

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

PREAMENDED

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

LLS NO. 23-0462.01 Jennifer Berman x3286

HOUSE BILL 23-1192

HOUSE SPONSORSHIP

Weissman,

SENATE SPONSORSHIP

Gonzales and Rodriguez,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF ADDITIONAL PROTECTIONS IN THE**
102 **CONSUMER CODE.**

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>.)

Section 1 of the bill:

- Removes the knowingly or recklessly mental state from the general unfair or deceptive trade practice provision concerning an unfair, unconscionable, deceptive, deliberately misleading, false, or fraudulent act or practice;
- Establishes as a deceptive trade practice the act of

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

including in a contract offered to or entered into with a consumer a term that is substantially unconscionable or void as against public policy;

- Establishes that evidence that a person has engaged in an unfair or deceptive trade practice constitutes a significant impact to the public; and
- Amends the definition of "recklessly" with regard to unfair or deceptive trade practices to mean without regard to consequences or to the rights, interests, or safety of others.

Under current law, a person commits an unfair and unconscionable act or practice if the person engages in price gouging with regard to the sale or provision of certain goods or services during, and for a certain period after, a declared emergency disaster (disaster period). **Section 2** extends the disaster period from 180 days after the first declaration of the disaster to 180 days after the final declaration concerning the disaster expires.

Section 3 repeals and reenacts the "Colorado Antitrust Act of 1992" as the "Colorado State Antitrust Act of 2023" (act) and:

- Establishes that the facilitation or aiding and abetting of another person's violation of the act is itself a violation of the act;
- Authorizes the attorney general (AG) to request discovery from any person that the AG believes may in the future engage in, or has information related to, a violation of the act;
- Authorizes the AG to deem investigatory or intelligence records related to the act available for public inspection, but allows the AG to issue public statements or warnings regarding conduct forming the basis of the investigatory or intelligence records without waiving the AG's authority not to deem the records available for public inspection;
- Authorizes a court, upon request of the AG, to compensate a person that has been injured from a violation of the act as part of a civil action that the AG brings on behalf of the person;
- Increases the maximum civil penalty that a court may award for a violation of the act from \$250,000 to \$1,000,000 per violation; and
- With regard to the statute of limitations for commencing a civil action under the act:
 - Clarifies that a cause of action accrues on the date of the last in a series of acts or practices that, in the aggregate, constitute a violation of the act;
 - Tolls the statute of limitations for any civil action pertaining to an alleged violation of the act during

the pendency of a federal proceeding regarding the conduct forming the basis of the alleged violation of the act; and

- Exempts the AG from the statute of limitations.

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)(rrr), (2), and (4); and **add** (1)(uuu) as follows:

4 **6-1-105. Unfair or deceptive trade practices - definition.** (1) A
5 person engages in a deceptive trade practice when, in the course of the
6 person's business, vocation, or occupation, the person:

7 (rrr) ~~Either knowingly or recklessly~~ Engages in any unfair,
8 unconscionable, deceptive, deliberately misleading, **KNOWINGLY** false, or
9 fraudulent act or practice;

10 (uuu) INCLUDES IN A CONTRACT THAT THE PERSON OFFERS TO OR
11 ENTERS INTO WITH A CONSUMER A TERM THAT IS **SUBSTANTIVELY**
12 UNCONSCIONABLE OR VOID AS AGAINST PUBLIC POLICY.

13 (2) Evidence that a person has engaged in AN UNFAIR OR a
14 deceptive trade practice:

15 (a) ~~Shall be~~ IS prima facie evidence of intent to injure competitors
16 and to destroy or substantially lessen competition; AND

17 (b) IS SUFFICIENT TO ESTABLISH A SIGNIFICANT IMPACT TO THE
18 PUBLIC.

19 (4) ~~For purposes of~~ AS USED IN this section, "recklessly" means:

20 (a) A reckless disregard for the truth or falsity of a statement or
21 advertisement;

22 (b) THE FAILURE TO EXERCISE REASONABLE CARE TO ENSURE THAT
23 A STATEMENT, AN ADVERTISEMENT, OR CONDUCT IS TRUTHFUL AND

1 ACCURATE; OR

2 (c) THE FAILURE TO EXERCISE REASONABLE CARE TO AVOID A
3 SUBSTANTIAL AND UNJUSTIFIABLE RISK OF CONSUMER HARM.

4 SECTION 2. In Colorado Revised Statutes, 6-1-730, amend
5 (5)(f) as follows:

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

9 (f) "Disaster period" means the date a disaster declaration begins
10 and continuing for one hundred eighty days after the date THAT the FINAL
11 disaster declaration begins CONCERNING THE DISASTER EXPIRES.

12 SECTION 3. In Colorado Revised Statutes, repeal and reenact,
13 with amendments, article 4 of title 6 as follows:

14 ARTICLE 4

15 Colorado State Antitrust Act of 2023

16 6-4-101. Short title. THE SHORT TITLE OF THIS ARTICLE 4 IS THE
17 "COLORADO STATE ANTITRUST ACT OF 2023".

18 6-4-102. Legislative declaration. (1) THE GENERAL ASSEMBLY
19 FINDS AND DECLARES THAT:

20 (a) COMPETITION IS FUNDAMENTAL TO:

21 (I) THE FREE MARKET SYSTEM; AND

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

24 (b) THE UNRESTRAINED AND FAIR INTERACTION OF COMPETITIVE
25 FORCES WILL YIELD THE BEST ALLOCATION OF OUR ECONOMIC RESOURCES,
26 THE LOWEST PRICES, THE HIGHEST QUALITY COMMODITIES AND SERVICES,
27 AND THE GREATEST MATERIAL PROGRESS WHILE AT THE SAME TIME

1 PROVIDING AN ENVIRONMENT THAT IS CONDUCIVE TO THE PRESERVATION
2 OF OUR DEMOCRATIC, POLITICAL, AND SOCIAL INSTITUTIONS AND TO THE
3 PROTECTION OF CONSUMERS.

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

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

- 8 (a) GOODS;
- 9 (b) MERCHANDISE;
- 10 (c) WARES;
- 11 (d) PRODUCE;
- 12 (e) CHOSE IN ACTION;
- 13 (f) LAND;
- 14 (g) ARTICLES OF COMMERCE; OR
- 15 (h) ANY OTHER TANGIBLE OR INTANGIBLE PROPERTY, INCLUDING
16 REAL, PERSONAL, OR MIXED PROPERTY.

17 (2) "GOVERNMENTAL OR PUBLIC ENTITY" MEANS:

- 18 (a) THE STATE OR ANY DEPARTMENT, BOARD, AGENCY,
19 INSTRUMENTALITY, AUTHORITY, OR COMMISSION OF THE STATE; AND
- 20 (b) ANY POLITICAL SUBDIVISION OF THE STATE, INCLUDING:
 - 21 (I) A COUNTY, CITY, OR CITY AND COUNTY;
 - 22 (II) A SCHOOL DISTRICT AS DEFINED IN SECTION 22-36-107 (2)(c);
 - 23 (III) A LOCAL IMPROVEMENT DISTRICT AS DEFINED IN SECTION
24 32-7-103 (7);
 - 25 (IV) A LAW ENFORCEMENT AUTHORITY;
 - 26 (V) A WATER, SANITATION, FIRE PROTECTION, METROPOLITAN,
27 IRRIGATION, DRAINAGE, OR OTHER SPECIAL DISTRICT CREATED PURSUANT

1 TO TITLE 32;

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

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

7 (3) "PERSON" INCLUDES AN INDIVIDUAL OR A FIRM, ASSOCIATION,
8 ORGANIZATION, BUSINESS TRUST, COMPANY, CORPORATION, JOINT
9 VENTURE, PARTNERSHIP, PROPRIETORSHIP, OR OTHER BUSINESS ENTITY,
10 WHETHER OR NOT FOR PROFIT, AND ANY GOVERNMENTAL OR PUBLIC
11 ENTITY.

12 (4) "SERVICE" INCLUDES ANY KIND OF ACTIVITY PERFORMED IN
13 WHOLE OR IN PART FOR ECONOMIC OR NONECONOMIC BENEFIT.

14 (5) "TRADE OR COMMERCE" MEANS ANY AND ALL ECONOMIC
15 ACTIVITY CARRIED ON WHOLLY OR PARTIALLY IN THE STATE THAT
16 INVOLVES OR RELATES TO ANY COMMODITY OR SERVICE.

17 **6-4-104. Illegal restraint of trade or commerce.** (1) ENTERING
18 INTO OR ENGAGING IN ANY OF THE FOLLOWING IN RESTRAINT OF TRADE OR
19 COMMERCE IS ILLEGAL:

20 (a) A CONTRACT;

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

23 (c) A CONSPIRACY.

24 **6-4-105. Monopolization and attempt to monopolize.** IT IS
25 ILLEGAL FOR ANY PERSON TO MONOPOLIZE, ATTEMPT TO MONOPOLIZE, OR
26 COMBINE OR CONSPIRE WITH ANY OTHER PERSON TO MONOPOLIZE ANY
27 PART OF TRADE OR COMMERCE.

1 **6-4-106. Bid-rigging.** (1) IT IS ILLEGAL FOR ANY PERSON TO
2 CONTRACT, COMBINE, OR CONSPIRE WITH ANY PERSON TO RIG ANY BID, OR
3 ANY ASPECT OF THE BIDDING PROCESS, IN ANY WAY RELATED TO THE
4 PROVISION OF ANY COMMODITY OR SERVICE.

5 (2) FOR PURPOSES OF THIS SECTION, EACH SEPARATE INSTANCE OF
6 BID-RIGGING CONSTITUTES A SEPARATE VIOLATION OF THIS SECTION,
7 REGARDLESS OF WHETHER A SINGLE CONSPIRACY IS FOUND TO EXIST
8 ENCOMPASSING MORE THAN ONE SUCH VIOLATION.

9 **6-4-107. Mergers - acquisitions.** (1) IT IS ILLEGAL FOR ANY
10 PERSON ENGAGED IN TRADE OR COMMERCE TO ACQUIRE, DIRECTLY OR
11 INDIRECTLY, THE WHOLE OR ANY PART OF THE STOCK, OTHER SHARE
12 CAPITAL, OR ASSETS OF ANOTHER PERSON ENGAGED IN TRADE OR
13 COMMERCE IF THE EFFECT OF THE ACQUISITION MAY SUBSTANTIALLY
14 LESSEN COMPETITION OR TEND TO CREATE A MONOPOLY.

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

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

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

23 (3) THE ATTORNEY GENERAL SHALL NOT CHALLENGE THE MERGER
24 OR ACQUISITION OF ANY BANK OR BANK HOLDING COMPANY BY OR WITH
25 ANY OTHER BANK OR BANK HOLDING COMPANY THAT IS SUBJECT TO THE
26 PROVISIONS OF ANY OF THE FEDERAL BANKING LAWS, EXCEPT AS
27 SPECIFICALLY PROVIDED IN THOSE FEDERAL BANKING LAWS.

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

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

7 **6-4-109. Exemptions.** (1) THE LABOR OF AN INDIVIDUAL IS NOT
8 A COMMODITY, A SERVICE, OR AN ARTICLE OF TRADE OR COMMERCE.

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

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

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

15 (II) DOES NOT HAVE CAPITAL STOCK; AND

16 (III) IS NOT BEING CONDUCTED FOR PROFIT; OR

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

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

26 (4) ANY PERSON, ACTIVITY, OR CONDUCT EXEMPT OR IMMUNE
27 UNDER THE LAWS OF THIS STATE OR EXEMPT OR IMMUNE FROM THE

1 FEDERAL ANTITRUST LAWS IS EXEMPT OR IMMUNE FROM THIS ARTICLE 4
2 WITHOUT REGARD TO ANY MONETARY THRESHOLD IMPOSED BY FEDERAL
3 LAW; EXCEPT THAT NOTHING IN THIS ARTICLE 4 SHALL BE DEEMED TO
4 MODIFY THE SPECIFIC PROVISIONS OF PART 4 OF ARTICLE 4 OF TITLE 10.

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

7 (a) HEALTH-CARE COVERAGE COOPERATIVES PURSUANT TO PART
8 10 OF ARTICLE 16 OF TITLE 10; OR

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

11 **6-4-110. Jurisdiction - venue.** (1) PRIMARY JURISDICTION OF
12 ANY CAUSE OF ACTION BROUGHT PURSUANT TO THIS ARTICLE 4 IS VESTED
13 IN THE DISTRICT COURTS OF THIS STATE.

14 (2) ANY CAUSE OF ACTION BROUGHT PURSUANT TO THIS ARTICLE
15 4 MAY BE BROUGHT IN ANY JUDICIAL DISTRICT IN WHICH THE ALLEGED
16 VIOLATION OCCURRED, ANY INJURY WAS ALLEGEDLY SUFFERED, OR ANY
17 DEFENDANT RESIDES.

18 **6-4-111. Civil discovery request - rules.** (1) WHEN THE
19 ATTORNEY GENERAL HAS REASONABLE CAUSE TO BELIEVE THAT ANY
20 PERSON HAS ENGAGED IN, IS ENGAGING IN, OR MAY HAVE INFORMATION
21 RELATED TO A VIOLATION OF THIS ARTICLE 4 OR OF ANY PROVISION OF THE
22 FEDERAL ANTITRUST STATUTES THAT MAY BE ENFORCED BY THE
23 ATTORNEY GENERAL, THE ATTORNEY GENERAL MAY:

24 (a) REQUEST THE PERSON, UNDER OATH OR OTHERWISE AND ON
25 FORMS PRESCRIBED BY THE ATTORNEY GENERAL, TO FILE A STATEMENT OR
26 REPORT IN WRITING, OR TO ANSWER IN WRITING, ANY QUESTIONS
27 PROPOUNDED BY THE ATTORNEY GENERAL AS TO ALL FACTS AND

1 CIRCUMSTANCES REASONABLY RELATED TO THE ALLEGED OR POTENTIAL
2 VIOLATION AND TO PROVIDE ANY OTHER DATA AND INFORMATION THE
3 ATTORNEY GENERAL REASONABLY DEEMS NECESSARY;

4 (b) ISSUE SUBPOENAS TO REQUIRE THE ATTENDANCE OF WITNESSES
5 OR THE PRODUCTION OF RELEVANT DOCUMENTS, ADMINISTER OATHS,
6 CONDUCT HEARINGS IN AID OF AN INVESTIGATION OR INQUIRY, AND
7 PRESCRIBE FORMS AND ADOPT RULES AS MAY REASONABLY BE DEEMED
8 NECESSARY TO ADMINISTER THIS SECTION; AND

9 (c) MAKE TRUE COPIES, AT THE EXPENSE OF THE ATTORNEY
10 GENERAL, OF ANY DOCUMENTS EXAMINED PURSUANT TO SUBSECTION
11 (1)(b) OF THIS SECTION, WHICH COPIES MAY BE OFFERED INTO EVIDENCE
12 IN LIEU OF THE ORIGINALS IN ANY CIVIL ACTION BROUGHT PURSUANT TO
13 THIS ARTICLE 4. THE PERSON PRODUCING THE DOCUMENTS MAY REQUIRE
14 THAT THE ATTORNEY GENERAL MAKE COPIES OF THE DOCUMENTS. IF THE
15 ATTORNEY GENERAL DETERMINES THE USE OF ORIGINALS IS NECESSARY,
16 THE ATTORNEY GENERAL SHALL PAY TO HAVE COPIES OF THOSE
17 DOCUMENTS MADE FOR USE BY THE PERSON PRODUCING THE DOCUMENTS.

18 (2) SERVICE OF ANY REQUEST OR SUBPOENA MUST BE MADE IN THE
19 MANNER PRESCRIBED BY LAW.

20 (3) ANY WRITTEN RESPONSE, TESTIMONY, OR DOCUMENTS
21 OBTAINED BY THE ATTORNEY GENERAL PURSUANT TO THIS SECTION, OR
22 ANY INFORMATION DERIVED DIRECTLY OR INDIRECTLY FROM SUCH
23 WRITTEN RESPONSE, TESTIMONY, OR DOCUMENTS, IS NOT ADMISSIBLE IN
24 EVIDENCE IN ANY CRIMINAL PROSECUTION AGAINST THE PERSON
25 PROVIDING THE WRITTEN RESPONSE, TESTIMONY, OR DOCUMENTS. THE
26 PROVISIONS OF THIS SUBSECTION (3) SHALL NOT BE CONSTRUED TO
27 PREVENT ANY LAW ENFORCEMENT OFFICER, HAVING AN INDEPENDENT

1 BASIS TO PRODUCE OR OBTAIN THE FACTS, INFORMATION, OR EVIDENCE,
2 FROM PRODUCING OR OBTAINING THE SAME OR SIMILAR FACTS,
3 INFORMATION, OR EVIDENCE FOR USE IN ANY CRIMINAL PROSECUTION.

4 (4) NOTHING IN THIS SECTION PROHIBITS THE ATTORNEY GENERAL
5 FROM DISCLOSING INFORMATION OBTAINED PURSUANT TO THIS SECTION TO
6 ANY OTHER LAW ENFORCEMENT AGENCY, DEPARTMENT OF ANY
7 GOVERNMENTAL OR PUBLIC ENTITY OF THIS OR ANY OTHER STATE, OR THE
8 FEDERAL GOVERNMENT IF SUCH OTHER LAW ENFORCEMENT AGENCY OR
9 DEPARTMENT EXECUTES AN AGREEMENT THAT THE INFORMATION WILL
10 REMAIN CONFIDENTIAL AND WILL NOT BE USED IN ANY CRIMINAL
11 PROSECUTION AGAINST THE PERSON PROVIDING THE WRITTEN RESPONSE,
12 TESTIMONY, OR DOCUMENTS.

13 (5) IF ANY PERSON FAILS TO APPEAR OR FAILS TO COOPERATE WITH
14 ANY INVESTIGATION OR INQUIRY PURSUANT TO A REQUEST OR SUBPOENA
15 ISSUED PURSUANT TO THIS SECTION, THE ATTORNEY GENERAL MAY APPLY
16 TO ANY DISTRICT COURT FOR AN APPROPRIATE ORDER TO EFFECT THE
17 PURPOSES OF THIS SECTION. THE APPLICATION MUST STATE THAT THERE
18 IS REASONABLE CAUSE TO BELIEVE THAT THE ORDER APPLIED FOR IS
19 NECESSARY TO INVESTIGATE, PROSECUTE, OR TERMINATE A VIOLATION OF
20 THIS ARTICLE 4. IF THE COURT IS SATISFIED THAT REASONABLE CAUSE
21 EXISTS, THE COURT MAY:

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

24 (b) ASSESS A CIVIL PENALTY OF UP TO FIVE THOUSAND DOLLARS
25 FOR THE FAILURE TO APPEAR AND ANSWER QUESTIONS, WRITTEN OR
26 OTHERWISE, OR THE FAILURE TO PRODUCE DOCUMENTS, UNLESS THE
27 COURT FINDS THAT THE FAILURE TO APPEAR, TO ANSWER QUESTIONS, OR

1 TO PRODUCE DOCUMENTS WAS SUBSTANTIALLY JUSTIFIED OR THAT OTHER
2 CIRCUMSTANCES MAKE AN ASSESSMENT OF A CIVIL PENALTY UNJUST;

3 (c) AWARD THE ATTORNEY GENERAL REASONABLE COSTS AND
4 ATTORNEY FEES IN MAKING THIS APPLICATION, UNLESS THE COURT FINDS
5 THAT THE FAILURE TO APPEAR, TO ANSWER QUESTIONS, OR TO PRODUCE
6 DOCUMENTS WAS SUBSTANTIALLY JUSTIFIED OR THAT OTHER
7 CIRCUMSTANCES MAKE AN AWARD OF COSTS AND ATTORNEY FEES UNJUST;

8 (d) ENTER ANY PROTECTIVE ORDER AS PROVIDED FOR IN THE
9 COLORADO RULES OF CIVIL PROCEDURE; AND

10 (e) GRANT SUCH OTHER OR FURTHER RELIEF AS MAY BE
11 NECESSARY TO OBTAIN COMPLIANCE BY THE PERSON.

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

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

22 [REDACTED]

23 **6-4-112. Enforcement by the attorney general.** (1) THE
24 ATTORNEY GENERAL MAY INSTITUTE ACTIONS OR PROCEEDINGS TO
25 PREVENT OR RESTRAIN VIOLATIONS OF THIS ARTICLE 4, INCLUDING
26 ACTIONS TO PREVENT OR RESTRAIN UNFAIR METHODS OF COMPETITION IN
27 OR AFFECTING COMMERCE.

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

10 (3) (a) THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION AS
11 *PARENS PATRIAE* ON BEHALF OF ANY INDIVIDUAL RESIDING WITHIN THE
12 STATE WHO IS INJURED, EITHER DIRECTLY OR INDIRECTLY, IN THE
13 INDIVIDUAL'S BUSINESS OR PROPERTY BY REASON OF ANY VIOLATION OF
14 THIS ARTICLE 4 AND, IF SUCCESSFUL, SHALL RECOVER ANY ACTUAL
15 DAMAGES SUSTAINED BY THE INDIVIDUAL. IF THE VIOLATION ALLEGED
16 AND PROVED IS DETERMINED BY THE COURT TO BE A PER SE VIOLATION OF
17 THIS ARTICLE 4, THE ATTORNEY GENERAL, ON BEHALF OF THE INDIVIDUAL,
18 MAY RECOVER THREE TIMES THE ACTUAL DAMAGES THAT THE INDIVIDUAL
19 SUSTAINS.

20 (b) IN ANY *PARENS PATRIAE* ACTION IN WHICH ACTUAL OR TREBLE
21 DAMAGES ARE RECOVERED, THE COURT, IN ITS DISCRETION, MAY
22 DETERMINE THAT THE AMOUNT OF DAMAGES RECOVERED IS TOO SMALL TO
23 MAKE ANY REFUND TO *PARENS* GROUP MEMBERS PRACTICABLE. IN THAT
24 EVENT, THE COURT MAY DIRECT THE DAMAGES TO BE PAID TO THE
25 GENERAL FUND OF THE STATE OR TO SOME OTHER GOVERNMENTAL OR
26 PUBLIC ENTITY AS THE COURT DEEMS APPROPRIATE OR MAY REQUIRE THAT
27 DAMAGES BE PAID AS REBATES OR PRICE REDUCTIONS TO FUTURE

1 CONSUMERS.

2 (4) IN ADDITION TO ANY OTHER REMEDIES PROVIDED IN THIS
3 ARTICLE 4, THE ATTORNEY GENERAL MAY REQUEST, AND A COURT MAY
4 MAKE, ORDERS OR JUDGMENTS AS MAY BE NECESSARY TO:

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

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

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

14 **6-4-113. Civil penalties.** (1) THE ATTORNEY GENERAL MAY
15 BRING A CIVIL ACTION ON BEHALF OF THE STATE TO SEEK THE IMPOSITION
16 OF A CIVIL PENALTY FOR ANY VIOLATION OF THIS ARTICLE 4. THE COURT,
17 UPON FINDING A VIOLATION OF THIS ARTICLE 4, SHALL IMPOSE A CIVIL
18 PENALTY TO BE PAID TO THE GENERAL FUND OF THE STATE IN AN AMOUNT
19 NOT TO EXCEED ONE MILLION DOLLARS FOR EACH SUCH VIOLATION.

20 (2) IN DETERMINING THE AMOUNT OF A CIVIL PENALTY, THE COURT
21 SHALL CONSIDER, AMONG OTHER THINGS:

22 (a) THE NATURE AND EXTENT OF THE VIOLATION;

23 (b) THE NUMBER OF CONSUMERS AFFECTED BY THE VIOLATION;

24 (c) WHETHER THE VIOLATION WAS AN ISOLATED INCIDENT OR A
25 CONTINUOUS PATTERN AND PRACTICE OF BEHAVIOR;

26 (d) WHETHER THE VIOLATION WAS THE RESULT OF WILLFUL
27 CONDUCT;

1 (e) WHETHER THE DEFENDANT TOOK AFFIRMATIVE STEPS TO
2 CONCEAL SUCH VIOLATIONS; AND

3 (f) WHETHER, GIVEN THE SIZE AND WEALTH OF THE DEFENDANT,
4 THE CIVIL PENALTY WILL BE AN EFFECTIVE DETERRENT AGAINST FUTURE
5 VIOLATIONS.

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

10 (2) IN ANY ACTION BROUGHT PURSUANT TO THIS SECTION, THE
11 COURT, IN ITS DISCRETION, MAY AWARD THE PREVAILING PARTY ITS
12 EXPERT WITNESS FEES, THE COSTS OF THE ACTION, AND REASONABLE
13 ATTORNEY FEES.

14 **6-4-115. Enforcement - civil damages.** (1) ANY PERSON
15 INJURED, EITHER DIRECTLY OR INDIRECTLY, IN ITS BUSINESS OR PROPERTY
16 BY REASON OF ANY VIOLATION OF THIS ARTICLE 4 MAY SUE AND, IF
17 SUCCESSFUL, IS ENTITLED TO RECOVER ANY ACTUAL DAMAGES THAT THE
18 PERSON SUSTAINED. IF THE VIOLATION ALLEGED AND PROVED IS
19 DETERMINED BY THE COURT TO BE A PER SE VIOLATION OF THIS ARTICLE
20 4, THE PERSON MAY RECOVER THREE TIMES THE ACTUAL DAMAGES THAT
21 THE PERSON SUSTAINS.

22 (2) IN ANY ACTION BROUGHT PURSUANT TO THIS SECTION, THE
23 COURT, IN ITS DISCRETION, MAY AWARD THE PREVAILING PARTY ITS
24 EXPERT FEES, THE COSTS OF THE ACTION, AND REASONABLE ATTORNEY
25 FEES.

26 (3) NO DAMAGES, COSTS, EXPERT FEES, COSTS OF INVESTIGATION,
27 CIVIL PENALTIES, OR ATTORNEY FEES MAY BE RECOVERED FROM:

- 1 (a) A GOVERNMENTAL OR PUBLIC ENTITY;
- 2 (b) ANY OFFICIAL, AGENT, OR EMPLOYEE OF A GOVERNMENTAL OR
- 3 PUBLIC ENTITY ACTING IN AN OFFICIAL CAPACITY; OR
- 4 (c) ANY PERSON BASED ON ANY OFFICIAL ACTION DIRECTED BY A
- 5 GOVERNMENTAL OR PUBLIC ENTITY.

6 **6-4-116. Notice to the attorney general.** ANY PERSON THAT FILES

7 A CIVIL ACTION THAT INCLUDES ANY ALLEGATION OF A VIOLATION OF THIS

8 ARTICLE 4 SHALL, SIMULTANEOUSLY WITH THE FILING OF THE ACTION IN

9 DISTRICT COURT, SERVE A COPY OF THE COMPLAINT ON THE ATTORNEY

10 GENERAL.

11 **6-4-117. Computation of damages.** IN ANY ACTION BROUGHT

12 PURSUANT TO SECTION 6-4-112 OR 6-4-115, THE AMOUNT OF DAMAGES

13 MAY BE CALCULATED AND ASSESSED IN THE AGGREGATE BY STATISTICAL

14 OR SAMPLING METHODS, BY THE COMPUTATION OF ILLEGAL

15 OVERCHARGES, OR BY SUCH OTHER REASONABLE SYSTEM OF ESTIMATING

16 AGGREGATE DAMAGES AS THE COURT IN ITS DISCRETION MAY PERMIT

17 WITHOUT REQUIRING SEPARATE PROOF OF ANY INDIVIDUAL CLAIM OF, OR

18 AMOUNT OF DAMAGES TO, EACH PERSON ON WHOSE BEHALF THE ACTION

19 WAS BROUGHT.

20 **6-4-118. Enforcement - criminal proceedings.** (1) THE

21 ATTORNEY GENERAL SHALL PROSECUTE ALL CRIMINAL PROCEEDINGS FOR

22 VIOLATIONS OF THIS ARTICLE 4, WHETHER BY INDICTMENT OR DIRECT

23 INFORMATION FILED IN THE APPROPRIATE DISTRICT COURT.

24 (2) ANY INDIVIDUAL WHO VIOLATES SECTION 6-4-104, 6-4-105, OR

25 6-4-106 COMMITS A CLASS 5 FELONY AND SHALL BE PUNISHED AS

26 PROVIDED IN SECTION 18-1.3-401.

27 (3) ANY PERSON, OTHER THAN AN INDIVIDUAL OR A

1 GOVERNMENTAL OR PUBLIC ENTITY, THAT VIOLATES SECTION 6-4-104,
2 6-4-105, OR 6-4-106 IS GUILTY OF A FELONY AND, UPON CONVICTION
3 THEREOF, SHALL BE PUNISHED BY A FINE OF NOT MORE THAN FIVE MILLION
4 DOLLARS.

5 **6-4-119. Statute of limitations.** (1) ANY CIVIL ACTION
6 COMMENCED PURSUANT TO THIS ARTICLE 4 MUST BE BROUGHT WITHIN
7 FOUR YEARS AFTER THE DATE THAT THE CAUSE OF ACTION ACCRUED. FOR
8 PURPOSES OF THIS ARTICLE 4, A CAUSE OF ACTION ACCRUES:

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

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

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

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

26 (4) WHENEVER ANY CIVIL OR CRIMINAL PROCEEDING IS BROUGHT
27 BY THE UNITED STATES TO PREVENT, RESTRAIN, OR PUNISH VIOLATIONS

1 OF ANY FEDERAL ANTITRUST LAWS, THE RUNNING OF THE STATUTE OF
2 LIMITATIONS WITH RESPECT TO ANY ACTION UNDER THIS ARTICLE 4 THAT
3 IS BASED IN WHOLE OR IN PART ON ANY MATTER COMPLAINED OF IN THE
4 FEDERAL PROCEEDING IS SUSPENDED DURING THE PENDENCY OF THE
5 FEDERAL PROCEEDING AND FOR ONE YEAR AFTER THE CONCLUSION OF THE
6 FEDERAL PROCEEDING.

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

11 **6-4-120. Remedies - cumulative.** THE REMEDIES PROVIDED IN
12 THIS ARTICLE 4 ARE CUMULATIVE EXCEPT AS OTHERWISE EXPRESSLY
13 LIMITED.

14 **6-4-121. Void contracts - refund.** (1) ANY CONTRACT OR
15 AGREEMENT THAT A PERSON MAKES WHILE A MEMBER OF ANY
16 COMBINATION, CONSPIRACY, TRUST, OR POOL PROHIBITED UNDER THIS
17 ARTICLE 4 THAT IS FOUNDED UPON, IS THE RESULT OF, GROWS OUT OF, OR
18 IS CONNECTED WITH ANY VIOLATION OF THIS ARTICLE 4, EITHER DIRECTLY
19 OR INDIRECTLY, IS VOID, AND THE PERSON MAY NOT RECOVER BASED ON
20 OR BENEFIT FROM THE CONTRACT OR AGREEMENT.

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

27 **6-4-122. Severability.** IF ANY PROVISION OF THIS ARTICLE 4 OR

1 THE APPLICATION OF THIS ARTICLE 4 TO ANY PERSON OR CIRCUMSTANCES
2 IS HELD INVALID, THAT INVALIDITY DOES NOT AFFECT OTHER PROVISIONS
3 OR APPLICATIONS OF THIS ARTICLE 4 THAT CAN BE GIVEN EFFECT WITHOUT
4 THE INVALID PROVISION OR APPLICATION.

5 **SECTION 4.** In Colorado Revised Statutes, 24-21-626, **amend**
6 (1) as follows:

7 **24-21-626. Unfair trade practices.** (1) The provisions of the
8 "Unfair Practices Act", article 2 of title 6, and the "Colorado STATE
9 Antitrust Act of ~~1992~~ 2023", article 4 of title 6, are specifically applicable
10 to charitable gaming activities conducted by any licensee. Within thirty
11 days after receiving a complaint alleging a violation of either of ~~said~~ THE
12 acts, the licensing authority shall transmit ~~such~~ THE complaint to the
13 attorney general.

14 **SECTION 5.** In Colorado Revised Statutes, 24-31-101, **amend**
15 (1)(i)(I) as follows:

16 **24-31-101. Powers and duties of attorney general.** (1) The
17 attorney general:

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

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

22 **SECTION 6.** In Colorado Revised Statutes, **amend** 25-17-410 as
23 follows:

24 **25-17-410. Limited exemption from antitrust, restraint of**
25 **trade, and unfair trade practices provisions.** If a producer or group of
26 producers participating in a paint stewardship program or a stewardship
27 organization contracted by one or more producers to implement a paint

1 stewardship program engages in an activity performed solely in
2 furtherance of implementing the paint stewardship program and in
3 compliance with the provisions of this part 4, the activity is not a
4 violation of the antitrust, restraint of trade, and unfair trade practices
5 provisions of the "Unfair Practices Act", article 2 of title 6, ~~C.R.S.~~, or the
6 "Colorado STATE Antitrust Act of ~~1992~~ 2023", article 4 of title 6. ~~C.R.S.~~

7 **SECTION 7.** In Colorado Revised Statutes, **amend** 25-17-711 as
8 follows:

9 **25-17-711. Limited exemption from antitrust, restraint of**
10 **trade, and unfair trade practices provisions.** If the program or any
11 other plan approved by the executive director pursuant to this part 7
12 engages in an activity performed solely in furtherance of implementing
13 the program or plan and in compliance with this part 7, the activity is not
14 a violation of the antitrust, restraint of trade, and unfair trade practices
15 provisions of the "Unfair Practices Act", article 2 of title 6, or the
16 "Colorado STATE Antitrust Act of ~~1992~~ 2023", article 4 of title 6.

17 **SECTION 8. Applicability.** This act applies to conduct occurring
18 on or after the effective date of this act.

19 **SECTION 9. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, or safety.