

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

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 23-0462.01 Jennifer Berman x3286

HOUSE BILL 23-1192

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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.*

HOUSE
3rd Reading Unamended
March 7, 2023

HOUSE
Amended 2nd Reading
March 6, 2023

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 AS OF THE TIME
13 THAT THE CONTRACT WAS EXECUTED.

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

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

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

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

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

23 (b) THE FAILURE TO EXERCISE REASONABLE CARE TO ENSURE THAT

1 A STATEMENT, AN ADVERTISEMENT, OR CONDUCT IS TRUTHFUL AND
2 ACCURATE; OR

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

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

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

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

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

15 **ARTICLE 4**

16 **Colorado State Antitrust Act of 2023**

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

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

21 (a) COMPETITION IS FUNDAMENTAL TO:

22 (I) THE FREE MARKET SYSTEM; AND

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

25 (b) THE UNRESTRAINED AND FAIR INTERACTION OF COMPETITIVE
26 FORCES WILL YIELD THE BEST ALLOCATION OF OUR ECONOMIC RESOURCES,
27 THE LOWEST PRICES, THE HIGHEST QUALITY COMMODITIES AND SERVICES,

1 AND THE GREATEST MATERIAL PROGRESS WHILE AT THE SAME TIME
2 PROVIDING AN ENVIRONMENT THAT IS CONDUCIVE TO THE PRESERVATION
3 OF OUR DEMOCRATIC, POLITICAL, AND SOCIAL INSTITUTIONS AND TO THE
4 PROTECTION OF CONSUMERS.

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

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

9 (a) GOODS;

10 (b) MERCHANDISE;

11 (c) WARES;

12 (d) PRODUCE;

13 (e) CHOSE IN ACTION;

14 (f) LAND;

15 (g) ARTICLES OF COMMERCE; OR

16 (h) ANY OTHER TANGIBLE OR INTANGIBLE PROPERTY, INCLUDING
17 REAL, PERSONAL, OR MIXED PROPERTY.

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

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

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

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

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

24 (III) A LOCAL IMPROVEMENT DISTRICT AS DEFINED IN SECTION
25 32-7-103 (7);

26 (IV) A LAW ENFORCEMENT AUTHORITY;

27 (V) A WATER, SANITATION, FIRE PROTECTION, METROPOLITAN,

1 IRRIGATION, DRAINAGE, OR OTHER SPECIAL DISTRICT CREATED PURSUANT
2 TO TITLE 32;

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

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

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

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

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

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

21 (a) A CONTRACT;

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

24 (c) A CONSPIRACY.

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

1 PART OF TRADE OR COMMERCE.

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

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

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

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

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

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

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

1 SPECIFICALLY PROVIDED IN THOSE FEDERAL BANKING LAWS.

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

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

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

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

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

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

16 (II) DOES NOT HAVE CAPITAL STOCK; AND

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

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

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

27 (4) ANY PERSON, ACTIVITY, OR CONDUCT EXEMPT OR IMMUNE

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

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

8 (a) HEALTH-CARE COVERAGE COOPERATIVES PURSUANT TO PART
9 10 OF ARTICLE 16 OF TITLE 10; OR

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

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

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

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

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

1 PROPOUNDED BY THE ATTORNEY GENERAL AS TO ALL FACTS AND
2 CIRCUMSTANCES REASONABLY RELATED TO THE ALLEGED OR POTENTIAL
3 VIOLATION AND TO PROVIDE ANY OTHER DATA AND INFORMATION THE
4 ATTORNEY GENERAL REASONABLY DEEMS NECESSARY;

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

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

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

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

1 PREVENT ANY LAW ENFORCEMENT OFFICER, HAVING AN INDEPENDENT
2 BASIS TO PRODUCE OR OBTAIN THE FACTS, INFORMATION, OR EVIDENCE,
3 FROM PRODUCING OR OBTAINING THE SAME OR SIMILAR FACTS,
4 INFORMATION, OR EVIDENCE FOR USE IN ANY CRIMINAL PROSECUTION.

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

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

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

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

1 COURT FINDS THAT THE FAILURE TO APPEAR, TO ANSWER QUESTIONS, OR
2 TO PRODUCE DOCUMENTS WAS SUBSTANTIALLY JUSTIFIED OR THAT OTHER
3 CIRCUMSTANCES MAKE AN ASSESSMENT OF A CIVIL PENALTY UNJUST;

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

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

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

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

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

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

1 OR AFFECTING COMMERCE.

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

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

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

1 DAMAGES BE PAID AS REBATES OR PRICE REDUCTIONS TO FUTURE
2 CONSUMERS.

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

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

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

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

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

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

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

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

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

27 (d) WHETHER THE VIOLATION WAS THE RESULT OF WILLFUL

1 CONDUCT;

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

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

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

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

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

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

27 (3) NO DAMAGES, COSTS, EXPERT FEES, COSTS OF INVESTIGATION,

1 CIVIL PENALTIES, OR ATTORNEY FEES MAY BE RECOVERED FROM:

2 (a) A GOVERNMENTAL OR PUBLIC ENTITY;

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

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

7 **6-4-116. Notice to the attorney general.** ANY PERSON THAT FILES
8 A CIVIL ACTION THAT INCLUDES ANY ALLEGATION OF A VIOLATION OF THIS
9 ARTICLE 4 SHALL, SIMULTANEOUSLY WITH THE FILING OF THE ACTION IN
10 DISTRICT COURT, SERVE A COPY OF THE COMPLAINT ON THE ATTORNEY
11 GENERAL.

12 **6-4-117. Computation of damages.** IN ANY ACTION BROUGHT
13 PURSUANT TO SECTION 6-4-112 OR 6-4-115, THE AMOUNT OF DAMAGES
14 MAY BE CALCULATED AND ASSESSED IN THE AGGREGATE BY STATISTICAL
15 OR SAMPLING METHODS, BY THE COMPUTATION OF ILLEGAL
16 OVERCHARGES, OR BY SUCH OTHER REASONABLE SYSTEM OF ESTIMATING
17 AGGREGATE DAMAGES AS THE COURT IN ITS DISCRETION MAY PERMIT
18 WITHOUT REQUIRING SEPARATE PROOF OF ANY INDIVIDUAL CLAIM OF, OR
19 AMOUNT OF DAMAGES TO, EACH PERSON ON WHOSE BEHALF THE ACTION
20 WAS BROUGHT.

21 **6-4-118. Enforcement - criminal proceedings.** (1) THE
22 ATTORNEY GENERAL SHALL PROSECUTE ALL CRIMINAL PROCEEDINGS FOR
23 VIOLATIONS OF THIS ARTICLE 4, WHETHER BY INDICTMENT OR DIRECT
24 INFORMATION FILED IN THE APPROPRIATE DISTRICT COURT.

25 (2) ANY INDIVIDUAL WHO VIOLATES SECTION 6-4-104, 6-4-105, OR
26 6-4-106 COMMITS A CLASS 5 FELONY AND SHALL BE PUNISHED AS
27 PROVIDED IN SECTION 18-1.3-401.

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

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

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

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

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

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

27 (4) WHENEVER ANY CIVIL OR CRIMINAL PROCEEDING IS BROUGHT

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

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

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

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

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

1 **6-4-122. Severability.** IF ANY PROVISION OF THIS ARTICLE 4 OR
2 THE APPLICATION OF THIS ARTICLE 4 TO ANY PERSON OR CIRCUMSTANCES
3 IS HELD INVALID, THAT INVALIDITY DOES NOT AFFECT OTHER PROVISIONS
4 OR APPLICATIONS OF THIS ARTICLE 4 THAT CAN BE GIVEN EFFECT WITHOUT
5 THE INVALID PROVISION OR APPLICATION.

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

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

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

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

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

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

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

25 **25-17-410. Limited exemption from antitrust, restraint of**
26 **trade, and unfair trade practices provisions.** If a producer or group of
27 producers participating in a paint stewardship program or a stewardship

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

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

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

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

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