



HB23- 1192 Testimony

3.21.23 Senate Judiciary Committee

1:30 pm | Old Supreme Court

Thank you, Madame Chair and Members of the Committee.

My name is Jessica Kostelnik, and I am here today on behalf of the Denver Metro Chamber of Commerce and our members in opposition to HB23-1192.

What was initially designed to be legislation focused on antitrust and business competitiveness has now moved in the dangerous direction of allowing anyone who feels aggrieved by a business to sue – raising major concerns from the business community about frivolous lawsuits, increased litigation, and new legal fees. This statute conflates the Colorado Antitrust Act with the Colorado Consumer Protection Act (CCPA), making reasonable updates to the former and significant, overreaching changes to the latter.

The Colorado Consumer Protection Act was written to have sharp teeth—it allows claimants to collect treble damages and claim their attorneys’ fees. But it also has high standards for what constitutes a CCPA. HB23-1192 removes the public impact standard and the knowingly or recklessly standard. These guardrails are essential because they deter hawkish plaintiffs’ attorneys from wielding the intentionally punitive powers of the CCPA for claims that might have more appropriate, and proportional, remedies.

Under current law, such a claim cannot be brought under the CCPA without showing ‘significant public impact’ – in other words the act or practice affected a wide range of consumers. If HB 1192 passes, every individual dispute is now a dog fight for punitive damages. Imagine in the sale of a single-family home, using the CCPA to address your contract dispute.

By stripping the knowingly or recklessly standard, we also overly penalize innocent or insignificant mistakes. Looking to housing for another example, if a developer advertises a home as 2000 sq ft because that’s what it shows on the architects plans, but then fails to account for square footage lost due to the thickness of the actual walls, the developer could be sued for three times the price of any actual damages. This bill could impact single-family construction the way construction defect litigation impacted condominium construction. We run the risk of creating such a risky, expensive, and litigious environment that we inadvertently crush new development.

We believe that removing Section 1 of this bill would address the concerns raised today and would humbly ask the committee to take it out.