

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 16-0666.01 Ed DeCecco x4216

SENATE BILL 16-117

SENATE SPONSORSHIP

Sonnenberg,

HOUSE SPONSORSHIP

(None),

Senate Committees

Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING A LIMITATION ON A STATE AGENCY'S AUTHORITY TO**
102 **IMPOSE A FINE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

For purposes of the bill, a "discretionary fine" means a penalty in an amount set by a state agency that is capped in law at \$1,000 or more or that has no statutory cap. A state agency is prohibited from imposing a discretionary fine unless:

- ! The state agency provides written notice of the violation of the state law or rule to the violator; and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

! The violator fails to cure the violation on or before the 20th business day after receipt of the written notice of the violation.

The bill also establishes a maximum amount of a discretionary fine, notwithstanding any specific provision of law to the contrary. But this maximum only applies if a violator provides the state agency with the requested information that allows the state agency to determine the maximum amount.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 79.3 to
3 title 24 as follows:

4 **ARTICLE 79.3**

5 **Fines Imposed by State Agencies - Limitations**

6 **24-79.3-101. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
7 CONTEXT OTHERWISE REQUIRES:

8 (1) "DESIGNATED FINE" MEANS A PENALTY THAT IS:

9 (a) IMPOSED BY A STATE AGENCY ON A NATURAL PERSON,
10 BUSINESS ENTITY, OR POLITICAL SUBDIVISION FOR A VIOLATION OF A STATE
11 STATUTE OR A STATE AGENCY RULE;

12 (b) AT LEAST ONE THOUSAND DOLLARS PER VIOLATION OR IN
13 TOTAL FOR RELATED VIOLATIONS; AND

14 (c) NOT A CRIMINAL PENALTY.

15 (2) "STATE AGENCY" MEANS ANY BOARD, BUREAU, COMMISSION,
16 DEPARTMENT, INSTITUTION, DIVISION, SECTION, OR OFFICER OF THE STATE
17 IN THE EXECUTIVE BRANCH.

18 **24-79.3-102. State agencies - fines - limitations.** (1) A STATE
19 AGENCY SHALL NOT IMPOSE A DESIGNATED FINE, UNLESS:

20 (a) THE STATE AGENCY PROVIDES WRITTEN NOTICE OF THE
21 VIOLATION OF THE STATE LAW OR RULE TO THE VIOLATOR; AND

1 (b) THE VIOLATOR FAILS TO CURE THE VIOLATION ON OR BEFORE
2 THE THIRTIETH CALENDAR DAY AFTER THE STATE AGENCY MAILS THE
3 WRITTEN NOTICE OF THE VIOLATION.

4 (2) (a) EXCEPT AS SET FORTH IN PARAGRAPH (c) OF THIS
5 SUBSECTION (2), AND NOTWITHSTANDING ANY SPECIFIC PROVISION OF LAW
6 TO THE CONTRARY, A STATE AGENCY SHALL NOT IMPOSE A DESIGNATED
7 FINE THAT EXCEEDS:

8 (I) FOR A NATURAL PERSON, TEN PERCENT OF THE TAXABLE
9 INCOME REPORTED ON HIS OR HER LAST STATE INCOME TAX RETURN,
10 REGARDLESS OF WHETHER IT IS A SINGLE OR JOINT RETURN;

11 (II) FOR A BUSINESS ENTITY, TEN PERCENT OF THE OPERATING
12 REVENUE REPORTED ON ITS INCOME STATEMENT FOR THE LAST FISCAL
13 YEAR; OR

14 (III) FOR A POLITICAL SUBDIVISION, FIVE PERCENT OF ITS TAX
15 REVENUE FOR THE PRIOR FISCAL YEAR.

16 (b) THE MAXIMUM DESIGNATED FINE ALLOWED UNDER PARAGRAPH
17 (a) OF THIS SUBSECTION (2) DOES NOT INCLUDE ANY DELINQUENCY
18 CHARGES.

19 (c) IF A VIOLATION HAS NOT BEEN CURED DURING THE PERIOD SET
20 FORTH IN PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, A STATE
21 AGENCY MAY REQUEST A VIOLATOR TO PROVIDE INFORMATION TO ALLOW
22 THE STATE AGENCY TO DETERMINE THE MAXIMUM ALLOWABLE FINE
23 UNDER PARAGRAPH (a) OF THIS SUBSECTION (2). FOR THE LIMIT TO APPLY,
24 THE VIOLATOR MUST PROVIDE THE STATE AGENCY WITH THE REQUESTED
25 INFORMATION ON OR BEFORE THE THIRTIETH CALENDAR DAY AFTER THE
26 STATE AGENCY MAILS THE REQUEST. IF THE VIOLATOR FAILS TO PROVIDE
27 THE REQUESTED INFORMATION, THEN PARAGRAPH (a) OF THIS SUBSECTION

1 (2) DOES NOT APPLY.

2 **SECTION 2. Act subject to petition - effective date.** This act
3 takes effect at 12:01 a.m. on the day following the expiration of the
4 ninety-day period after final adjournment of the general assembly (August
5 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
6 referendum petition is filed pursuant to section 1 (3) of article V of the
7 state constitution against this act or an item, section, or part of this act
8 within such period, then the act, item, section, or part will not take effect
9 unless approved by the people at the general election to be held in
10 November 2016 and, in such case, will take effect on the date of the
11 official declaration of the vote thereon by the governor.