

SENATE COMMITTEE OF REFERENCE REPORT

Chair of Committee

Date

March 31, 2022

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB22-1082 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

- 1 Amend reengrossed bill, page 4, line 13, strike "**unit.**" and substitute
- 2 "**unit - powers of attorney general or district attorney - subpoenas -**
- 3 **document production - remedies - injunctive relief - penalties.**"

- 4 Page 4, lines 14 and 15, strike "THAT RISKS CONSUMER HARM," and
- 5 substitute "THAT RISKS HARM TO A CONSUMER,".

- 6 Page 4, line 15, after "SAFETY," strike "OR".

- 7 Page 4, line 17, after "ARTICLE 31." insert "A COMPLAINT IS NOT
- 8 NECESSARY IF THE INFORMATION IS PROVIDED BY AN AGENCY OF THE
- 9 FEDERAL, STATE, OR A LOCAL GOVERNMENT THAT REGULATES OR
- 10 PROVIDES PROTECTIONS FOR CONSUMERS, TENANTS, AND MOBILE HOME
- 11 RESIDENTS.".

- 12 Page 4, strike line 18.

- 13 Page 4, line 19, strike "ARTICLE 31".

- 14 Page 5, after line 4 insert:

- 15 "**(3) Venue for actions.** UNTIL THE COLORADO SUPREME COURT
- 16 ADOPTS A VENUE PROVISION RELATING TO THIS ARTICLE 31, ACTIONS
- 17 INSTITUTED PURSUANT TO THIS ARTICLE 31 MAY BE BROUGHT IN ANY
- 18 COUNTY IN WHICH:
- 19 (a) AN ALLEGED VIOLATION OCCURRED OR IN WHICH ANY PORTION
- 20 OF A TRANSACTION INVOLVING AN ALLEGED VIOLATION OCCURRED;
- 21 (b) THE PRINCIPAL PLACE OF BUSINESS OF ANY DEFENDANT IS

1 LOCATED; OR
2 (c) ANY DEFENDANT RESIDES.
3 (4)(a) **Powers.** WHEN THE ATTORNEY GENERAL HAS REASONABLE
4 CAUSE TO BELIEVE THAT ANY PERSON, WHETHER IN THIS STATE OR
5 ELSEWHERE, HAS ENGAGED IN OR IS ENGAGING IN A VIOLATION OF ANY OF
6 THE PROVISIONS LISTED IN SECTION 24-31-101 (1)(i)(IX) TO (1)(i)(XIV),
7 THE ATTORNEY GENERAL MAY:
8 (I) REQUEST THE PERSON TO FILE A STATEMENT OR A REPORT IN
9 WRITING, UNDER OATH OR OTHERWISE, ON FORMS PRESCRIBED BY THE
10 ATTORNEY GENERAL, WITH RESPECT TO ALL FACTS AND CIRCUMSTANCES
11 CONCERNING THE ADVERTISEMENT OF PROPERTY BY THE PERSON AND ANY
12 OTHER DATA AND INFORMATION THE ATTORNEY GENERAL DEEMS
13 NECESSARY;
14 (II) EXAMINE UNDER OATH ANY PERSON IN CONNECTION WITH THE
15 SALE OR ADVERTISEMENT OF ANY PROPERTY;
16 (III) EXAMINE ANY PROPERTY OR SAMPLE THEREOF, RECORD,
17 BOOK, DOCUMENT, ACCOUNT, OR PAPER THE ATTORNEY GENERAL DEEMS
18 NECESSARY; AND
19 (IV) MAKE TRUE COPIES, AT THE EXPENSE OF THE ATTORNEY
20 GENERAL, OF ANY RECORD, BOOK, DOCUMENT, ACCOUNT, OR PAPER
21 EXAMINED PURSUANT TO SUBSECTION (4)(c) OF THIS SECTION, WHICH
22 COPIES MAY BE OFFERED INTO EVIDENCE IN LIEU OF PRODUCING THE
23 ORIGINALS IN ANY ACTIONS BROUGHT BY THE ATTORNEY GENERAL.
24 (b) FOR PURPOSES OF THIS SECTION, "REASONABLE CAUSE" IS
25 BASED UPON A COMPLAINT CONCERNING A POTENTIAL VIOLATION OF THE
26 LAW WHEN THE ATTORNEY GENERAL BELIEVES THE ALLEGED VIOLATION
27 MAY AFFECT MORE THAN ONE PERSON OR BE PART OF A SERIES OF RELATED
28 VIOLATIONS AFFECTING MULTIPLE PERSONS.
29 (c) ANY REQUEST FOR PERSONALLY IDENTIFIABLE INFORMATION
30 MADE PURSUANT TO THIS SUBSECTION (4) IS SUBJECT TO THE
31 REQUIREMENTS OF SUBSECTION (5) OF THIS SECTION.
32 (5) **Subpoenas - production of documents.** (a) WHEN THE
33 ATTORNEY GENERAL HAS REASONABLE CAUSE TO BELIEVE THAT A PERSON,
34 WHETHER IN THIS STATE OR ELSEWHERE, HAS ENGAGED IN OR IS ENGAGING
35 IN A VIOLATION OF ANY OF THE PROVISIONS LISTED IN SECTION 24-31-101
36 (1)(i)(IX) TO (1)(i)(XIV), THE ATTORNEY GENERAL, IN ADDITION TO ANY
37 OTHER POWERS CONFERRED UPON THE ATTORNEY GENERAL BY THIS
38 ARTICLE 31, MAY ISSUE SUBPOENAS TO REQUIRE THE ATTENDANCE OF
39 WITNESSES OR THE PRODUCTION OF DOCUMENTS, ADMINISTER OATHS,
40 CONDUCT HEARINGS IN AID OF ANY INVESTIGATION OR INQUIRY, AND
41 PRESCRIBE SUCH FORMS AND PROMULGATE SUCH RULES AS MAY BE
42 NECESSARY TO ADMINISTER THE PROVISIONS OF THIS ARTICLE 31.
43 (b) SERVICE OF ANY NOTICE OR SUBPOENA MUST BE MADE IN THE

1 MANNER PRESCRIBED BY LAW OR AS PROVIDED IN RULE 4 OF THE
2 COLORADO RULES OF CIVIL PROCEDURE.

3 (c) IF THE RECORDS OF A PERSON WHO HAS BEEN ISSUED A
4 SUBPOENA ARE LOCATED OUTSIDE THIS STATE, THE PERSON SHALL EITHER:

5 (I) MAKE THEM AVAILABLE TO THE ATTORNEY GENERAL AT A
6 CONVENIENT LOCATION WITHIN THIS STATE; OR

7 (II) PAY THE REASONABLE AND NECESSARY EXPENSES FOR THE
8 ATTORNEY GENERAL OR DISTRICT ATTORNEY, OR THE ATTORNEY
9 GENERAL'S OR DISTRICT ATTORNEY'S DESIGNEE, TO EXAMINE THE RECORDS
10 AT THE LOCATION AT WHICH THE DOCUMENTS ARE MAINTAINED.

11 (d) THE ATTORNEY GENERAL OR DISTRICT ATTORNEY MAY
12 DESIGNATE REPRESENTATIVES, INCLUDING COMPARABLE OFFICIALS OF THE
13 STATE IN WHICH THE RECORDS ARE LOCATED, TO INSPECT THE RECORDS ON
14 BEHALF OF THE ATTORNEY GENERAL OR DISTRICT ATTORNEY.

15 (6) **Inadmissible testimony.** (a) ANY TESTIMONY OBTAINED BY
16 THE ATTORNEY GENERAL PURSUANT TO COMPULSORY PROCESS UNDER
17 THIS ARTICLE 31 OR ANY INFORMATION DERIVED DIRECTLY OR INDIRECTLY
18 FROM SUCH TESTIMONY SHALL NOT BE ADMISSIBLE IN EVIDENCE IN ANY
19 CRIMINAL PROSECUTION AGAINST THE PERSON SO COMPELLED TO TESTIFY.
20 THIS SUBSECTION (6) SHALL NOT BE CONSTRUED TO PREVENT ANY LAW
21 ENFORCEMENT OFFICER FROM INDEPENDENTLY PRODUCING OR OBTAINING
22 THE SAME OR SIMILAR FACTS, INFORMATION, OR EVIDENCE FOR USE IN ANY
23 CRIMINAL PROSECUTION.

24 (b) SUBJECT TO SUBSECTION (8) OF THIS SECTION, THE RECORDS OF
25 INVESTIGATIONS OR INTELLIGENCE INFORMATION OF THE ATTORNEY
26 GENERAL OBTAINED UNDER THIS ARTICLE 31 MAY CONSTITUTE PUBLIC
27 RECORDS AVAILABLE FOR INSPECTION BY THE PUBLIC AT THE SOLE
28 DISCRETION OF THE ATTORNEY GENERAL. THIS SUBSECTION (6)(b) SHALL
29 NOT BE CONSTRUED TO PREVENT THE ATTORNEY GENERAL FROM ISSUING
30 PUBLIC STATEMENTS DESCRIBING OR WARNING OF ANY COURSE OF
31 CONDUCT OR ANY CONSPIRACY THAT CONSTITUTES A VIOLATION OF ANY
32 OF THE PROVISIONS LISTED IN SECTION 24-31-101 (1)(i)(IX) TO
33 (1)(i)(XIV), WHETHER ON A LOCAL, STATEWIDE, REGIONAL, OR
34 NATIONWIDE BASIS.

35 (7) **Remedies.** IF ANY PERSON FAILS TO COOPERATE WITH ANY
36 INVESTIGATION PURSUANT TO THIS ARTICLE 31 OR FAILS TO OBEY ANY
37 SUBPOENA PURSUANT TO THIS ARTICLE 31, THE ATTORNEY GENERAL MAY
38 APPLY TO THE APPLICABLE DISTRICT COURT FOR AN APPROPRIATE ORDER
39 TO EFFECT THE PURPOSES OF THIS ARTICLE. THE APPLICATION MUST STATE
40 THAT THERE ARE REASONABLE GROUNDS TO BELIEVE THAT THE ORDER
41 APPLIED FOR IS NECESSARY TO INVESTIGATE A VIOLATION OF THIS ARTICLE
42 31. IF THE COURT IS SATISFIED THAT REASONABLE GROUNDS EXIST, THE
43 COURT IN ITS ORDER MAY:

1 (a) GRANT INJUNCTIVE RELIEF RESTRAINING THE ADVERTISEMENT
2 OF ANY PROPERTY BY SUCH PERSON;

3 (b) REQUIRE THE ATTENDANCE OF OR THE PRODUCTION OF
4 DOCUMENTS BY SUCH PERSON, OR BOTH; OR

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

7 (8) **Injunctive authority - assurances of discontinuance.**

8 (a) WHENEVER THE ATTORNEY GENERAL HAS CAUSE TO BELIEVE THAT A
9 PERSON HAS ENGAGED IN OR IS ENGAGING IN A VIOLATION OF ANY OF THE
10 PROVISIONS LISTED IN SECTION 24-31-101 (1)(i)(IX) TO (1)(i)(XIV), THE
11 ATTORNEY GENERAL MAY APPLY FOR AND OBTAIN, IN AN ACTION IN THE
12 APPROPRIATE DISTRICT COURT OF THIS STATE, A TEMPORARY RESTRAINING
13 ORDER OR INJUNCTION, OR BOTH, PURSUANT TO THE COLORADO RULES OF
14 CIVIL PROCEDURE, PROHIBITING THE PERSON FROM CONTINUING OR
15 ENGAGING IN SUCH PRACTICES, OR DOING ANY ACT IN FURTHERANCE OF
16 SUCH PRACTICES. THE COURT MAY MAKE SUCH ORDERS OR JUDGMENTS AS
17 IS NECESSARY TO:

18 (I) PREVENT THE USE OR EMPLOYMENT BY SUCH PERSON OF ANY
19 SUCH PRACTICES;

20 (II) COMPLETELY COMPENSATE OR RESTORE THE ORIGINAL
21 POSITION OF ANY PERSON INJURED BY MEANS OF ANY SUCH PRACTICE; OR

22 (III) PREVENT ANY UNJUST ENRICHMENT BY ANY PERSON
23 THROUGH THE USE OR EMPLOYMENT OF ANY PRACTICE THAT IS IN
24 VIOLATION OF ANY OF THE PROVISIONS LISTED IN SECTION 24-31-101
25 (1)(i)(IX) TO (1)(i)(XIV).

26 (b) WHERE THE ATTORNEY GENERAL HAS AUTHORITY TO
27 INSTITUTE A CIVIL ACTION OR OTHER PROCEEDING PURSUANT TO THE
28 PROVISIONS OF THIS ARTICLE, THE ATTORNEY GENERAL MAY ACCEPT, IN
29 LIEU THEREOF OR AS A PART THEREOF, AN ASSURANCE OF
30 DISCONTINUANCE OF ANY PRACTICE THAT CONSTITUTES A VIOLATION OF
31 ANY OF THE PROVISIONS THAT ARE LISTED IN SECTION 24-31-101 (1)(i)(IX)
32 TO (1)(i)(XIV). ANY SUCH ASSURANCE OF DISCONTINUANCE MAY INCLUDE
33 A STIPULATION FOR THE VOLUNTARY PAYMENT BY THE ALLEGED
34 VIOLATOR OF THE COSTS OF INVESTIGATION AND THE COSTS OF ANY
35 ACTION OR PROCEEDING BY THE ATTORNEY GENERAL OR A DISTRICT
36 ATTORNEY AND ANY AMOUNT NECESSARY TO RESTORE TO ANY PERSON
37 ANY MONEY OR PROPERTY THAT MAY HAVE BEEN ACQUIRED BY THE
38 ALLEGED VIOLATOR BY MEANS OF A VIOLATION OF ANY OF THE
39 PROVISIONS THAT ARE LISTED IN SECTION 24-31-101 (1)(i)(IX) TO
40 (1)(i)(XIV). ANY SUCH ASSURANCE OR DISCONTINUANCE ACCEPTED BY
41 THE ATTORNEY GENERAL AND ANY SUCH STIPULATION FILED WITH THE
42 COURT AS A PART OF ANY SUCH ACTION OR PROCEEDING IS A MATTER OF
43 PUBLIC RECORD UNLESS THE ATTORNEY GENERAL DETERMINES, IN THE

1 ATTORNEY GENERAL'S SOLE DISCRETION, THAT THE ASSURANCE OF
2 DISCONTINUANCE AND ANY STIPULATION ARE CONFIDENTIAL TO THE
3 PARTIES TO THE ACTION OR PROCEEDING AND TO THE COURT AND ITS
4 EMPLOYEES. UPON THE FILING OF A CIVIL ACTION BY THE ATTORNEY
5 GENERAL ALLEGING THAT A CONFIDENTIAL ASSURANCE OF
6 DISCONTINUANCE OR STIPULATION ACCEPTED PURSUANT TO THIS
7 SUBSECTION (8)(b) HAS BEEN VIOLATED, THE ASSURANCE OF
8 DISCONTINUANCE OR STIPULATION IS DEEMED A PUBLIC RECORD AND OPEN
9 TO INSPECTION BY ANY PERSON. PROOF BY A PREPONDERANCE OF THE
10 EVIDENCE OF A VIOLATION OF ANY SUCH ASSURANCE OR STIPULATION
11 CONSTITUTES PRIMA FACIE EVIDENCE OF A DECEPTIVE TRADE PRACTICE
12 FOR THE PURPOSES OF ANY CIVIL ACTION OR PROCEEDING BROUGHT
13 THEREAFTER BY THE ATTORNEY GENERAL, WHETHER A NEW ACTION OR A
14 SUBSEQUENT MOTION OR PETITION IN ANY PENDING ACTION OR
15 PROCEEDING.

16 (9) **Penalties.** IN ORDER TO ENFORCE THE PROVISIONS OF THIS
17 ARTICLE 31, IN ADDITION TO ANY PENALTIES STATED IN THIS ARTICLE 31,
18 THE ATTORNEY GENERAL MAY SEEK ANY OF THE PENALTIES OR OTHER
19 ENFORCEMENT MECHANISMS SPECIFIED IN THE "IMMIGRANT TENANT
20 PROTECTION ACT", PART 12 OF ARTICLE 12 OF TITLE 38; THE "MOBILE
21 HOME PARK ACT", PART 2 OF ARTICLE 12 OF TITLE 38; THE "MOBILE
22 HOME PARK ACT DISPUTE RESOLUTION AND ENFORCEMENT PROGRAM",
23 PART 11 OF ARTICLE 12 OF TITLE 38; PART 1 OF ARTICLE 12 OF TITLE 38;
24 PART 7 OF ARTICLE 12 OF TITLE 38; AND SECTION 38-12-904 (1)(b), ALONG
25 WITH COSTS TO ENFORCE THESE PROVISIONS.

26 (10) **Limitations.** ALL ACTIONS BROUGHT UNDER THIS ARTICLE 31
27 MUST BE COMMENCED WITHIN THREE YEARS AFTER THE DATE ON WHICH
28 A VIOLATION OCCURRED OR THE DATE ON WHICH THE LAST IN A SERIES OF
29 SUCH ACTS OR PRACTICES OCCURRED OR WITHIN THREE YEARS AFTER THE
30 CONSUMER DISCOVERED OR IN THE EXERCISE OF REASONABLE DILIGENCE
31 SHOULD HAVE DISCOVERED THE VIOLATION. THE PERIOD OF LIMITATION
32 PROVIDED IN THIS SECTION MAY BE EXTENDED FOR A PERIOD OF ONE YEAR
33 IF THE ATTORNEY GENERAL PROVES THAT FAILURE TO TIMELY COMMENCE
34 THE ACTION WAS CAUSED BY THE DEFENDANT ENGAGING IN CONDUCT
35 CALCULATED TO INDUCE THE ATTORNEY GENERAL TO REFRAIN FROM OR
36 POSTPONE THE COMMENCEMENT OF THE ACTION."

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