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HOUSE BILL 23-1192

BY REPRESENTATIVE(S) Weissman, Amabile, Bacon, Boesenecker, Brown, deGruy Kennedy, Dickson, Duran, English, Epps, Garcia, Gonzales-Gutierrez, Hamrick, Herod, Jodeh, Kipp, Lindsay, Mabrey, Mauro, McCormick, Michaelson Jenet, Parenti, Sharbini, Sirota, Story, Titone, Vigil, Woodrow, Joseph, Lieder, McLachlan, McCluskie; also SENATOR(S) Gonzales and Rodriguez, Buckner, Coleman, Cutter, Exum, Hinrichsen, Jaquez Lewis, Kolker, Marchman, Priola, Sullivan, Winter F., Fenberg.

CONCERNING THE CREATION OF ADDITIONAL PROTECTIONS IN THE CONSUMER CODE.

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

SECTION 1. In Colorado Revised Statutes, 6-1-730, **amend** (5)(f) as follows:

6-1-730. Price gouging during declared disaster prohibited - deceptive trade practice - legislative declaration - definitions. (5) As used in this section:

(f) "Disaster period" means the date a disaster declaration begins

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

and continuing for one hundred eighty days after the date THAT the FINAL disaster declaration ~~begins~~ CONCERNING THE DISASTER EXPIRES.

SECTION 2. In Colorado Revised Statutes, **repeal and reenact, with amendments**, article 4 of title 6 as follows:

ARTICLE 4
Colorado State Antitrust Act of 2023

6-4-101. Short title. THE SHORT TITLE OF THIS ARTICLE 4 IS THE "COLORADO STATE ANTITRUST ACT OF 2023".

6-4-102. Legislative declaration. (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(a) COMPETITION IS FUNDAMENTAL TO:

(I) THE FREE MARKET SYSTEM; AND

(II) A HEALTHY MARKETPLACE THAT PROTECTS WORKERS AND CONSUMERS; AND

(b) THE UNRESTRAINED AND FAIR 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 THAT IS CONDUCIVE TO THE PRESERVATION OF OUR DEMOCRATIC, POLITICAL, AND SOCIAL INSTITUTIONS AND TO THE PROTECTION OF CONSUMERS.

6-4-103. Definitions. AS USED IN THIS ARTICLE 4, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "COMMODITY" INCLUDES ANY OF THE FOLLOWING FOR USE, CONSUMPTION, PRODUCTION, ENJOYMENT, OR RESALE:

(a) GOODS;

(b) MERCHANDISE;

- (c) WARES;
- (d) PRODUCE;
- (e) CHOSE IN ACTION;
- (f) LAND;
- (g) ARTICLES OF COMMERCE; OR
- (h) ANY OTHER TANGIBLE OR INTANGIBLE PROPERTY, INCLUDING REAL, PERSONAL, OR MIXED PROPERTY.

(2) "GOVERNMENTAL OR PUBLIC ENTITY" MEANS:

(a) THE STATE OR ANY DEPARTMENT, BOARD, AGENCY, INSTRUMENTALITY, AUTHORITY, OR COMMISSION OF THE STATE; AND

(b) ANY POLITICAL SUBDIVISION OF THE STATE, INCLUDING:

(I) A COUNTY, CITY, OR CITY AND COUNTY;

(II) A SCHOOL DISTRICT AS DEFINED IN SECTION 22-36-107 (2)(c);

(III) A LOCAL IMPROVEMENT DISTRICT AS DEFINED IN SECTION 32-7-103 (7);

(IV) A LAW ENFORCEMENT AUTHORITY;

(V) A WATER, SANITATION, FIRE PROTECTION, METROPOLITAN, IRRIGATION, DRAINAGE, OR OTHER SPECIAL DISTRICT CREATED PURSUANT TO TITLE 32;

(VI) ANY OTHER MUNICIPAL, QUASI-MUNICIPAL, OR PUBLIC CORPORATION ORGANIZED PURSUANT TO THE STATE CONSTITUTION OR OTHER LAW; AND

(VII) ANY DEPARTMENT, BOARD, AGENCY, INSTRUMENTALITY, AUTHORITY, OR COMMISSION OF A POLITICAL SUBDIVISION OF THE STATE.

(3) "PERSON" INCLUDES AN INDIVIDUAL OR A FIRM, ASSOCIATION, ORGANIZATION, BUSINESS 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 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 THE STATE THAT INVOLVES OR RELATES TO ANY COMMODITY OR SERVICE.

6-4-104. Illegal restraint of trade or commerce. (1) ENTERING INTO OR ENGAGING IN ANY OF THE FOLLOWING IN RESTRAINT OF TRADE OR COMMERCE IS ILLEGAL:

(a) A CONTRACT;

(b) A COMBINATION IN THE FORM OF A TRUST OR OTHER FORM OF COMBINATION; OR

(c) A CONSPIRACY.

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.

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 CONSTITUTES A SEPARATE VIOLATION OF THIS SECTION, REGARDLESS OF WHETHER A SINGLE CONSPIRACY IS FOUND TO EXIST ENCOMPASSING MORE THAN ONE SUCH VIOLATION.

6-4-107. Mergers - acquisitions. (1) IT IS ILLEGAL FOR ANY PERSON ENGAGED IN TRADE OR COMMERCE TO ACQUIRE, DIRECTLY OR INDIRECTLY,

THE WHOLE OR ANY PART OF THE STOCK, OTHER SHARE CAPITAL, OR ASSETS OF ANOTHER PERSON ENGAGED IN TRADE OR COMMERCE IF THE EFFECT OF THE ACQUISITION MAY SUBSTANTIALLY LESSEN COMPETITION OR TEND TO CREATE A MONOPOLY.

(2) NOTHING IN THIS SECTION PROHIBITS ANY PERSON FROM:

(a) ACQUIRING STOCK OF ANOTHER PERSON SOLELY FOR INVESTMENT PURPOSES, SO LONG AS THE ACQUISITION OF STOCK IS NOT USED, BY VOTING OR OTHERWISE, TO BRING ABOUT OR TO ATTEMPT TO BRING ABOUT THE SUBSTANTIAL LESSENING OF COMPETITION; OR

(b) CAUSING THE FORMATION OF SUBSIDIARY CORPORATIONS OR FROM OWNING AND HOLDING ALL OR ANY PART OF THE STOCK OF A SUBSIDIARY CORPORATION.

(3) 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 FEDERAL BANKING LAWS.

6-4-108. Facilitating or aiding and abetting. (1) IT IS UNLAWFUL TO FACILITATE OR AID AND ABET ANOTHER PERSON IN VIOLATING THIS ARTICLE 4.

(2) EACH SEPARATE INSTANCE OF FACILITATING OR AIDING AND ABETTING ANOTHER PERSON IN VIOLATING THIS ARTICLE 4 IS A SEPARATE VIOLATION OF THIS ARTICLE 4.

6-4-109. Exemptions. (1) THE LABOR OF AN INDIVIDUAL IS NOT A COMMODITY, A SERVICE, OR AN ARTICLE OF TRADE OR COMMERCE.

(2) NOTHING IN THIS ARTICLE 4 SHALL BE CONSTRUED TO:

(a) FORBID THE EXISTENCE AND OPERATION OF A LABOR, AGRICULTURAL, OR HORTICULTURAL ORGANIZATION THAT:

(I) IS INSTITUTED FOR THE PURPOSE OF PROVIDING MUTUAL HELP OR IS ENGAGED IN MAKING COLLECTIVE SALES OR MARKETING FOR ITS MEMBERS

OR SHAREHOLDERS;

(II) DOES NOT HAVE CAPITAL STOCK; AND

(III) IS NOT BEING CONDUCTED FOR PROFIT; OR

(b) FORBID OR RESTRAIN INDIVIDUAL MEMBERS OF A LABOR, AGRICULTURAL, OR HORTICULTURAL ORGANIZATION FROM LAWFULLY CARRYING OUT THE LEGITIMATE OBJECTIVES OF THE ORGANIZATION.

(3) A PROFESSIONAL REVIEW COMMITTEE CONSTITUTED AND CONDUCTING ITS REVIEWS AND ACTIVITIES IN ACCORDANCE WITH THE PROVISIONS OF PART 2 OF ARTICLE 30 OF TITLE 12, OR THE MEMBERS OF THE PROFESSIONAL REVIEW COMMITTEE, SHALL NOT BE HELD OR CONSTRUED TO BE AN ILLEGAL COMBINATION OR CONSPIRACY IN RESTRAINT OF TRADE UNDER THIS ARTICLE 4.

(4) ANY PERSON, ACTIVITY, OR CONDUCT EXEMPT OR IMMUNE UNDER THE LAWS OF THIS STATE OR EXEMPT OR IMMUNE FROM THE FEDERAL ANTITRUST LAWS IS EXEMPT OR IMMUNE FROM THIS ARTICLE 4 WITHOUT REGARD TO ANY MONETARY THRESHOLD IMPOSED BY FEDERAL LAW; EXCEPT THAT NOTHING IN THIS ARTICLE 4 SHALL BE DEEMED TO MODIFY THE SPECIFIC PROVISIONS OF PART 4 OF ARTICLE 4 OF TITLE 10.

(5) NOTHING IN THIS ARTICLE 4 PROHIBITS OR SHALL BE CONSTRUED TO PROHIBIT THE FORMATION AND OPERATION OF:

(a) HEALTH-CARE COVERAGE COOPERATIVES PURSUANT TO PART 10 OF ARTICLE 16 OF TITLE 10; OR

(b) PROVIDER NETWORKS PURSUANT TO PART 3 OF ARTICLE 18 OF THIS TITLE 6.

6-4-110. Jurisdiction - venue. (1) PRIMARY JURISDICTION OF ANY CAUSE OF ACTION BROUGHT PURSUANT TO THIS ARTICLE 4 IS VESTED IN THE DISTRICT COURTS OF THIS STATE.

(2) ANY CAUSE OF ACTION BROUGHT PURSUANT TO THIS ARTICLE 4 MAY BE BROUGHT IN ANY JUDICIAL DISTRICT IN WHICH THE ALLEGED VIOLATION OCCURRED, ANY INJURY WAS ALLEGEDLY SUFFERED, OR ANY

DEFENDANT RESIDES.

6-4-111. Civil discovery request - rules. (1) WHEN THE ATTORNEY GENERAL HAS REASONABLE CAUSE TO BELIEVE THAT ANY PERSON HAS ENGAGED IN, IS ENGAGING IN, OR MAY HAVE INFORMATION RELATED TO A VIOLATION OF THIS ARTICLE 4 OR OF ANY PROVISION OF THE FEDERAL ANTITRUST STATUTES THAT MAY BE ENFORCED BY THE ATTORNEY GENERAL, THE ATTORNEY GENERAL MAY:

(a) REQUEST THE PERSON, UNDER OATH OR OTHERWISE AND ON FORMS PRESCRIBED BY THE ATTORNEY GENERAL, TO FILE A STATEMENT OR REPORT IN WRITING, OR TO ANSWER IN WRITING, ANY QUESTIONS PROPOUNDED BY THE ATTORNEY GENERAL AS TO ALL FACTS AND CIRCUMSTANCES REASONABLY RELATED TO THE ALLEGED OR POTENTIAL VIOLATION AND TO PROVIDE ANY OTHER DATA AND INFORMATION THE ATTORNEY GENERAL REASONABLY DEEMS 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 FORMS AND ADOPT RULES AS MAY REASONABLY BE DEEMED NECESSARY TO ADMINISTER THIS SECTION; AND

(c) MAKE TRUE COPIES, AT THE EXPENSE OF THE ATTORNEY GENERAL, OF ANY DOCUMENTS EXAMINED PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION, WHICH COPIES MAY BE OFFERED INTO EVIDENCE IN LIEU OF THE ORIGINALS IN ANY CIVIL ACTION BROUGHT PURSUANT TO THIS ARTICLE 4. 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 MUST 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, IS NOT 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 TO PRODUCE OR OBTAIN THE FACTS, INFORMATION, OR EVIDENCE, FROM PRODUCING OR OBTAINING THE SAME OR SIMILAR FACTS, INFORMATION, OR EVIDENCE FOR USE IN ANY CRIMINAL PROSECUTION.

(4) NOTHING IN THIS SECTION PROHIBITS THE ATTORNEY GENERAL FROM DISCLOSING INFORMATION OBTAINED PURSUANT TO THIS SECTION TO ANY OTHER LAW ENFORCEMENT AGENCY, DEPARTMENT OF ANY GOVERNMENTAL OR PUBLIC ENTITY OF THIS OR ANY OTHER STATE, OR THE FEDERAL GOVERNMENT IF SUCH OTHER LAW ENFORCEMENT AGENCY OR DEPARTMENT EXECUTES AN AGREEMENT THAT THE 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 MUST 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 4. IF THE COURT IS SATISFIED THAT REASONABLE CAUSE EXISTS, THE COURT MAY:

(a) REQUIRE THE ATTENDANCE OF, OR THE PRODUCTION OF DOCUMENTS BY, THE PERSON, OR BOTH;

(b) ASSESS A CIVIL PENALTY OF UP TO FIVE THOUSAND DOLLARS FOR THE FAILURE TO APPEAR AND ANSWER QUESTIONS, WRITTEN OR OTHERWISE, OR THE 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 THE PERSON.

(6) (a) THE ATTORNEY GENERAL MAY DEEM ANY INVESTIGATIVE RECORDS OR RECORDS REGARDING INTELLIGENCE INFORMATION OBTAINED UNDER THIS ARTICLE 4 PUBLIC RECORDS SUBJECT TO PUBLIC INSPECTION PURSUANT TO PART 2 OF ARTICLE 72 OF TITLE 24.

(b) NOTHING IN THIS SUBSECTION (6) SHALL BE CONSTRUED TO PREVENT OR LIMIT THE ATTORNEY GENERAL'S AUTHORITY TO ISSUE PUBLIC STATEMENTS DESCRIBING OR WARNING OF ANY COURSE OF CONDUCT OR CONSPIRACY THAT VIOLATES THIS ARTICLE 4, WHETHER THE PUBLIC STATEMENTS ARE MADE ON A LOCAL, STATEWIDE, REGIONAL, OR NATIONWIDE BASIS.

6-4-112. Enforcement by the attorney general. (1) THE ATTORNEY GENERAL MAY INSTITUTE ACTIONS OR PROCEEDINGS TO PREVENT OR RESTRAIN VIOLATIONS OF THIS ARTICLE 4, INCLUDING ACTIONS TO PREVENT OR RESTRAIN UNFAIR METHODS OF COMPETITION IN OR AFFECTING COMMERCE.

(2) THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION ON BEHALF OF THE STATE OR ANY GOVERNMENTAL OR PUBLIC ENTITY INJURED, EITHER DIRECTLY OR INDIRECTLY, IN ITS BUSINESS OR PROPERTY BY REASON OF ANY VIOLATION OF THIS ARTICLE 4 AND, IF SUCCESSFUL, SHALL RECOVER ANY ACTUAL DAMAGES SUSTAINED BY THE ENTITY. IF THE VIOLATION ALLEGED AND PROVED IS DETERMINED BY THE COURT TO BE A PER SE VIOLATION OF THIS ARTICLE 4, THE ATTORNEY GENERAL, ON BEHALF OF THE ENTITY, MAY RECOVER THREE TIMES THE ACTUAL DAMAGES THAT THE ENTITY SUSTAINS.

(3) (a) THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION AS *PARENS PATRIAE* ON BEHALF OF ANY INDIVIDUAL RESIDING WITHIN THE STATE WHO IS INJURED, EITHER DIRECTLY OR INDIRECTLY, IN THE INDIVIDUAL'S

BUSINESS OR PROPERTY BY REASON OF ANY VIOLATION OF THIS ARTICLE 4 AND, IF SUCCESSFUL, SHALL RECOVER ANY ACTUAL DAMAGES SUSTAINED BY THE INDIVIDUAL. IF THE VIOLATION ALLEGED AND PROVED IS DETERMINED BY THE COURT TO BE A PER SE VIOLATION OF THIS ARTICLE 4, THE ATTORNEY GENERAL, ON BEHALF OF THE INDIVIDUAL, MAY RECOVER THREE TIMES THE ACTUAL DAMAGES THAT THE INDIVIDUAL SUSTAINS.

(b) 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 ANY REFUND TO *PARENS* GROUP MEMBERS PRACTICABLE. IN THAT EVENT, THE COURT MAY DIRECT THE 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 ADDITION TO ANY OTHER REMEDIES PROVIDED IN THIS ARTICLE 4, THE ATTORNEY GENERAL MAY REQUEST, AND A COURT MAY MAKE, ORDERS OR JUDGMENTS AS MAY BE NECESSARY TO:

(a) FULLY COMPENSATE OR MAKE WHOLE ANY PERSON INJURED, EITHER DIRECTLY OR INDIRECTLY, BY MEANS OF ANY RESTRAINT OF TRADE IN VIOLATION OF THIS ARTICLE 4; OR

(b) PREVENT ANY UNJUST ENRICHMENT BY ANY PERSON THROUGH ANY RESTRAINT OF TRADE IN VIOLATION OF THIS ARTICLE 4.

(5) IN ANY ACTION BROUGHT PURSUANT TO THIS ARTICLE 4, THE ATTORNEY GENERAL, IF SUCCESSFUL, IS ENTITLED TO RECOVER THE COSTS OF INVESTIGATION, EXPERT FEES, COSTS OF THE ACTION, AND REASONABLE ATTORNEY FEES.

6-4-113. 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 4. THE COURT, UPON FINDING A VIOLATION OF THIS ARTICLE 4, SHALL IMPOSE A CIVIL PENALTY TO BE PAID TO THE GENERAL FUND OF THE STATE IN AN AMOUNT NOT TO EXCEED ONE MILLION DOLLARS FOR EACH SUCH VIOLATION.

(2) IN DETERMINING THE AMOUNT OF A CIVIL PENALTY, THE COURT

SHALL CONSIDER, AMONG OTHER THINGS:

- (a) THE NATURE AND EXTENT OF THE VIOLATION;
- (b) THE NUMBER OF CONSUMERS AFFECTED BY THE VIOLATION;
- (c) WHETHER THE VIOLATION WAS AN ISOLATED INCIDENT OR A CONTINUOUS PATTERN AND PRACTICE OF BEHAVIOR;
- (d) WHETHER THE VIOLATION WAS THE RESULT OF WILLFUL CONDUCT;
- (e) WHETHER THE DEFENDANT TOOK AFFIRMATIVE STEPS TO CONCEAL SUCH VIOLATIONS; AND
- (f) WHETHER, GIVEN THE SIZE AND WEALTH OF THE DEFENDANT, THE CIVIL PENALTY WILL BE AN EFFECTIVE DETERRENT AGAINST FUTURE VIOLATIONS.

6-4-114. Enforcement - injunction. (1) ANY PERSON INJURED, EITHER DIRECTLY OR INDIRECTLY, IN ITS BUSINESS OR PROPERTY BY REASON OF A VIOLATION OF THIS ARTICLE 4 MAY FILE AN ACTION TO PREVENT OR RESTRAIN THE 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.

6-4-115. Enforcement - civil damages. (1) ANY PERSON INJURED, EITHER DIRECTLY OR INDIRECTLY, IN ITS BUSINESS OR PROPERTY BY REASON OF ANY VIOLATION OF THIS ARTICLE 4 MAY SUE AND, IF SUCCESSFUL, IS ENTITLED TO RECOVER ANY ACTUAL DAMAGES THAT THE PERSON SUSTAINED. IF THE VIOLATION ALLEGED AND PROVED IS DETERMINED BY THE COURT TO BE A PER SE VIOLATION OF THIS ARTICLE 4, THE PERSON MAY RECOVER THREE TIMES THE ACTUAL DAMAGES THAT THE PERSON SUSTAINS.

(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) A GOVERNMENTAL OR PUBLIC ENTITY;

(b) ANY OFFICIAL, AGENT, OR EMPLOYEE OF A GOVERNMENTAL OR PUBLIC ENTITY ACTING IN AN OFFICIAL CAPACITY; OR

(c) ANY PERSON BASED ON ANY OFFICIAL ACTION DIRECTED BY A GOVERNMENTAL OR PUBLIC ENTITY.

6-4-116. Notice to the attorney general. ANY PERSON THAT FILES A CIVIL ACTION THAT INCLUDES ANY ALLEGATION OF A VIOLATION OF THIS ARTICLE 4 SHALL, SIMULTANEOUSLY WITH THE FILING OF THE ACTION IN DISTRICT COURT, SERVE A COPY OF THE COMPLAINT ON THE ATTORNEY GENERAL.

6-4-117. Computation of damages. IN ANY ACTION BROUGHT PURSUANT TO SECTION 6-4-112 OR 6-4-115, 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 REQUIRING SEPARATE PROOF OF ANY INDIVIDUAL CLAIM OF, OR AMOUNT OF DAMAGES TO, EACH PERSON ON WHOSE BEHALF THE ACTION WAS BROUGHT.

6-4-118. Enforcement - criminal proceedings. (1) THE ATTORNEY GENERAL SHALL PROSECUTE ALL CRIMINAL PROCEEDINGS FOR VIOLATIONS OF THIS ARTICLE 4, WHETHER BY INDICTMENT OR DIRECT INFORMATION FILED IN THE APPROPRIATE DISTRICT COURT.

(2) ANY INDIVIDUAL 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.

(3) ANY PERSON, OTHER THAN AN INDIVIDUAL OR 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 FIVE MILLION DOLLARS.

6-4-119. Statute of limitations. (1) ANY CIVIL ACTION COMMENCED PURSUANT TO THIS ARTICLE 4 MUST BE BROUGHT WITHIN FOUR YEARS AFTER THE DATE THAT THE CAUSE OF ACTION ACCRUED. FOR PURPOSES OF THIS ARTICLE 4, A CAUSE OF ACTION ACCRUES:

(a) WHEN THE CIRCUMSTANCES GIVING RISE TO THE CAUSE OF ACTION ARE DISCOVERED OR SHOULD HAVE BEEN DISCOVERED IN THE EXERCISE OF REASONABLE DILIGENCE; OR

(b) ON THE DATE THAT THE LAST IN A SERIES OF ACTS OR PRACTICES IN VIOLATION OF THIS ARTICLE 4 OCCURRED, INCLUDING ANY ACQUISITIONS OR SERIES OF ACQUISITIONS THAT, IN THE AGGREGATE, MAY CONSTITUTE A VIOLATION OF THIS ARTICLE 4.

(2) ANY CRIMINAL PROCEEDING BROUGHT PURSUANT TO THIS ARTICLE 4 MUST BE COMMENCED WITHIN SIX YEARS AFTER THE ALLEGED CRIMINAL ACT OCCURRED.

(3) IF THE ATTORNEY GENERAL COMMENCES A PROCEEDING OR ACTION FOR ANY VIOLATION OF THIS ARTICLE 4, THE RUNNING OF THE STATUTE OF LIMITATIONS WITH RESPECT TO EVERY CAUSE OF ACTION THAT IS BASED IN WHOLE OR IN PART ON ANY MATTER COMPLAINED OF IN THE PROCEEDING OR ACTION IS SUSPENDED DURING THE PENDENCY OF THE PROCEEDING OR ACTION AND FOR ONE YEAR AFTER THE CONCLUSION OF THE PROCEEDING OR ACTION.

(4) WHENEVER ANY CIVIL OR CRIMINAL PROCEEDING IS BROUGHT BY THE UNITED STATES TO PREVENT, RESTRAIN, OR PUNISH VIOLATIONS OF ANY FEDERAL ANTITRUST LAWS, THE RUNNING OF THE STATUTE OF LIMITATIONS WITH RESPECT TO ANY ACTION UNDER THIS ARTICLE 4 THAT IS BASED IN WHOLE OR IN PART ON ANY MATTER COMPLAINED OF IN THE FEDERAL PROCEEDING IS SUSPENDED DURING THE PENDENCY OF THE FEDERAL PROCEEDING AND FOR ONE YEAR AFTER THE CONCLUSION OF THE FEDERAL PROCEEDING.

(5) EXCEPT AS EXPRESSLY PROVIDED IN SUBSECTIONS (1) AND (2) OF THIS SECTION, NO OTHER LIMITATION TERMINATES THE PERIOD WITHIN WHICH THE ATTORNEY GENERAL MAY FILE AN ACTION FOR A VIOLATION OF THIS ARTICLE 4.

6-4-120. Remedies - cumulative. THE REMEDIES PROVIDED IN THIS ARTICLE 4 ARE CUMULATIVE EXCEPT AS OTHERWISE EXPRESSLY LIMITED.

6-4-121. Void contracts - refund. (1) ANY CONTRACT OR AGREEMENT THAT A PERSON MAKES WHILE A MEMBER OF ANY COMBINATION, CONSPIRACY, TRUST, OR POOL PROHIBITED UNDER THIS ARTICLE 4 THAT IS FOUNDED UPON, IS THE RESULT OF, GROWS OUT OF, OR IS CONNECTED WITH ANY VIOLATION OF THIS ARTICLE 4, EITHER DIRECTLY OR INDIRECTLY, IS VOID, AND THE PERSON MAY NOT RECOVER BASED ON OR BENEFIT FROM THE CONTRACT OR AGREEMENT.

(2) ANY PAYMENTS MADE UPON, UNDER, OR PURSUANT TO A CONTRACT OR AGREEMENT FOR THE BENEFIT OF A PERSON THAT IS A MEMBER OF ANY COMBINATION, CONSPIRACY, TRUST, OR POOL PROHIBITED UNDER THIS ARTICLE 4 MAY BE RECOVERED IN AN ACTION BROUGHT BY THE PARTY MAKING THE PAYMENTS OR BY THE PARTY'S HEIRS, PERSONAL REPRESENTATIVES, OR ASSIGNS.

6-4-122. Severability. IF ANY PROVISION OF THIS ARTICLE 4 OR THE APPLICATION OF THIS ARTICLE 4 TO ANY PERSON OR CIRCUMSTANCES IS HELD INVALID, THAT INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS ARTICLE 4 THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION.

SECTION 3. In Colorado Revised Statutes, 24-21-626, **amend** (1) as follows:

24-21-626. Unfair trade practices. (1) The provisions of the "Unfair Practices Act", article 2 of title 6, and the "Colorado STATE Antitrust Act of ~~1992~~ 2023", article 4 of title 6, are specifically applicable to charitable gaming activities conducted by any licensee. Within thirty days after receiving a complaint alleging a violation of either of ~~said~~ THE acts, the licensing authority shall transmit ~~such~~ THE complaint to the attorney general.

SECTION 4. In Colorado Revised Statutes, 24-31-101, **amend** (1)(i)(I) as follows:

24-31-101. Powers and duties of attorney general. (1) The attorney general:

(i) May independently initiate and bring civil and criminal actions to enforce state laws, including actions brought pursuant to:

(I) The "Colorado Antitrust Act of 1992" OR THE "COLORADO STATE ANTITRUST ACT OF 2023", article 4 of title 6;

SECTION 5. In Colorado Revised Statutes, **amend** 25-17-410 as follows:

25-17-410. Limited exemption from antitrust, restraint of trade, and unfair trade practices provisions. If a producer or group of producers participating in a paint stewardship program or a stewardship organization contracted by one or more producers to implement a paint stewardship program engages in an activity performed solely in furtherance of implementing the paint stewardship program and in compliance with the provisions of this part 4, the activity is not a violation of the antitrust, restraint of trade, and unfair trade practices provisions of the "Unfair Practices Act", article 2 of title 6, ~~C.R.S.~~, or the "Colorado STATE Antitrust Act of ~~1992~~ 2023", article 4 of title 6. ~~C.R.S.~~

SECTION 6. In Colorado Revised Statutes, **amend** 25-17-711 as follows:

25-17-711. Limited exemption from antitrust, restraint of trade, and unfair trade practices provisions. If the program or any other plan approved by the executive director pursuant to this part 7 engages in an activity performed solely in furtherance of implementing the program or plan and in compliance with this part 7, the activity is not a violation of the antitrust, restraint of trade, and unfair trade practices provisions of the "Unfair Practices Act", article 2 of title 6, or the "Colorado STATE Antitrust Act of ~~1992~~ 2023", article 4 of title 6.

SECTION 7. Applicability. This act applies to conduct occurring on or after the effective date of this act.

SECTION 8. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Steve Fenberg
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO