

Testimony of Theresa Wardon Benz
on behalf of the Colorado Civil Justice League (CCJL)
Opposing SB20-080
“Consumer Protection Act Damages”
By Sen. Robert Rodriguez

I am a partner at Wheeler Trigg O'Donnell LLP, a litigation firm in Denver, Colorado. My practice includes class action defense, as well as defending companies against claims under the Colorado Consumer Protection Act. On behalf of the CCJL, I oppose the changes proposed in SB20-080.

The Colorado Consumer Protection Act is already working for the people of Colorado.

- The CCPA already provides robust incentives for private litigants to pursue individual claims through the availability of statutory damages where they exceed actual damages, plus an award of fees and costs for prevailing, and together with the self-help available in our county courts to bring small claims there does not appear to be evidence these incentives are insufficient.
- The CCPA similarly provides the tools and incentives for the Attorney General to pursue broader enforcement actions and remedies on behalf of Colorado citizens as a whole.

Allowing a Plaintiff to recover \$500 *per violation* will not defer consumer fraud, but will create uncertainty for the Colorado business community

- Instead of allowing an individual plaintiff to recover the greater of \$500 in statutory damages or actual damages, the bill proposes that a plaintiff may recover the greater of \$500 *per violation* in statutory damages or actual damages. What constitutes an individual violation is not defined, which creates uncertainty for Colorado businesses, particularly those that have repetitive transactions that could be characterized as separate “violations.” This change would expose those businesses to potentially thousands of dollars when a plaintiff’s actual damages are far less. There is no evidence this is necessary to deter consumer fraud.

Coloradans are better represented when CCPA enforcement efforts are led by the Attorney General.

- By proposing an expansion into class action “piecemeal litigation by private consumers,” the bill implies that the Attorney General’s enforcement agenda and actions are lacking and ineffective, which is not supported by any evidence.
- The Attorney General is elected and accountable to Coloradans. If Coloradans are not satisfied with the enforcement efforts of the AG, they can vote him or her out of office.

- The AG should have the authority to bring relief on behalf of a broader class of consumers, not private litigants who are not accountable to Coloradans and whose individual motivations may influence the case that they bring and prosecute.

The proposed solution of allowing for class action relief do not adequately address consumer fraud.

- A recent study demonstrated that private class actions do not promote the goal of the CCPA of providing "prompt, economical, and readily available remedies against consumer fraud". According to the study, 30% of class actions were dismissed with no relief provided to the class. Another 30% settled with minimal relief for the class.
- This system increases attorneys' fees on both sides – making defense and plaintiffs' side lawyers the only beneficiaries, not consumers.