of financial and economic analysis that the nonprofit entity reviewed or relied on in negotiating the proposed transaction. These documents shall be treated in the same manner as set forth in section 6-19-404 (4).

(IV) Hold a public hearing as similarly provided for in section 6-19-404 (1). The attorney general shall provide a written determination within the time frames or extended time frames as similarly provided for in section 6-19-402 (2).

(b) The attorney general shall have the authority to allow a transaction that satisfies the following criteria:

(I) The assets continue to be dedicated to charitable purposes;

(II) The directors or trustees of the parties to the transaction have not acted unreasonably in light of the financial circumstances of the parties;

(III) The directors or trustees of the parties to the transaction have not acted unreasonably in accommodating the affected community or communities; and

(IV) The directors or trustees of the parties to the transaction have not breached their fiduciary duties or otherwise engaged in misconduct in such transaction.

(c) The attorney general shall liberally construe the criteria set forth in paragraph (b) of this subsection (2) in favor of allowing a transaction to proceed.

Source: L. 98: Entire article added, p. 522, § 1, effective April 30. **L. 2008:** (1) amended, p. 1342, § 2, effective August 5.

PART 3

FOR-PROFIT TO FOR-PROFIT TRANSACTIONS

6-19-301. Scope of part 3. This part 3 applies to covered transactions where the parties involved in the transaction are all for-profit entities.

Source: L. 98: Entire article added, p. 524, § 1, effective April 30.

6-19-302. Notice. The parties to a covered transaction governed by this part 3 shall provide the notice required by section 6-19-103.

Source: L. 98: Entire article added, p. 524, § 1, effective April 30.

PART 4

NONPROFIT TO FOR-PROFIT TRANSACTIONS

6-19-401. Scope of part 4. This part 4 applies to covered transactions involving a nonprofit hospital and a for-profit entity.

Source: L. 98: Entire article added, p. 524, § 1, effective April 30.

6-19-402. Notice and filing. (1) The notice and filing provided to the attorney general pursuant to section 6-19-103 shall include all proposed agreements relating to the proposed transaction, all agreements regarding collateral transactions that relate to the principal transaction, any reports of financial and economic analysis that the nonprofit entity reviewed or relied on in negotiating the proposed transaction, and an explanation of how the completed transaction will comply with the requirements of section 6-19-403. The attorney general shall notify the parties to the transaction if the filing is complete or incomplete within thirty days after the initial filing and shall specify the omitted documentation if incomplete. An initial filing that includes a schedule for the submission of subsequently produced or acquired documents may be deemed complete by the attorney general.

(2) Within sixty days after the complete filing required by this section, the attorney general shall notify in writing the parties to the transaction of the results and conclusions of the review and assessment. The attorney general may extend this period for an additional period of up to ninety days if the attorney general determines, for good cause, that additional time is warranted and so advises the parties in writing. The attorney general shall notify the parties of any extension as soon as possible.

Source: L. 98: Entire article added, p. 524, § 1, effective April 30.

6-19-403. Certification and criteria. (1) The proposed transaction shall comply with the provisions of this section, and the parties to the transaction shall include in the filing required by section 6-19-402 documentation and certification from the parties, either joint or several as appropriate, that the covered transaction will comply with the following:

(a) The transaction shall be in the public interest. A transaction is not in the public interest unless appropriate steps have been taken to safeguard the value of nonprofit hospital assets being transferred and to ensure that any proceeds of the transaction are dedicated to the charitable purposes.

(b) The transaction results in continuing access to health care services for the affected community.

(c) No director, officer of the board, chief executive officer, chief operating officer, or chief financial officer of the nonprofit entity submitting the filing or a nonprofit charitable organization receiving the proceeds of the covered transaction shall benefit directly or indirectly from the transaction.

(d) The nonprofit entity proposing the transaction shall use due diligence in selecting the for-profit entity that is a party to the transaction and in negotiating the price and other terms and conditions of the transaction.

(e) Proceeds of the covered transaction shall be set aside in an amount equal to the fair market value of the hospital assets being transferred. Fair market value shall be determined at the time of the transaction and include consideration of market value, going concern value, net asset value, and any other significant relevant factors.

(f) The distribution of the proceeds of the covered transaction shall be made only to one or more existing or new charitable organizations operating pursuant to 26 U.S.C. sec. 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended.

(g) Each nonprofit charitable organization receiving the proceeds of the covered transaction, its directors, officers, and staff shall be and remain independent of the parties to the transaction and their affiliates. Except as provided in this paragraph (g), no person who is a director, officer of the board, chief executive officer, chief operating officer, or chief financial officer of any party to the transaction submitting the notice and filing, at the time the notice is submitted or at the time of the transaction, shall be qualified to be an officer of the board, chief executive officer, chief operating officer, or chief financial officer of the nonprofit charitable organization receiving the proceeds of the covered transaction. The nonprofit entity that is a party to the proposed transaction shall include in its notice and filing the proposed membership of the initial board of directors of the nonprofit charitable organization that is to receive the proceeds of the covered transaction that shall represent the diverse interests of the affected communities and include persons from the area affected by the transaction. Notwithstanding the requirements of this paragraph (g), each nonprofit charitable organization receiving the proceeds of the covered transaction may have persons affiliated with parties to the transaction or their affiliates serve on its board of directors provided that such persons do not constitute more than one-third of the members of the board.

(h) A nonprofit charitable organization receiving the proceeds of the covered transaction shall put mechanisms in place to avoid conflicts of interest and to prohibit grants or other actions benefiting its board of directors or management beyond the reasonable value of their services or substantially benefiting the for-profit entity.

(i) The charitable mission and functions of the nonprofit charitable organization receiving the proceeds of the covered transaction shall reflect the historical charitable purposes of the nonprofit entity proposing the transaction.

Source: L. 98: Entire article added, p. 524, § 1, effective April 30.

6-19-404. Attorney general review. (1) No later than thirty days after the attorney general has received the completed notice and filing pursuant to section 6-19-402, the attorney general shall hold at least one public hearing in the service area of the hospital involved in the transaction, at which the attorney general shall allow any person to either file written comments and exhibits or appear and make a statement about any aspect of the transaction, including, but

not limited to, whether the proposed transaction complies with the requirements of section 6-19-403. At least seven days prior to each public hearing, the attorney general shall submit a press release providing pertinent information about the hearing, including the time and place of the hearing, to one or more newspapers of general circulation in the affected communities and notify the mayor of the city or city and county and the board of county commissioners of the county in which the hospital is located. The public hearing shall be a legislative rather than an adjudicative hearing.

(2) The attorney general shall have the power to subpoena documents or witnesses, require and administer oaths, and require statements at any time that are reasonably necessary to assess an application or monitor compliance with this section.

(3) If any person fails to cooperate with any investigation pursuant to this section or fails to obey any subpoena issued pursuant to this section, the attorney general may apply to the appropriate district court for an appropriate order to effect the purposes of this section. The application shall state that there are reasonable grounds to believe that the order applied for is necessary to carry out the attorney general's duties under this section. If the court is satisfied that reasonable grounds exist, the court, in its order, may:

(a) Require the attendance of or the production of documents by such person, or both;

(b) Grant such other or further relief as may be necessary to obtain compliance by such person.

(4) Except for documents the attorney general determines to be confidential as a matter of law, the documents filed pursuant to section 6-19-402 shall be available to the public for review and copying during normal business hours at both the attorney general's office and the offices of the parties to the transaction. Reasonable costs of copying shall be borne by the parties if copies are requested at their offices.

Source: L. 98: Entire article added, p. 526, § 1, effective April 30.

6-19-405. Post-transaction requirements. For a period of not less than five years, the nonprofit charitable organization receiving the proceeds of the covered transaction shall provide the attorney general with an annual report of its grant-making and other charitable activities related to its use of the proceeds of the covered transaction received. For a period of not less than five years, the for-profit entity shall provide the attorney general with an annual report detailing its activities to satisfy the requirements of section 6-19-403 at the time of the review and assessment. These annual reports shall be made available to the public at the attorney general's office, the office of the nonprofit charitable organization, and the offices of the parties to the covered transaction. The annual report shall be filed no later than ninety days after the year that the report addresses.

Source: L. 98: Entire article added, p. 527, § 1, effective April 30.

6-19-406. Attorney general powers. (1) The attorney general has the following powers:

(a) To contract with, consult with, and receive advice from any state agency on those terms and conditions that the attorney general and the executive director deem appropriate;

(b) To contract with persons including, but not limited to, attorneys, accountants, actuaries, financial analysts, and health care analysts as is reasonable and necessary to assist in reviewing a proposed transaction. Contract costs shall be borne by the parties to the transaction and shall not exceed an amount that is reasonably necessary to conduct the review and assessment.

(c) To adopt regulations or guidelines as necessary in order to carry out the requirements of this section;

(d) The discretion to determine, consistent with the requirements of section 6-19-404, the degree of administrative review of the transaction that is necessary to determine whether the transaction conforms with the requirements of section 6-19-403. This determination shall be made by taking into consideration, among other things, the size of the transaction, the size of all communities affected by the transaction, the impact on the communities, and the past performance of the for-profit entity.

(e) To accept and expend grants or donations, or both, not to exceed fifty thousand dollars for the purpose of the implementation of this article. Any such grants or donations shall be deposited into and expended from the nonprofit health care entity review cash fund created in paragraph (f) of this subsection (1).

(f) To request and receive from the for-profit entity such sums as may be prescribed by the attorney general to cover the necessary and actual costs for monitoring for the ensuing five-year period to ensure that the transaction remains in compliance with the requirements of section 6-19-403. Any moneys collected pursuant to this paragraph (f) shall be transmitted to the state treasurer, who shall credit the same to the nonprofit health care entity review cash fund, which fund is hereby created in the state treasury. The moneys in such fund shall be continuously appropriated for the direct and indirect costs of such monitoring. In accordance with section 24-36-114, C.R.S., all interest derived from the deposit and investment of this fund shall be credited to the general fund.

(g) To hold a hearing after twenty days' notice to the affected parties if the attorney general receives information that the attorney general deems sufficient to indicate that the nonprofit charitable organization or for-profit entity may not be fulfilling its obligations pursuant to section 6-19-403. If, after such hearing, the attorney general determines that proof of the noncompliance is probable, he or she shall institute proceedings in district court to require corrective action. The attorney general shall retain oversight of the corrective action for as long as necessary to ensure compliance. Nothing in this section shall be construed to limit the attorney general's power to enforce compliance with this section after the expiration of the five-year period contemplated by paragraph (f) of this subsection (1).

Source: L. 98: Entire article added, p. 527, § 1, effective April 30.

6-19-407. Attorney general review and assessment. (1) The attorney general may review any notice and filing made under this part 4 and assess whether the proposed transaction complies with the requirements of section 6-19-403.

(2) If, after review and assessment, the attorney general concludes that all of the requirements of section 6-19-403 have been met, the attorney general shall issue a written assessment and conclusion to such effect on the proposed transaction. If the attorney general concludes, after discussions with the parties to the transaction, that all of the requirements of

section 6-19-403 have not been met, or if the attorney general is unable to conclude whether or not all of the requirements of section 6-19-403 have been met, the attorney general shall issue a written assessment and conclusion to such effect on the proposed transaction. Such nonconclusive or noncomplying assessment and conclusion shall include specific findings on each of the requirements of section 6-19-403. The attorney general may also issue a written statement that a formal assessment and review has not been determined necessary for the covered transaction or that the transaction does not constitute a covered transaction.

(3) The attorney general may challenge any proposed transaction at any time through injunction, declaratory order, or otherwise, in the district court of the jurisdiction in which the nonprofit entity proposing the transaction has its principal place of business or where the hospital involved in the transaction is located. If the attorney general's assessment and review under this section is challenged in court, the attorney general's conclusions shall be the focus of the review by the reviewing court and shall be given strong deference by such court. The burden shall be upon the proponents of the transaction to establish that the attorney general's conclusions are not in conformance with statutory provisions. The court shall have the power to issue whatever orders are necessary to ensure compliance with the provisions of section 6-19-403.

Source: L. 98: Entire article added, p. 528, § 1, effective April 30.

ARTICLE 20

Hospital Disclosures to Consumers

PART 1

DISCLOSURE OF AVERAGE CHARGE

6-20-101. Provider disclosure of average charge. (1) Each hospital licensed or certified pursuant to section 25-1.5-103 (1)(a), C.R.S., shall disclose to a person seeking care or treatment his or her right to receive notice of the average facility charge for such treatment that is a frequently performed inpatient procedure prior to admission for such procedure; except that care or treatment for an emergency need not be disclosed prior to such emergency care or treatment. When requested, the average charge information shall be made available to the person prior to admission for such procedure.

(2) Other health facilities licensed or certified pursuant to section 25-1.5-103 (1)(a), C.R.S., shall disclose to a person seeking care or treatment his or her right to receive notice of the average facility charge for such treatment that is a frequently performed procedure prior to ordering or scheduling such procedure; except that care or treatment for an emergency need not be disclosed prior to such emergency care or treatment. When requested, such average charge information shall be made available to the person prior to the scheduling of the procedure.

Source: L. 2003: Entire article added, p. 1221, § 2, effective January 1, 2004. **L. 2004:** (1) and (2) amended, p. 1189, § 11, effective August 4.

PART 2

NOTIFICATION OF DEBT BY A HEALTH CARE PROVIDER

6-20-201. Definitions. For the purposes of this part 2, unless the context otherwise requires:

(1) "Collection activity" means only those activities provided or performed by a licensed collection agency, using a business name other than the name of the health care provider, for purposes of collecting a debt. The term does not include any standard billing procedures used by the health care provider or its agent in the normal course of business on current, nondelinquent accounts.

(2) "Collection agency" shall have the same meaning as in section 5-16-103 (3).

(3) "Health care provider" includes a health care facility licensed pursuant to article 3 of title 25, C.R.S., and any other health care provider.

Source: L. 2004: Entire part added, p. 458, § 1, effective August 4. **L. 2005:** Entire section amended, p. 124, § 1, effective August 8. **L. 2017:** (2) amended, (HB 17-1238), ch. 260, p. 1171, § 12, effective August 9.

6-20-202. Notice to patient of debt. (1) (a) When a person has health benefit coverage to provide payment for care or treatment rendered by a health care provider and the person has notified the health care provider of coverage within thirty days after the date the care or treatment was rendered, and if the health coverage plan, as defined in section 10-16-102 (34), C.R.S., pays only a portion of the debt, prior to the assignment of the debt to a licensed collection agency, the health care provider shall mail written notice to the last-known address of the person responsible for payment of the debt at least thirty days before any collection activity on any amount due and owing the health care provider.

(b) The notice required of health care providers by paragraph (a) of this subsection (1) shall include the amount due and owing; the name, address, and telephone number of the health care provider; where payment may be made; the date of service; and the last date or number of days after the date of the notice the health care provider will accept payment prior to the debt being submitted to a collection agency or reporting adverse information to a consumer reporting agency for the debt for which notice was provided.

(2) (a) If the health care provider fails to provide the person with notice of such debt and all other information required by subsection (1) of this section, the health care provider shall not pursue any rights to collect such outstanding amount either through a collection agency or by any further efforts of the health care provider to collect the debt. In addition, the health care provider may not report adverse information to a consumer reporting agency for the debt for which notice was provided without providing notice to the person pursuant to subsection (1) of this section. The health care provider shall assist the person in correcting any adverse credit information because of the health care provider's failure to provide notice pursuant to subsection (1) of this section.

(b) Notwithstanding any provision of this section to the contrary, a health care provider may remedy a failure to give notice by providing a written report to the collection agency to withhold any collection activity and withholding any of the health care provider's own collection

efforts until the provider complies with the notice and time requirements pursuant to subsection (1) of this section.

(c) Nothing in this subsection (2) shall be construed to require a health care provider to perform additional attempts to notify a person of the person's portion of the debt other than mailing the notice required pursuant to subsection (1) of this section to the person's last-known address and maintaining a record of such mailing.

(d) The failure of a health care provider or its agent to provide the notice required by subsection (1) of this section shall not create a cause of action or remedy against a collection agency under the "Colorado Fair Debt Collection Practices Act", article 16 of title 5.

Source: L. 2004: Entire part added, p. 458, § 1, effective August 4. **L. 2005:** (1) and (2)(b) amended and (2)(d) added, p. 124, § 2, effective August 8. **L. 2013:** (1)(a) amended, (HB 13-1266), ch. 217, p. 985, § 40, effective May 13. **L. 2017:** (2)(d) amended, (HB 17-1238), ch. 260, p. 1172, § 13, effective August 9.

PROTECTION AGAINST EXPLOITATION OF AT-RISK ADULTS

ARTICLE 21

Protection Against Financial Exploitation

6-21-101 to 6-21-103. (Repealed)

Source: L. 2013: Entire article repealed, (SB 13-111), ch. 233, p. 1128, § 17, effective May 16.

Editor's note: This article was added in 2010 and was not amended prior to its repeal in 2013. For the text of this article prior to 2013, consult the 2012 Colorado Revised Statutes.

Cross references: For the legislative declaration in the 2013 act repealing this article, see section 1 of chapter 233, Session Laws of Colorado 2013.

RESIDENTIAL ROOFING SERVICES

ARTICLE 22

Roofing Services - Residential Property

6-22-101. Legislative declaration. (1) The general assembly hereby declares that the purpose of enacting this article is to protect Colorado consumers by:

(a) Requiring roofing contractors offering to perform roofing work on residential property in this state to sign a written contract with property owners detailing the scope and cost of the roofing work and contact information for the roofing contractor;

(b) Requiring roofing contractors to permit property owners to rescind a contract for the performance of roofing work and obtain a refund of any deposit paid to the roofing contractor; and

(c) Prohibiting roofing contractors from paying, waiving, rebating, or promising to pay, waive, or rebate all or part of any insurance deductible applicable to an insurance claim made to the property owner's property and casualty insurer for payment for roofing work on the residential property covered by a property and casualty insurance policy.

Source: L. 2012: Entire article added, (SB 12-038), ch. 267, p. 1386, § 1, effective June 6.

6-22-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Property owner" means the owner of residential property or the owner's legal representative.

(2) (a) "Residential property" means:

(I) A detached, one- or two-family dwelling; or

(II) Multiple single-family dwellings that are not more than three stories above grade plane height and provide separate means of egress.

(b) "Residential property" does not include:

(I) A structure comprising multiple, attached single-family dwellings, unless maintenance, repair, or replacements of the dwellings' roof is the responsibility of a condominium association, homeowners' association, common interest community, unit owners' association, or any other entity subject to the "Colorado Common Interest Ownership Act", article 33.3 of title 38, C.R.S., regardless of when the entity was formed; or

(II) New construction.

(3) "Roofing contractor" means:

(a) An individual or sole proprietorship that performs roofing work or roofing services in this state for compensation; or

(b) (I) A firm, partnership, corporation, association, business trust, limited liability company, or other legal entity that performs or offers to perform roofing work in this state on residential property for compensation.

(II) As used in subparagraph (I) of this paragraph (b), "association" does not include a condominium association, homeowners' association, common interest community, unit owners' association, or any other entity subject to the "Colorado Common Interest Ownership Act", article 33.3 of title 38, C.R.S., regardless of when the entity was formed.

(4) (a) "Roofing work" or "roofing services" means the construction, reconstruction, alteration, maintenance, or repair of a roof on a residential property and the use of materials and items in the construction, reconstruction, alteration, maintenance, and repair of roofing and waterproofing of roofs, all in a manner to comply with plans, specifications, codes, laws, rules, regulations, and roofing industry standards for workmanlike performance applicable to the construction, reconstruction, alteration, maintenance, and repair of roofs on residential properties.

(b) "Roofing work" or "roofing services" does not include roofing work or services for which the compensation is one thousand dollars or less per contract.

Source: L. 2012: Entire article added, (SB 12-038), ch. 267, p. 1387, § 1, effective June 6.

6-22-103. Contracts for roofing services - writing required - required terms. (1) Prior to engaging in any roofing work, a roofing contractor shall provide a written contract to the property owner, signed by both the roofing contractor or his or her designee and the property owner, stating at least the following terms:

(a) The scope of roofing services and materials to be provided;

(b) The approximate dates of service;

(c) The approximate costs of the services based on damages known at the time the contract is entered;

(d) The roofing contractor's contact information, including physical address, electronic mail address, telephone number, and any other contact information available for the roofing contractor;

(e) Identification of the roofing contractor's surety and liability coverage insurer and their contact information, if applicable;

(f) (I) The roofing contractor's policy regarding cancellation of the contract and refund of any deposit, including a rescission clause allowing the property owner to rescind the contract and obtain a full refund of any deposit within seventy-two hours after entering the contract; and

(II) A written statement that the property owner may rescind a roofing contract pursuant to section 6-22-104; and

(g) A written statement that if the property owner plans to use the proceeds of a property and casualty insurance policy issued pursuant to part 1 of article 4 of title 10, C.R.S., to pay for the roofing work, pursuant to section 6-22-105, the roofing contractor cannot pay, waive, rebate, or promise to pay, waive, or rebate all or part of any insurance deductible applicable to the insurance claim for payment for roofing work on the covered residential property.

(2) In addition to the contract terms required in subsection (1) of this section, a roofing contractor shall include, on the face of the contract, in bold-faced type, a statement indicating that the roofing contractor shall hold in trust any payment from the property owner until the roofing contractor has delivered roofing materials at the residential property site or has performed a majority of the roofing work on the residential property.

Source: L. 2012: Entire article added, (SB 12-038), ch. 267, p. 1388, § 1, effective June 6.

6-22-104. Residential roofing contract - payment from insurance proceeds - right to rescind - return of payments. (1) (a) A property owner who enters into a written contract with a roofing contractor to perform roofing work on the property owner's residential property, the payment for which will be made from the proceeds of a property and casualty insurance policy issued pursuant to part 1 of article 4 of title 10, C.R.S., may rescind the contract within seventy-two hours after the property owner receives written notice from the property and casualty insurer that the claim for payment for roofing work on the residential property is denied in whole or in part. The property owner's right of rescission under this subsection (1) does not apply when the property and casualty insurer denies, in whole or in part, a claim related to a request for supplemental roofing services if the damage requiring the supplemental roofing services could

not have been reasonably foreseen as a necessary and related roofing service at the time of the initial roofing inspection or the execution of the initial roofing contract.

(b) The property owner shall give written notice of rescission of the contract to the roofing contractor at the physical address provided in the contract within seventy-two hours after he or she is notified of the denial. The property owner may give notice of rescission of the contract:

(I) In an electronic form, which is effective on the date of the electronic transmission;

(II) By mail, which is effective upon deposit in the United States mail, postage prepaid, sent to the physical address stated in the contract; or

(III) By personal delivery to the roofing contractor, which is effective upon delivery.

(2) Within ten days after rescission of a contract in accordance with subsection (1) of this section, the roofing contractor shall return to the property owner any payments or deposits made by or evidence of indebtedness of the property owner in connection with the contract for roofing work on the residential property.

(3) Nothing in this section precludes a roofing contractor from retaining all or a portion of any payments or deposits made by a property owner to compensate the roofing contractor for roofing work actually performed on the residential property in a workmanlike manner consistent with standard roofing industry practices, but the roofing contractor may retain only an amount required to compensate the roofing contractor for the actual work performed.

(4) Nothing in this section abrogates the roofing contractor's right to pursue common law remedies for the reasonable value of roofing materials ordered and actually installed on the residential property pursuant to a contract for roofing work before the property owner rescinded the contract, as long as the roofing contractor performed the roofing services consistent with roofing industry standards for workmanlike performance of roofing services.

(5) Nothing in this section abrogates a property and casualty insurer's duties, responsibilities, or liability under sections 10-3-1115 and 10-3-1116, C.R.S.

Source: L. 2012: Entire article added, (SB 12-038), ch. 267, p. 1388, § 1, effective June 6.

6-22-105. Waiver of insurance deductible prohibited. (1) A roofing contractor that performs roofing work, the payment for which will be made from the proceeds of a property and casualty insurance policy issued pursuant to part 1 of article 4 of title 10, C.R.S., shall not advertise or promise to pay, waive, or rebate all or part of any insurance deductible applicable to the claim for payment for roofing work on the covered residential property.

(2) If a roofing contractor violates subsection (1) of this section:

(a) The insurer to whom the property owner submitted the claim for payment for the roofing work is not obligated to consider the estimate of costs for the roofing work prepared by the roofing contractor; and

(b) The property owner whose residential property is insured under the property and casualty insurance policy or the insurer that issued the policy may bring an action against the roofing contractor in a court of competent jurisdiction to recover damages sustained by the property owner or insurer as a consequence of the violation.

(3) A roofing contractor soliciting roofing services in this state shall not claim to be or act as a public insurance adjuster adjusting claims for losses or damages. Nothing in this article

prevents a public insurance adjuster licensed pursuant to section 10-2-417, C.R.S., from acting or holding himself or herself out as a public insurance adjuster. Nothing in this subsection (3) precludes a roofing contractor from discussing, on behalf of the property owner, the scope of repairs with a property and casualty insurer when the roofing contractor has a valid contract with the property owner of the residential property on which the roofing contractor has contracted to perform roofing work.

Source: L. 2012: Entire article added, (SB 12-038), ch. 267, p. 1390, § 1, effective June 6.

DIRECT PRIMARY HEALTH CARE

ARTICLE 23

Direct Primary Care

Cross references: For the legislative declaration in HB 17-1115, see section 1 of chapter 151, Session Laws of Colorado 2017.

6-23-101. Definitions. As used in this section:

(1) "Direct primary care agreement" means a written agreement that:

(a) Is between a patient, his or her legal representative, a government entity, or a patient's employer and a direct primary health care provider;

(b) Discloses and describes to the patient and to the person paying the direct primary care fee the primary care services to be provided in exchange for payment of a periodic fee;

(c) Specifies the periodic fee required and any additional fees that may be charged;

(d) May allow the periodic fee and any additional fees to be paid by a third party;

(e) Prohibits the provider from submitting a fee-for-service claim for payment to a health insurance issuer for primary care services covered under the agreement and states that some services may be a covered benefit or covered service under the patient's health benefit plan as defined in section 10-16-102, at no cost to the patient;

(f) Conspicuously and prominently discloses to all parties subject to the agreement that it is not health insurance and does not meet any individual health benefit plan mandate that may be required by federal law and the patient is not entitled to health insurance protections for consumers under title 10; and

(g) Allows either party to terminate the agreement, in writing and with notice, as specified in the agreement and subject to refund terms and conditions in the agreement.

(2) "Direct primary health care provider" means an individual or legal entity that is licensed under article 36 or 38 of title 12 to provide primary care services in this state and who enters into a direct primary care agreement. "Direct primary health care provider" includes an individual primary care provider or other legal entity, alone or with others professionally associated with the individual or other legal entity.

(3) "Primary care service" includes the screening, assessment, diagnosis, and treatment for the purpose of promotion of health or the detection and management of disease or injury within the competency and training of the primary care provider.

Source: L. 2017: Entire article added, (HB 17-1115), ch. 151, p. 511, § 2, effective August 9.

6-23-102. Direct primary care - not regulated by the division of insurance. (1) Direct primary care is not insurance and is not regulated by the commissioner of insurance pursuant to title 10.

(2) Direct primary health care providers and direct primary care agreements that comply with this article 23 shall not be considered to be a health maintenance organization, insurer, insurance producer, or insurance and are not subject to title 10.

(3) Offering or entering into a direct primary care agreement is not the business of insurance or the practice of underwriting.

(4) A direct primary health care provider or agent of a direct primary health care provider is not required to obtain a certificate of authority or license to market, sell, or offer to sell a direct primary care agreement.

Source: L. 2017: Entire article added, (HB 17-1115), ch. 151, p. 511, § 2, effective August 9; (2) amended, (SB 17-294), ch. 264, p. 1417, § 117, effective August 9.

6-23-103. Direct primary health care provider rights. (1) A direct primary health care provider may:

(a) Decline to accept patients whose health needs exceed the primary care services offered by the direct primary health care provider; and

(b) Terminate a direct primary care agreement if the termination allows for the transition of care to another health care provider commensurate with the standards of professional responsibility within the state.

Source: L. 2017: Entire article added, (HB 17-1115), ch. 151, p. 512, § 2, effective August 9.

6-23-104. Direct primary health care providers - prohibitions. (1) A direct primary health care provider may not discriminate in the selection of patients on the basis of age, citizenship status, color, disability, gender or gender identity, genetic information, health status, national origin, race, religion, sex, sexual orientation, or any other protected class.

(2) Direct primary health care providers are subject to section 25.5-4-301.

(3) This section does not prevent a direct primary health care provider from providing primary care to patients who are not party to a direct primary care agreement.

Source: L. 2017: Entire article added, (HB 17-1115), ch. 151, p. 512, § 2, effective August 9.

6-23-105. Enforcement. This article 23 is not subject to enforcement by the attorney general or the district attorney pursuant to this title 6.

Source: L. 2017: Entire article added, (HB 17-1115), ch. 151, p. 512, § 2, effective August 9.

CEMETERIES

ARTICLE 24

Cemeteries

Editor's note: This article was added with relocations in 2017. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

6-24-101. Definitions. As used in this article 24, unless the context otherwise requires:

(1) "Burial memorial" means any type of gravestone, tombstone, headstone, memorial, monument, or marker that commemorates the permanent disposition of the remains of a human body either below or above the surface of the ground.

(2) "Cemetery" means any place, including a mausoleum, in which there is provided space either below or above the surface of the ground for the interment of the remains of human bodies. "Cemetery" does not include a cemetery that is owned, operated, or maintained by a government or governmental agency, by a church or synagogue, by a labor organization, by a cooperative association as defined in section 7-55-101, by a corporation organized and operated exclusively for religious purposes, or by a fraternal society, order, or association operating under the lodge system and exempt from the payment of state income tax and that has as its main business something other than the ownership, operation, or maintenance of any business connected with the burial of the dead.

(3) "Cemetery authority" means any person who owns, maintains, or operates a cemetery.

(4) "Endowment care cemetery" means any cemetery, the authority of which does, or represents to the public that it does, collect funds for the purpose of caring for, maintaining, or embellishing the cemetery to preserve it from becoming unkempt or a place of reproach and desolation. It does not include a cemetery which is owned, operated, or maintained by a government or governmental agency, by a church, by a labor organization, by a cooperative association as defined in section 7-55-101, by a corporation organized and operated exclusively for religious purposes, or by a fraternal society, order, or association operating under the lodge system and exempt from the payment of state income tax and which has as its main purpose something other than the ownership, operation, or maintenance of any business connected with burial of the dead.

(5) "Grave space" means any space in the ground for the interment of the remains of a human body.

(6) "Inscription" means any words or symbols on a burial memorial.

(7) "Interment" means the permanent disposition of the remains of a deceased person by cremation, inurnment, entombment, or burial.

(8) "Niche" or "crypt" means a space in any structure above the ground for the interment of the remains of a human body.

(9) "Nonendowment care cemetery" means any cemetery other than an endowment care cemetery.

(10) "Person" means a person as defined by section 2-4-401 (8).

Source: L. 2017: Entire article added with relocations, (HB 17-1244), ch. 239, p. 977, § 1, effective August 9.

Editor's note: This section is similar to former § 12-12-101 as it existed prior to 2017.

6-24-102. Organization as endowment care cemetery - when. Any person who, after July 1, 1965, establishes or acquires a cemetery within twenty miles from the exterior boundary of any city with a population of five thousand or more, according to the latest federal decennial census, shall be organized as an endowment care cemetery.

Source: L. 2017: Entire article added with relocations, (HB 17-1244), ch. 239, p. 978, § 1, effective August 9.

Editor's note: This section is similar to former § 12-12-103 as it existed prior to 2017.

6-24-103. Nonendowment section in endowment care cemetery. Any cemetery authority of an endowment care cemetery that has a nonendowed section that is used only as single graves for indigents may continue to donate the graves for the burial of indigents. Nothing in this article shall be construed to prevent a cemetery authority of an endowed care cemetery from donating a grave space for the burial of an indigent person without placing money in the endowment care fund for the space.

Source: L. 2017: Entire article added with relocations, (HB 17-1244), ch. 239, p. 978, § 1, effective August 9.

Editor's note: This section is similar to former § 12-12-104 as it existed prior to 2017.

6-24-104. Acquisition of land. Any cemetery authority may acquire suitable and sufficient land for a cemetery in a manner provided by articles 1 to 7 of title 38.

Source: L. 2017: Entire article added with relocations, (HB 17-1244), ch. 239, p. 978, § 1, effective August 9.

Editor's note: This section is similar to former § 12-12-105 as it existed prior to 2017.

6-24-105. Plats of land to be recorded. Any cemetery authority shall cause its land or the portion thereof as may become necessary for that purpose to be surveyed into blocks, lots, avenues, and walks and platted. The plat of ground as surveyed shall be acknowledged by some officer of the cemetery authority and filed for record in the office of the clerk and recorder of the county in which the land is situated. Each block or lot shall be regularly numbered by the surveyor, and the numbers shall be marked on the plat.

Source: L. 2017: Entire article added with relocations, (HB 17-1244), ch. 239, p. 979, § 1, effective August 9.

Editor's note: This section is similar to former § 12-12-106 as it existed prior to 2017.

6-24-106. Endowment care fund. (1) A cemetery authority of an endowment care cemetery shall establish an irrevocable endowment care fund for each endowment care cemetery owned, maintained, or operated by it in a state bank or trust company authorized to act as fiduciary and under the supervision of the banking board or in a national banking association authorized to act as fiduciary or in a state or federally chartered savings and loan association authorized to act as a fiduciary. The endowment care fund shall be invested in investments lawful for trustees, which shall not include investments in nor mortgages on property owned or contracted for by the cemetery authority or any owned or affiliated company.

(2) (a) A cemetery authority of an endowment care cemetery shall make deposits in the endowment care fund or, if it operates more than one endowment care fund, in the appropriate endowment care fund, in accordance with one of the following plans:

(I) Plan A:

It shall deposit in the fund not more than thirty days after any sale is completed at least fifteen percent of the sales price of any grave space and at least ten percent of the sales price of any crypt or niche, and in case any sale has not been completed within sixty months after date of first payment, it shall deposit in the fund, not later than one month after the sixtieth month, at least fifteen percent of the sales price of any grave space and at least ten percent of the sales price of any crypt or niche. A sale is completed at the time the final payment is made and no balance remains due to the cemetery authority, whether or not a deed has been issued. If a contract of sale is rewritten, the date of the first payment under the original contract of sale shall be the date of first payment under the rewritten contract of sale.

(II) Plan B:

It shall deposit, not later than thirty days after the end of the fiscal year in which the payments are received, fifteen percent of all payments received on account of the sale of any grave space and at least ten percent of all payments received on account of the sale of a niche or crypt. This deposit requirement applies to all uncompleted sales contracts that carry an endowment care provision.

(III) Plan C: (applicable only to sale of niches or crypts in a mausoleum)

It shall deposit in its endowment care fund for the mausoleum, not later than thirteen months after the end of its fiscal year in which any sale is completed, at least ten percent of the sale price of any niche or crypt, and in case any sale has not been completed within twenty-four months after date of first payment, it shall deposit in the fund, not later than one month after the end of its fiscal year in which the last day of the twenty-four month period occurs, at least ten percent of the sales price of any niche or crypt. A sale is completed at the time the final payment is made and no balance remains due to the cemetery authority, whether or not a deed has been issued. If a contract of sale is rewritten, the date of first payment under the original contract of sale shall be the date of first payment under the rewritten contract of sale.

(b) As to any endowment care cemetery in operation on July 1, 1965, this subsection (2) shall only apply to all sales contracts entered into on or after the date.

(3) (a) The cemetery authority of an endowment care cemetery, before commencing operation, on or after July 1, 1965, shall have on deposit in the endowment care fund a sum in accordance with the following scale:

For 10,000 or less population $10,000

For more than 10,000 but less than 20,000 population $15,000
For 20,000 but less than 25,000 population $20,000
For 25,000 or more population $25,000

(b) "Population" means the people residing within a twenty-mile radius of the location of the endowment care cemetery, the population figure to be taken from the latest federal decennial census.

(c) The cemetery authority for the endowment care cemetery shall thereafter make deposits in accordance with subsection (2) of this section. When the deposits have reached twice the amount stated in the above table, the cemetery authority may withdraw the sum of the initial deposit in amounts equal to the amounts deposited thereafter until the initial deposit has been withdrawn.

(4) A cemetery authority of a nonendowment care cemetery which converts to operation as an endowment care cemetery on or after July 1, 1965, shall deposit in its endowment care fund the sum of ten thousand dollars before making any further sale of any grave space or niche or crypt. The cemetery authority for the cemetery shall thereafter make deposits in accordance with subsection (2) of this section until total deposits into the endowment care fund have reached twenty thousand dollars. It may thereafter withdraw from the initial ten thousand dollar deposit amounts equal to the amounts of deposits thereafter made until the entire ten thousand dollar initial deposit has been withdrawn and replaced by deposits in accordance with subsection (2) of this section.

(5) The cemetery authority of an endowment care cemetery that constructs foundations for the setting of markers or memorials and receives payment for the care of the markers or memorials as part of the cost of foundation construction, setting charges, or itemized endowment requirements shall deposit all of the care payments in their irrevocable endowment care fund not later than one month after the end of its fiscal year in which the payments are received.

(6) The cemetery authority of an endowment care cemetery shall keep in its principal office a copy of the report referred to in section 6-24-107, which shall be available to any grave space, niche, or crypt owner or his or her duly authorized representative for inspection and study.

(7) (a) The endowment care fund, for all purposes, shall constitute a nonprofit irrevocable trust fund. The fiduciary shall not distribute principal from an endowment care fund; except that principal may be distributed from the fund to the extent that a unitrust election is in effect under subsection (8)(a)(II) of this section.

(b) Endowment care is a provision for the benefit and protection of the public by preserving and keeping cemeteries from becoming unkempt and places of reproach and desolation in the communities in which they are situated. The income from the fund is for the benefit of the public for the purposes provided for in the trust agreement.

(8) (a) The cemetery authority of an endowment care cemetery may choose the distribution as income of either of the following from the endowment care fund:

(I) All net income, including net realized capital gains; or

(II) An amount set and administered in accordance with section 15-1-404.5 for unitrust elections.

(b) (I) A cemetery authority may request that the fiduciary convert an endowment care fund to a unitrust. To take effect during a specific calendar year, the request must be made by delivering written instructions to the fund's fiduciary by November 2 of the year before the trust is converted. Once the fiduciary and the cemetery authority agree on the terms and conditions of

conversion, the distribution method, and the distribution rate, these terms remain in effect until the fiduciary and the cemetery authority agree to a change.

(II) Disbursements from the trust shall be made on a monthly, quarterly, semi-annual, or annual basis, as agreed upon by the cemetery authority and the fiduciary. If the fiduciary and cemetery authority are in agreement, the fiduciary need not obtain any court approval or notify a court to set or change the timing of disbursements.

(III) The fiduciary is subject to section 15-1-404.5 when administering an endowment care fund for which the unitrust election has been made; except that, in the event of a conflict between this section and section 15-1-404.5, this section controls.

(c) If the fiduciary does not receive written instructions from the cemetery authority informing the fiduciary of the method of income distribution chosen, then the fiduciary shall calculate and disburse the earned net income under subsection (8)(a)(I) of this section on a monthly basis.

Source: L. 2017: Entire article added with relocations, (HB 17-1244), ch. 239, p. 979, § 1, effective August 9; (7) amended and (8) added, (HB 17-1096), ch. 65, p. 206, § 1, effective August 9.

Editor's note: (1) This section is similar to former § 12-12-109 as it existed prior to 2017.

(2) Subsections (7) and (8) were numbered as § 12-12-109 (7) and (8), respectively, in HB 17-1096 (See L. 2017, p. 206). Those provisions were harmonized with this section as it appears in HB 17-1244.

6-24-107. Reports. (1) Each cemetery authority shall keep on file annually, within three months after the end of its fiscal year, a written report setting forth:

(a) The total amount deposited in the endowment care fund, listing separately the total amounts paid for endowment of grave spaces, for niches, and for crypts, in accordance with the provisions of section 6-24-106;

(b) The total amount of endowment care funds invested in each of the investments authorized by law and the amount of cash on hand not invested;

(c) Any other facts necessary to show the actual financial condition of the fund; and

(d) The total number of interments and entombments for the preceding year.

(2) Each report shall be verified by the owner or by the president or the vice-president and one other officer of the cemetery authority and shall be attested to by the accountant, auditor, or other person preparing the same.

Source: L. 2017: Entire article added with relocations, (HB 17-1244), ch. 239, p. 981, § 1, effective August 9.

Editor's note: This section is similar to former § 12-12-110 as it existed prior to 2017.

6-24-108. Delivery of copy of contract - required. A duplicate original of any contract entered into between a purchaser of any lot, grave space, interment right, niche, or crypt and any cemetery authority shall be given to the buyer at the time both parties become bound by the

contract and any consideration whatsoever is given by the buyer and retained pursuant to the contract by the cemetery authority.

Source: L. 2017: Entire article added with relocations, (HB 17-1244), ch. 239, p. 981, § 1, effective August 9.

Editor's note: This section is similar to former § 12-12-113 as it existed prior to 2017.

6-24-109. Burial memorial - changes - notice of ownership. (1) No person other than the owner of a burial memorial or a person authorized by the owner of the burial memorial shall make a change to the inscription on the burial memorial.

(2) If a burial memorial is to be placed at a grave space, niche, or crypt that is purchased on or after July 1, 2004, the cemetery authority shall give written notice to the purchaser of the grave space, niche, or crypt of who shall be the owner of the burial memorial and, as owner, who shall be entitled to make or authorize a change to the inscription on the burial memorial.

(3) Any person violating the provisions of subsection (1) of this section commits the crime of defacing property as defined in section 18-4-509 (1)(b).

Source: L. 2017: Entire article added with relocations, (HB 17-1244), ch. 239, p. 981, § 1, effective August 9.

Editor's note: This section is similar to former § 12-12-113.5 as it existed prior to 2017.

6-24-110. Discrimination. There shall be no limitation, restriction, or covenant based upon race, color, sex, sexual orientation, marital status, disability, national origin, or ancestry on the size, placement, location, sale, or transfer of any cemetery grave space, niche, or crypt or in the interment of a deceased person.

Source: L. 2017: Entire article added with relocations, (HB 17-1244), ch. 239, p. 982, § 1, effective August 9.

Editor's note: This section is similar to former § 12-12-114 as it existed prior to 2017.

6-24-111. Violations - penalties. (1) It is unlawful for any person to sell or offer to sell a grave space, niche, or crypt upon the promise, representation, or inducement of resale at a financial profit.

(2) Any person who violates any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both a fine and imprisonment. Whenever any person has reason to believe that any person is liable to punishment under this article, the person may certify the facts to the district attorney of the judicial district in which the alleged violation occurred who shall cause appropriate proceedings to be brought.

Source: L. 2017: Entire article added with relocations, (HB 17-1244), ch. 239, p. 982, § 1, effective August 9.

Editor's note: This section is similar to former § 12-12-115 as it existed prior to 2017.

6-24-112. Abandoned graves - right to reclaim. (1) If there is a lot, grave space, niche, or crypt in a cemetery in which no remains have been interred, no burial memorial has been placed, and no other improvement has been made for a continuous period of no less than seventy-five years, a cemetery authority may initiate the process of reclaiming title to the lot, grave space, niche, or crypt in accordance with this section.

(2) A cemetery authority seeking to reclaim a lot, grave space, niche, or crypt shall:

(a) Send written notice of the cemetery authority's intent to reclaim title to the lot, grave space, niche, or crypt to the owner's last-known address by first-class mail; and

(b) Publish a notice of the cemetery authority's intent to reclaim title to the lot, grave space, niche, or crypt in a newspaper of general circulation in the area in which the cemetery is located once per week for four weeks.

(3) The notice required by subsection (2) of this section shall clearly indicate that the cemetery authority intends to terminate the owner's rights and title to the lot, grave space, niche, or crypt and include a recitation of the owner's right to notify the cemetery authority of the owner's intent to retain ownership of the lot, grave space, niche, or crypt.

(4) If the cemetery authority does not receive from the owner of the lot, grave space, niche, or crypt a letter of intent to retain ownership of the lot, grave space, niche, or crypt within sixty days after the last publication of the notice required by subsection (2)(b) of this section, all rights and title to the lot, grave space, niche, or crypt shall transfer to the cemetery authority. The cemetery authority may then sell, transfer, or otherwise dispose of the lot, grave space, niche, or crypt without risk of liability to the prior owner of the lot, grave space, niche, or crypt.

(5) A cemetery authority that reclaims title to a lot, grave space, niche, or crypt in accordance with this section shall retain in its records for no less than one year a copy of the notice sent pursuant to subsection (2)(a) of this section and a copy of the notice published pursuant to subsection (2)(b) of this section.

(6) If a person submits to a cemetery authority a legitimate claim to a lot, grave space, niche, or crypt that the cemetery authority has reclaimed pursuant to this section, the cemetery authority shall transfer to the person at no charge a lot, grave space, niche, or crypt that, to the extent possible, is equivalent to the reclaimed lot, grave space, niche, or crypt.

(7) Notwithstanding any provision of law to the contrary, on and after August 7, 2006, a cemetery authority shall not convey title to the real property surveyed as a lot in a cemetery for use as a burial space. A cemetery authority may grant interment rights to a lot, grave space, niche, or crypt in a cemetery.

Source: L. 2017: Entire article added with relocations, (HB 17-1244), ch. 239, p. 982, § 1, effective August 9.

Editor's note: This section is similar to former § 12-12-116 as it existed prior to 2017.

PUBLIC ESTABLISHMENTS

ARTICLE 25

Editor's note: This article was added with relocations in 2017. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

PART 1

HOTELS AND RESTAURANTS

6-25-101. Definitions - evidence of intent. As used in this part 1, unless the context otherwise requires:

(1) "Agreement with the public establishment" means any written or verbal agreement as to the price to be charged for, and the acceptance of, food, beverage, service, or accommodations where the price to be charged therefor is printed on a menu or schedule of rates shown to or made available by a public establishment to the patron and includes the acceptance of the food, beverage, service, or accommodations for which a reasonable charge is made.

(2) "Notice", as used in section 6-25-104, shall be given by posting a printed copy of sections 6-25-101 to 6-25-104 at any conspicuous place within the sleeping accommodations.

(3) "Public establishment" means any establishment selling or offering for sale prepared food or beverages to the public generally, or any establishment leasing or renting overnight sleeping accommodations to the public generally, including, but not exclusively, restaurants, cafes, dining rooms, lunch counters, coffee shops, boarding houses, hotels, motor hotels, motels, and rooming houses, unless the rental thereof is on a month-to-month basis or a longer period of time.

(4) It shall be evidence of an intent to defraud that food, service, or accommodations were given to any person who gave false information concerning his or her name or address, or both, in obtaining the food, service, or accommodations, or that the person removed or attempted to remove his or her baggage from the premises of the public establishment without giving notice of his or her intent to do so to the public establishment. These provisions shall not constitute the sole means of establishing evidence that a person accused under this part 1 had an intent to defraud. Proof of intent to defraud may be made by any facts or circumstances sufficient to establish the intent to defraud beyond a reasonable doubt as provided by law.

(5) If any person, partnership, or corporation shall by written or verbal complaint, or otherwise, institute or cause to be instituted any prosecution for any violation of this section and shall thereafter, whether or not restitution is sought or received from the alleged offender, fail to cooperate in the full prosecution of the alleged offender without reasonable cause, the court having jurisdiction, on motion of the prosecuting attorney appearing therein and, after notice to the person, partnership, or corporation and an opportunity to be heard, may give judgment against the person, partnership, or corporation and in favor of the county wherein prosecution was commenced for all costs of the prosecution, including a reasonable allowance for the time of the prosecuting attorney.

Source: L. 2017: Entire article added with relocations, (HB 17-1245), ch. 240, p. 985, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44-101 as it existed prior to 2017.

6-25-102. Public establishment - vendor contract. A contract between a vendor and a public establishment shall be invalid unless the vendor enters into the contract directly with the public establishment's owner, general manager, or a person with authority to enter into a contract as specifically designated in writing by the owner or general manager. The acceptance of delivered items by a public establishment from a vendor that includes an invoice stating the terms of a contract shall not constitute acceptance of the terms and the contract shall be void.

Source: L. 2017: Entire article added with relocations, (HB 17-1245), ch. 240, p. 986, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44-101.5 as it existed prior to 2017.

6-25-103. Defrauding an innkeeper. A person who, with intent to defraud, procures food or accommodations from a public establishment without making payment therefor in accordance with his or her agreement with the public establishment is guilty of a misdemeanor if the total amount due under the agreement is one thousand dollars or less and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both the fine and imprisonment; and, if the amount due under the agreement is more than one thousand dollars, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401.

Source: L. 2017: Entire article added with relocations, (HB 17-1245), ch. 240, p. 986, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44-102 as it existed prior to 2017.

6-25-104. Notice prerequisite to conviction. No conviction shall be had under section 6-25-103, unless it is made to appear upon the trial for a violation of section 6-25-103 that the person charged with the violation was given notice of the terms and provisions of sections 6-25-101 to 6-25-104.

Source: L. 2017: Entire article added with relocations, (HB 17-1245), ch. 240, p. 986, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44-103 as it existed prior to 2017.

6-25-105. Jurisdiction. Jurisdiction of cases arising under sections 6-25-101 to 6-25-104 and appeals from judgments in the cases shall be as provided by statute.

Source: L. 2017: Entire article added with relocations, (HB 17-1245), ch. 240, p. 987, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44-104 as it existed prior to 2017.

6-25-106. Safe for valuables - notice. Every landlord or keeper of a hotel or public inn in this state who provides in the office of his or her hotel, inn, or other convenient place a safe, vault, or other suitable receptacle, for the secure custody of money, jewelry, ornaments, or other valuable articles other than necessary baggage belonging to the guests or patrons of the hotel or public inn, and who keeps posted in a public and conspicuous place in the office, public room, and public parlors of the hotel or public inn, and upon the inside entrance door of every public sleeping room in the hotel or public inn a notice printed in English stating the fact, shall not be liable for the loss of any money, jewelry, ornaments, or other valuable articles, other than necessary baggage, sustained by the guest or patron by theft or otherwise, unless the guest or patron delivers the money, jewelry, ornaments, or other valuable articles, other than necessary baggage, to the landlord or keeper of the hotel or public inn, or person in charge of the office of the hotel or public inn, for deposit in the safe, vault, or other receptacle. The liability shall not be greater than the amount at the time of deposit declared by the guest or patron to be the value of the article deposited.

Source: L. 2017: Entire article added with relocations, (HB 17-1245), ch. 240, p. 987, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44-105 as it existed prior to 2017.

6-25-107. Maximum amount landlord bound to receive. No landlord or keeper of any hotel or public inn is obliged to receive property from any guest or patron for custody under the provisions of section 6-25-106, exceeding in value the sum of five thousand dollars, nor is he or she liable for any loss thereof by theft or otherwise in any sum exceeding the sum of five thousand dollars, unless the landlord or keeper of the hotel or public inn, or person in charge of the office, assumes in writing a greater liability.

Source: L. 2017: Entire article added with relocations, (HB 17-1245), ch. 240, p. 987, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44-106 as it existed prior to 2017.

6-25-108. Landlord not responsible - when. The landlord or keeper of any hotel or public inn shall not be liable to any guest or patron of the hotel or public inn for the loss within his or her hotel or public inn of any article of wearing apparel or other necessary baggage belonging to any guest or patron, unless the same had been left within a room assigned to the guest or patron, or had been especially entrusted to the care or custody of the landlord or keeper of the hotel or public inn, or to an employee or servant thereof entrusted with the duty of receiving or caring for the article in the hotel or public inn.

Source: L. 2017: Entire article added with relocations, (HB 17-1245), ch. 240, p. 987, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44-107 as it existed prior to 2017.

6-25-109. Responsibility when key furnished. When the landlord or keeper of any hotel or public inn provides the doors of the rooms or sleeping apartments in the hotel or public inn with locks and keys in good order and repair and the room or sleeping apartment is turned over to the possession of any guest or patron together with the key to the door thereof, the landlord or keeper of the hotel or public inn shall not be liable to any guest or patron thereof occupying the room or apartment for loss of any article of personal property left within the room or apartment by the guest or patron while in possession thereof, unless the door in the room or apartment was left locked when unoccupied, and after being locked the key thereto was delivered to the person in charge of the office of the hotel or public inn. If any article of personal property is taken by an employee or servant of the landlord or keeper of the hotel or public inn, then the provisions of this section shall not prevent the guest or patron from recovering the value of the article, not to exceed the sum of two hundred dollars for all the articles.

Source: L. 2017: Entire article added with relocations, (HB 17-1245), ch. 240, p. 987, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44-108 as it existed prior to 2017.

6-25-110. Maximum liability for articles lost from rooms. The landlord or keeper of any hotel or public inn shall not be liable for the loss of any article left by any guest or patron in any room assigned to or occupied by the guest or patron, greater, in any event, than the sum of two hundred dollars for all articles that may be lost by the guest or patron, except by an agreement in writing made by the landlord or keeper of the hotel or public inn, or person in charge of the office, assuming a greater liability.

Source: L. 2017: Entire article added with relocations, (HB 17-1245), ch. 240, p. 988, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44-109 as it existed prior to 2017.

6-25-111. Liability for baggage left by guest. In case any person who has been the guest or patron of any hotel or public inn ceases to be a guest or patron and leaves with the landlord or keeper of the hotel or public inn any baggage or other personal property for safekeeping, and the landlord or keeper accepts and receives the same for safekeeping, and makes no charge for services or storage in keeping the property, then the landlord or keeper of a hotel or public inn shall be liable only as a gratuitous bailee and as such shall be liable for no sum greater than fifty dollars.

Source: L. 2017: Entire article added with relocations, (HB 17-1245), ch. 240, p. 988, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44-110 as it existed prior to 2017.

6-25-112. Liability in case of fire or accident. The landlord or keeper of any hotel or public inn shall not be liable for loss of or damage to the property of any guest or patron of the

hotel or public inn by fire or by any unforeseen causes or by inevitable accident, unless the loss or damage occurs on account of his or her negligence or the negligence of his or her servants or employees.

Source: L. 2017: Entire article added with relocations, (HB 17-1245), ch. 240, p. 988, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44-111 as it existed prior to 2017.

6-25-113. Liability limited to damages. None of the provisions of sections 6-25-106 to 6-25-113 shall be construed to render the landlord or keeper of a hotel or public inn in this state liable in a greater sum than the actual loss or damage sustained.

Source: L. 2017: Entire article added with relocations, (HB 17-1245), ch. 240, p. 988, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44-112 as it existed prior to 2017.

PART 2

INNKEEPERS' RIGHTS

6-25-201. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Innkeeper" means the owner, operator, or manager of a lodging establishment.

(2) "Lodging establishment" means a bed and breakfast, as defined in section 44-3-103 (4), or a hotel, motel, resort, or public inn, as defined in section 6-25-101 (3).

(3) "Minor" means a person under eighteen years of age.

(4) "Resort" means a hotel with related sports and recreational facilities for the convenience of its guests or the general public located contiguous or adjacent to the hotel.

Source: L. 2017: Entire article added with relocations, (HB 17-1245), ch. 240, p. 988, § 1, effective August 9. **L. 2018:** (2) amended, (HB 18-1025), ch. 152, p. 1077, § 4, effective October 1.

Editor's note: This section is similar to former § 12-44-301 as it existed prior to 2017.

6-25-202. Innkeepers' right to refuse accommodations - exceptions. (1) An innkeeper has the right to refuse or deny accommodations, facilities, and the privileges of a lodging establishment to any person who is not willing or able to pay for the accommodations, facilities, and services. The innkeeper shall have the right to require a prospective guest to demonstrate his or her ability to pay by cash, valid credit card, or a validated check, and if the prospective guest is a minor, the innkeeper may require a parent or legal guardian of the minor or other responsible adult:

(a) To provide a valid credit card number or agree, in writing, to pay for the cost of:

(I) The guest room, including applicable taxes;

(II) All charges made by the minor; and

(III) Any damages caused by the minor or the minor's guests to the guest room or its furnishings; or

(b) To provide an advance cash payment to cover the cost of the guest room for all nights reserved, including applicable taxes, plus a cash deposit to be held toward the payment of any charges made by the minor and any damages to the guest room or its furnishings. The cash deposit shall be refunded, unless applied to charges or damages, following a joint inspection of the room. It is the obligation of the guest to join the innkeeper during the inspection. Should the guest fail to join the innkeeper, the guest thereby waives his or her right to the joint inspection. The refund, if any, shall immediately be made to the extent it is not used to cover the described charges or damages.

Source: L. 2017: Entire article added with relocations, (HB 17-1245), ch. 240, p. 989, § 1, effective August 9.

Editor's note: This section is similar to former § 12-44-302 as it existed prior to 2017.