

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

PREAMENDED

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

LLS NO. 19-1043.01 Yelana Love x2295

HOUSE BILL 19-1289

HOUSE SPONSORSHIP

Weissman,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill:

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

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

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

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

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

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

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

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

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

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

20 (o) Knowingly OR RECKLESSLY fails to identify flood-damaged or

1 water-damaged goods as to such damages;

2 (ll) Knowingly OR RECKLESSLY makes a false representation as to
3 the results of a radon test or the need for radon mitigation;

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

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

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

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

16 (kkk) KNOWINGLY OR RECKLESSLY ENGAGES IN ANY UNFAIR,
17 UNCONSCIONABLE, ABUSIVE, OR DECEPTIVE ACT OR PRACTICE;

18 (lll) KNOWINGLY OR RECKLESSLY ENGAGES IN ANY CONDUCT THAT
19 CREATES A LIKELIHOOD OF CONFUSION OR MISUNDERSTANDING.

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

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

25 **6-1-112. Civil penalties.** (1) The attorney general or a district
26 attorney may bring a civil action on behalf of the state to seek the
27 imposition of civil penalties as follows:

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

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

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

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

20 **6-1-113. Damages.** (2) Except in a class action or a case brought
21 for a violation of section 6-1-709, AND NOTWITHSTANDING ANY OTHER
22 LAW, any person who, in a private civil action, is found to have engaged
23 in or caused another to engage in any deceptive trade practice listed in
24 this ~~article shall be~~ ARTICLE 1 IS liable in an amount equal to the sum of:

25 (a) The greater of:

26 (I) The amount of actual damages sustained, INCLUDING
27 PREJUDGMENT INTEREST OF EITHER EIGHT PERCENT PER YEAR OR AT THE

1 RATE PROVIDED IN SECTION 13-21-101, WHICHEVER IS GREATER, FROM
2 THE DATE THE CLAIM UNDER THIS ARTICLE 1 ACCRUED; or

3

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

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