

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

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 23-0462.01 Jennifer Berman x3286

HOUSE BILL 23-1192

HOUSE SPONSORSHIP

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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.*

SENATE
Amended 2nd Reading
May 2, 2023

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

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

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

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

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

13 **ARTICLE 4**

14 **Colorado State Antitrust Act of 2023**

15 **6-4-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 4 IS THE
16 "COLORADO STATE ANTITRUST ACT OF 2023".

17 **6-4-102. Legislative declaration.** (1) THE GENERAL ASSEMBLY
18 FINDS AND DECLARES THAT:

19 (a) COMPETITION IS FUNDAMENTAL TO:

20 (I) THE FREE MARKET SYSTEM; AND

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

23 (b) THE UNRESTRAINED AND FAIR INTERACTION OF COMPETITIVE

1 FORCES WILL YIELD THE BEST ALLOCATION OF OUR ECONOMIC RESOURCES,
2 THE LOWEST PRICES, THE HIGHEST QUALITY COMMODITIES AND SERVICES,
3 AND THE GREATEST MATERIAL PROGRESS WHILE AT THE SAME TIME
4 PROVIDING AN ENVIRONMENT THAT IS CONDUCIVE TO THE PRESERVATION
5 OF OUR DEMOCRATIC, POLITICAL, AND SOCIAL INSTITUTIONS AND TO THE
6 PROTECTION OF CONSUMERS.

7 **6-4-103. Definitions.** AS USED IN THIS ARTICLE 4, UNLESS THE
8 CONTEXT OTHERWISE REQUIRES:

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

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

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

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

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

- 24 (I) A COUNTY, CITY, OR CITY AND COUNTY;
- 25 (II) A SCHOOL DISTRICT AS DEFINED IN SECTION 22-36-107 (2)(c);
- 26 (III) A LOCAL IMPROVEMENT DISTRICT AS DEFINED IN SECTION
27 32-7-103 (7);

1 (IV) A LAW ENFORCEMENT AUTHORITY;

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

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

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

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

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

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

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

23 (a) A CONTRACT;

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

26 (c) A CONSPIRACY.

27 **6-4-105. Monopolization and attempt to monopolize.** IT IS

1 ILLEGAL FOR ANY PERSON TO MONOPOLIZE, ATTEMPT TO MONOPOLIZE, OR
2 COMBINE OR CONSPIRE WITH ANY OTHER PERSON TO MONOPOLIZE ANY
3 PART OF TRADE OR COMMERCE.

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

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

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

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

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

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

26 (3) THE ATTORNEY GENERAL SHALL NOT CHALLENGE THE MERGER
27 OR ACQUISITION OF ANY BANK OR BANK HOLDING COMPANY BY OR WITH

1 ANY OTHER BANK OR BANK HOLDING COMPANY THAT IS SUBJECT TO THE
2 PROVISIONS OF ANY OF THE FEDERAL BANKING LAWS, EXCEPT AS
3 SPECIFICALLY PROVIDED IN THOSE FEDERAL BANKING LAWS.

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

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

10 **6-4-109. Exemptions.** (1) THE LABOR OF AN INDIVIDUAL IS NOT
11 A COMMODITY, A SERVICE, OR AN ARTICLE OF TRADE OR COMMERCE.

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

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

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

18 (II) DOES NOT HAVE CAPITAL STOCK; AND

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

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

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

1 RESTRAINT OF TRADE UNDER THIS ARTICLE 4.

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

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

10 (a) HEALTH-CARE COVERAGE COOPERATIVES PURSUANT TO PART
11 10 OF ARTICLE 16 OF TITLE 10; OR

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

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

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

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

27 (a) REQUEST THE PERSON, UNDER OATH OR OTHERWISE AND ON

1 FORMS PRESCRIBED BY THE ATTORNEY GENERAL, TO FILE A STATEMENT OR
2 REPORT IN WRITING, OR TO ANSWER IN WRITING, ANY QUESTIONS
3 PROPOUNDED BY THE ATTORNEY GENERAL AS TO ALL FACTS AND
4 CIRCUMSTANCES REASONABLY RELATED TO THE ALLEGED OR POTENTIAL
5 VIOLATION AND TO PROVIDE ANY OTHER DATA AND INFORMATION THE
6 ATTORNEY GENERAL REASONABLY DEEMS NECESSARY;

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

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

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

23 (3) ANY WRITTEN RESPONSE, TESTIMONY, OR DOCUMENTS
24 OBTAINED BY THE ATTORNEY GENERAL PURSUANT TO THIS SECTION, OR
25 ANY INFORMATION DERIVED DIRECTLY OR INDIRECTLY FROM SUCH
26 WRITTEN RESPONSE, TESTIMONY, OR DOCUMENTS, IS NOT ADMISSIBLE IN
27 EVIDENCE IN ANY CRIMINAL PROSECUTION AGAINST THE PERSON

1 PROVIDING THE WRITTEN RESPONSE, TESTIMONY, OR DOCUMENTS. THE
2 PROVISIONS OF THIS SUBSECTION (3) SHALL NOT BE CONSTRUED TO
3 PREVENT ANY LAW ENFORCEMENT OFFICER, HAVING AN INDEPENDENT
4 BASIS TO PRODUCE OR OBTAIN THE FACTS, INFORMATION, OR EVIDENCE,
5 FROM PRODUCING OR OBTAINING THE SAME OR SIMILAR FACTS,
6 INFORMATION, OR EVIDENCE FOR USE IN ANY CRIMINAL PROSECUTION.

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

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

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

27 (b) ASSESS A CIVIL PENALTY OF UP TO FIVE THOUSAND DOLLARS

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

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

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

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

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

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

25 ■
26 **6-4-112. Enforcement by the attorney general.** (1) THE
27 ATTORNEY GENERAL MAY INSTITUTE ACTIONS OR PROCEEDINGS TO

1 PREVENT OR RESTRAIN VIOLATIONS OF THIS ARTICLE 4, INCLUDING
2 ACTIONS TO PREVENT OR RESTRAIN UNFAIR METHODS OF COMPETITION IN
3 OR AFFECTING COMMERCE.

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

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

23 (b) IN ANY *PARENS PATRIAE* ACTION IN WHICH ACTUAL OR TREBLE
24 DAMAGES ARE RECOVERED, THE COURT, IN ITS DISCRETION, MAY
25 DETERMINE THAT THE AMOUNT OF DAMAGES RECOVERED IS TOO SMALL TO
26 MAKE ANY REFUND TO *PARENS* GROUP MEMBERS PRACTICABLE. IN THAT
27 EVENT, THE COURT MAY DIRECT THE DAMAGES TO BE PAID TO THE

1 GENERAL FUND OF THE STATE OR TO SOME OTHER GOVERNMENTAL OR
2 PUBLIC ENTITY AS THE COURT DEEMS APPROPRIATE OR MAY REQUIRE THAT
3 DAMAGES BE PAID AS REBATES OR PRICE REDUCTIONS TO FUTURE
4 CONSUMERS.

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

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

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

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

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

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

- 25 (a) THE NATURE AND EXTENT OF THE VIOLATION;
26 (b) THE NUMBER OF CONSUMERS AFFECTED BY THE VIOLATION;
27 (c) WHETHER THE VIOLATION WAS AN ISOLATED INCIDENT OR A

1 CONTINUOUS PATTERN AND PRACTICE OF BEHAVIOR;

2 (d) WHETHER THE VIOLATION WAS THE RESULT OF WILLFUL
3 CONDUCT;

4 (e) WHETHER THE DEFENDANT TOOK AFFIRMATIVE STEPS TO
5 CONCEAL SUCH VIOLATIONS; AND

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

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

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

17 **6-4-115. Enforcement - civil damages.** (1) ANY PERSON
18 INJURED, EITHER DIRECTLY OR INDIRECTLY, IN ITS BUSINESS OR PROPERTY
19 BY REASON OF ANY VIOLATION OF THIS ARTICLE 4 MAY SUE AND, IF
20 SUCCESSFUL, IS ENTITLED TO RECOVER ANY ACTUAL DAMAGES THAT THE
21 PERSON SUSTAINED. IF THE VIOLATION ALLEGED AND PROVED IS
22 DETERMINED BY THE COURT TO BE A PER SE VIOLATION OF THIS ARTICLE
23 4, THE PERSON MAY RECOVER THREE TIMES THE ACTUAL DAMAGES THAT
24 THE PERSON SUSTAINS.

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

1 FEES.

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

4 (a) A GOVERNMENTAL OR PUBLIC ENTITY;

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

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

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

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

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

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

1 6-4-106 COMMITS A CLASS 5 FELONY AND SHALL BE PUNISHED AS
2 PROVIDED IN SECTION 18-1.3-401.

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

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

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

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

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

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

1 THE PROCEEDING OR ACTION.

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

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

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

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

24 (2) ANY PAYMENTS MADE UPON, UNDER, OR PURSUANT TO A
25 CONTRACT OR AGREEMENT FOR THE BENEFIT OF A PERSON THAT IS A
26 MEMBER OF ANY COMBINATION, CONSPIRACY, TRUST, OR POOL PROHIBITED
27 UNDER THIS ARTICLE 4 MAY BE RECOVERED IN AN ACTION BROUGHT BY

1 THE PARTY MAKING THE PAYMENTS OR BY THE PARTY'S HEIRS, PERSONAL
2 REPRESENTATIVES, OR ASSIGNS.

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

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

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

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

19 **24-31-101. Powers and duties of attorney general.** (1) The
20 attorney general:

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

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

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

27 **25-17-410. Limited exemption from antitrust, restraint of**

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

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

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

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

22 **SECTION 8. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, or safety.