

**First Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO**

**PREAMENDED**

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

LLS NO. 19-1043.01 Yelana Love x2295

**HOUSE BILL 19-1289**

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**HOUSE SPONSORSHIP**

**Weissman,** Arndt, Buentello, Cutter, Duran, Esgar, Exum, Froelich, Galindo, Gonzales-Gutierrez, Hooton, Jackson, Jaquez Lewis, Kennedy, Kipp, Lontine, Michaelson Jenet, Roberts, Sirota, Snyder, Sullivan, Tipper, Titone, Valdez A.

**SENATE SPONSORSHIP**

**Foote,**

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**House Committees**  
Judiciary

**Senate Committees**  
Judiciary

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**A BILL FOR AN ACT**

101      **CONCERNING THE CREATION OF ADDITIONAL PROTECTIONS IN THE**  
102            **COLORADO CONSUMER CODE, AND, IN CONNECTION**  
103            **THEREWITH, ENABLING ENFORCEMENT OF THE "COLORADO**  
104            **CONSUMER PROTECTION ACT" FOR RECKLESS ACTS.**

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**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://leg.colorado.gov>.)*

The bill:

!        Adds "recklessly" as a culpable mental state for certain violations of the "Colorado Consumer Protection Act"

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

HOUSE  
3rd Reading Unamended  
April 16, 2019

HOUSE  
Amended 2nd Reading  
April 12, 2019

- (Act) so that a person violates certain provisions of the Act by acting knowingly or recklessly;
- ! Increases the potential penalty for a violation of the Act brought by the attorney general or a district attorney from \$2,000 to \$20,000 per violation and from \$10,000 to \$50,000 per violation committed against an elderly person;
  - ! Specifies the calculation of potential damage awards in a private civil action for violations of the Act; and
  - ! Specifies certain terms that are prohibited in standard form contracts.

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

2           **SECTION 1.** In Colorado Revised Statutes, 6-1-105, **amend**  
3 (1)(a), (1)(b), (1)(c), (1)(e), (1)(o), (1)(ll), (1)(hhh), and (1)(iii); and **add**  
4 (1)(kkk), (4), and (5) as follows:

5           **6-1-105. Unfair or deceptive trade practices - definition.** (1) A  
6 person engages in a deceptive trade practice when, in the course of the  
7 person's business, vocation, or occupation, the person:

8           (a) EITHER knowingly OR RECKLESSLY passes off goods, services,  
9 or property as those of another;

10           (b) EITHER knowingly OR RECKLESSLY makes a false  
11 representation as to the source, sponsorship, approval, or certification of  
12 goods, services, or property;

13           (c) EITHER knowingly OR RECKLESSLY makes a false  
14 representation as to affiliation, connection, or association with or  
15 certification by another;

16           (e) EITHER knowingly OR RECKLESSLY makes a false  
17 representation as to the characteristics, ingredients, uses, benefits,  
18 alterations, or quantities of goods, food, services, or property or a false  
19 representation as to the sponsorship, approval, status, affiliation, or  
20 connection of a person therewith;

1 (o) EITHER knowingly OR RECKLESSLY fails to identify  
2 flood-damaged or water-damaged goods as to such damages;

3 (ll) EITHER knowingly OR RECKLESSLY makes a false  
4 representation as to the results of a radon test or the need for radon  
5 mitigation;

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

10 (iii) EITHER knowingly OR RECKLESSLY enters into, or attempts to  
11 enforce, an agreement regarding the recovery of an overbid on foreclosed  
12 property if the agreement concerns the recovery of funds in the possession  
13 of:

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

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

18 (kkk) EITHER KNOWINGLY OR RECKLESSLY ENGAGES IN ANY  
19 UNFAIR, UNCONSCIONABLE, DECEPTIVE, DELIBERATELY MISLEADING,  
20 FALSE, OR FRAUDULENT ACT OR PRACTICE.

21 (4) AN ACTION UNDER THIS ARTICLE 1 DOES NOT REQUIRE PROOF  
22 THAT A DECEPTIVE TRADE PRACTICE HAS A SIGNIFICANT PUBLIC IMPACT.

23 (5) FOR PURPOSES OF THIS SECTION, "RECKLESSLY" MEANS A  
24 RECKLESS DISREGARD FOR THE TRUTH OR FALSITY OF A STATEMENT OR  
25 ADVERTISEMENT.

26 **SECTION 2.** In Colorado Revised Statutes, 6-1-112, **amend**  
27 (1)(a) and (1)(c); and **add** (2) as follows:

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

4           (a) Any person who violates or causes another to violate any  
5 provision of this ~~article~~ ARTICLE 1 shall forfeit and pay to the general fund  
6 of this state a civil penalty of not more than ~~two~~ TWENTY thousand dollars  
7 for each such violation. For purposes of this ~~paragraph (a)~~ SUBSECTION  
8 (1)(a), a violation of any provision shall constitute a separate violation  
9 with respect to each consumer or transaction involved. ~~except that the~~  
10 ~~maximum civil penalty shall not exceed five hundred thousand dollars for~~  
11 ~~any related series of violations.~~

12           (c) Any person who violates or causes another to violate any  
13 provision of this ~~article~~ ARTICLE 1, where such violation was committed  
14 against an elderly person, shall forfeit and pay to the general fund of the  
15 state a civil penalty of not more than ~~ten~~ FIFTY thousand dollars for each  
16 such violation. For purposes of this ~~paragraph (c)~~ SUBSECTION (1)(c), a  
17 violation of any provision of this ~~article shall constitute~~ ARTICLE 1 IS a  
18 separate violation with respect to each elderly person involved.

19           (2) ~~FOR ACCOUNTING PURPOSES, A~~ FINE OR PENALTY RECEIVED  
20 BY THE STATE UNDER THIS ARTICLE 1 IS A DAMAGE AWARD.

21           **SECTION 3.** In Colorado Revised Statutes, 6-1-113, **amend** (2)  
22 introductory portion and (2)(a)(I) as follows:

23           **6-1-113. Damages.** (2) Except in a class action or a case brought  
24 for a violation of section 6-1-709, AND NOTWITHSTANDING ANY OTHER  
25 LAW, any person who, in a private civil action, is found to have engaged  
26 in or caused another to engage in any deceptive trade practice listed in  
27 this ~~article shall be~~ ARTICLE 1 IS liable in an amount equal to the sum of:

1           (a) The greater of:  
2           (I) The amount of actual damages sustained, INCLUDING  
3 PREJUDGMENT INTEREST OF EITHER EIGHT PERCENT PER YEAR OR AT THE  
4 RATE PROVIDED IN SECTION 13-21-101, WHICHEVER IS GREATER, FROM  
5 THE DATE THE CLAIM UNDER THIS ARTICLE 1 ACCRUED; or

6           ■ ■ ■

7           **SECTION 4. Applicability.** Sections 1 and 2 of this act apply to  
8 civil actions filed on or after the effective date of this act. Section 3 of  
9 this act applies to judgments entered into on or after the effective date of  
10 this act.

11           **SECTION 5. Safety clause.** The general assembly hereby finds,  
12 determines, and declares that this act is necessary for the immediate  
13 preservation of the public peace, health, and safety.