

**Source:**

Colorado Statutes/TITLE 6 CONSUMER AND COMMERCIAL AFFAIRS/FAIR TRADE AND RESTRAINT OF TRADE/ARTICLE 1 COLORADO CONSUMER PROTECTION ACT/PART 1 CONSUMER PROTECTION - GENERAL/6-1-105. Deceptive trade practices.

**6-1-105. Deceptive trade practices.**

(1) A person engages in a deceptive trade practice when, in the course of such person's business, vocation, or occupation, such person:

- (a) Knowingly passes off goods, services, or property as those of another;
- (b) Knowingly makes a false representation as to the source, sponsorship, approval, or certification of goods, services, or property;
- (c) Knowingly makes a false representation as to affiliation, connection, or association with or certification by another;
- (d) Uses deceptive representations or designations of geographic origin in connection with goods or services;
- (e) Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith;
- (f) Represents that goods are original or new if he knows or should know that they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;
- (g) Represents that goods, food, services, or property are of a particular standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another;
- (h) Disparages the goods, services, property, or business of another by false or misleading representation of fact;
- (i) Advertises goods, services, or property with intent not to sell them as advertised;
- (j) Advertises goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
- (k) Advertises under the guise of obtaining sales personnel when in fact the purpose is to first sell a product or service to the sales personnel applicant;
- (l) Makes false or misleading statements of fact concerning the price of goods, services, or property or the reasons for, existence of, or amounts of price reductions;
- (m) Fails to deliver to the customer at the time of an installment sale of goods or services a written order, contract, or receipt setting forth the name and address of the seller, the name and address of the organization which he represents, and all of the terms and conditions of the sale, including a description of the goods or services, stated in readable, clear, and unambiguous language;
- (n) Employs "bait and switch" advertising, which is advertising accompanied by an effort to sell goods, services, or property other than those advertised or on terms other than those advertised and which is also accompanied by one or more of the following practices:
  - (I) Refusal to show the goods or property advertised or to offer the services advertised;

(II) Disparagement in any respect of the advertised goods, property, or services or the terms of sale;

(III) Requiring tie-in sales or other undisclosed conditions to be met prior to selling the advertised goods, property, or services;

(IV) Refusal to take orders for the goods, property, or services advertised for delivery within a reasonable time;

(V) Showing or demonstrating defective goods, property, or services which are unusable or impractical for the purposes set forth in the advertisement;

(VI) Accepting a deposit for the goods, property, or services and subsequently switching the purchase order to higher-priced goods, property, or services; or

(VII) Failure to make deliveries of the goods, property, or services within a reasonable time or to make a refund therefor;

(o) Knowingly fails to identify flood-damaged or water-damaged goods as to such damages;

(p) Solicits door-to-door as a seller, unless the seller, within thirty seconds after beginning the conversation, identifies himself or herself, whom he or she represents, and the purpose of the call;

(p.3) to (p.7) Repealed.

(q) Contrives, prepares, sets up, operates, publicizes by means of advertisements, or promotes any pyramid promotional scheme;

(r) Advertises or otherwise represents that goods or services are guaranteed without clearly and conspicuously disclosing the nature and extent of the guarantee, any material conditions or limitations in the guarantee which are imposed by the guarantor, the manner in which the guarantor will perform, and the identity of such guarantor. Any representation that goods or services are "guaranteed for life" or have a "lifetime guarantee" shall contain, in addition to the other requirements of this paragraph (r), a conspicuous disclosure of the meaning of "life" or "lifetime" as used in such representation (whether that of the purchaser, the goods or services, or otherwise). Guarantees shall not be used which under normal conditions could not be practically fulfilled or which are for such a period of time or are otherwise of such a nature as to have the capacity and tendency of misleading purchasers or prospective purchasers into believing that the goods or services so guaranteed have a greater degree of serviceability, durability, or performance capability in actual use than is true in fact. The provisions of this paragraph (r) apply not only to guarantees but also to warranties, to disclaimer of warranties, to purported guarantees and warranties, and to any promise or representation in the nature of a guarantee or warranty; however, such provisions do not apply to any reference to a guarantee in a slogan or advertisement so long as there is no guarantee or warranty of specific merchandise or other property.

(s) and (t) Repealed.

(u) Fails to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale if such failure to disclose such information was intended to induce the consumer to enter into a transaction;

(v) Disburses funds in connection with a real estate transaction in violation of section [38-35-125](#) (2), C.R.S.;

(w) Repealed.

(x) Violates the provisions of sections [6-1-203](#) to 6-1-205 or of part 7 of this article;

(y) Fails, in connection with any solicitation, oral or written, to clearly and prominently disclose immediately adjacent to or after the description of any item or prize to be received by any person the actual retail value of each item or prize to be awarded. For the purposes of this paragraph (y), the actual retail value is the price at which substantial

sales of the item were made in the person's trade area or in the trade area in which the item or prize is to be received within the last ninety days or, if no substantial sales were made, the actual cost of the item or prize to the person on whose behalf any contest or promotion is conducted; except that, whenever the actual cost of the item to the provider is less than fifteen dollars per item, a disclosure that "actual cost to the provider is less than fifteen dollars" may be made in lieu of disclosure of actual cost. The provisions of this paragraph (y) shall not apply to a promotion which is soliciting the sale of a newspaper, magazine, or periodical of general circulation, or to a promotion soliciting the sale of books, records, audio tapes, compact discs, or videos when the promoter allows the purchaser to review the merchandise without obligation for at least seven days and provides a full refund within thirty days after the receipt of the returned merchandise or when a membership club operation is in conformity with rules and regulations of the federal trade commission contained in 16 CFR 425.

(z) Refuses or fails to obtain all governmental licenses or permits required to perform the services or to sell the goods, food, services, or property as agreed to or contracted for with a consumer;

(aa) Fails, in connection with the issuing, making, providing, selling, or offering to sell of a motor vehicle service contract, to comply with the provisions of article [11](#) of title [42](#), C.R.S.;

(bb) Repealed.

(cc) Engages in any commercial telephone solicitation which constitutes an unlawful telemarketing practice as defined in section [6-1-304](#);

(dd) Repealed.

(ee) Intentionally violates any provision of article [10](#) of title [5](#), C.R.S.;

(ee.5) to (ff) Repealed.

(gg) Fails to disclose or misrepresents to another person, a secured creditor, or an assignee by whom such person is retained to repossess personal property whether such person is bonded in accordance with section [4-9-629](#), C.R.S., or fails to file such bond with the attorney general;

(hh) Violates any provision of article 16 of this title;

(ii) Repealed.

(jj) Represents to any person that such person has won or is eligible to win any award, prize, or thing of value as the result of a contest, promotion, sweepstakes, or drawing, or that such person will receive or is eligible to receive free goods, services, or property, unless, at the time of the representation, the person has the present ability to supply such award, prize, or thing of value;

(kk) Violates any provision of article 6 of this title;

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

(mm) Violates section [35-27-113](#) (3) (e), (3) (f), or (3) (i), C.R.S.;

(nn) Repealed.

(oo) Fails to comply with the provisions of section [35-80-108](#) (1) (a), (1) (b), or (2) (f), C.R.S.;

(pp) Violates article [9](#) of title [42](#), C.R.S.;

(qq) Repealed.

(rr) Violates the provisions of part 8 of this article;

(ss) Violates any provision of part 33 of article [32](#) of title [24](#), C.R.S., that applies to the installation of manufactured homes;

(tt) Violates any provision of part 9 of this article;

(uu) Violates section [38-40-105](#), C.R.S.;

(vv) Violates section [12-55-110.3](#), C.R.S.;

(ww) Violates any provision of section [6-1-702](#);

(xx) Violates any provision of part 11 of this article.

(2) Evidence that a person has engaged in a deceptive trade practice shall be prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

(3) The deceptive trade practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable at common law or under other statutes of this state.

**Source:** **L. 69:** p. 372, § 2. **C.R.S. 1963:** § 55-5-2. **L. 71:** p. 580, § 1. **L. 73:** p. 619, § 2. **L. 75:** (1)(r) added, p. 259, § 1, effective July 1. **L. 84:** (1)(e) and (1)(g) amended and (1)(s) added, pp. 289, 290, §§ 2, 2, effective July 1. **L. 85:** (1)(t) added, p. 307, § 2, effective June 1. **L. 87:** (1)(a), (1)(b), (1)(e), (1)(g) to (1)(i) and (1)(l) amended and (1)(s)(V) and (1)(u) added, p. 357, §§ 3, 4, effective July 1. **L. 88:** (1)(n) amended and (1)(v) and (1)(w) added, pp. 341, 1260, §§ 2, 2, effective July 1. **L. 89:** (1)(s)(V) repealed and (1)(y), (1)(z), and (1)(aa) added, pp. 360, 357, §§ 4, 1, effective July 7; (1)(x) added, p. 363, § 2, effective January 1, 1990. **L. 90:** (1)(ee) added, p. 378, § 2, effective April 20; (1)(t)(VI) amended and (1)(bb) to (1)(dd) added, p. 380, § 2, effective July 1. **L. 91:** (1)(t)(VI) amended and (1)(t)(VII) added, p. 329, § 1, effective May 16; (1)(dd)(I) amended and (1)(dd)(I.5) added, p. 331, § 1, effective June 8. **L. 92:** IP(1) amended and (1)(ff) added, p. 1835, § 2, effective April 29; IP(1) amended and (1)(gg) added, p. 247, § 2, effective June 1. **L. 93:** (1)(t)(VI) and (1)(y) amended and (1)(hh) to (1)(ll) added, p. 1571, § 1, effective July 1; (1)(cc) amended, p. 943, § 2, and (1)(mm) added, p. 1022, § 3, effective July 1. **L. 94:** (1)(nn) added, p. 759, § 1, effective April 20; (1)(ee.5) added, p. 94, § 1, and (1)(oo) added, p. 1311, § 10, effective July 1; (1)(aa) and (1)(ii) amended, p. 2544, § 14, effective January 1, 1995. **L. 96:** (1)(p) amended and (1)(p.3) and (1)(ee.7) added, pp. 787, 1787, §§ 1, 1, effective July 1. **L. 97:** (1)(pp) added, p. 865, § 13, effective May 21; (1)(p.5) and (1)(p.7) added, p. 500, § 1, effective July 1; (1)(ee.8) added, p. 406, § 1, July 1. **L. 98:** (1)(qq) added, p. 746, § 2, effective August 5. **L. 99:** (1)(p.3), (1)(p.5), (1)(p.7), (1)(s), (1)(t), (1)(w), (1)(bb), (1)(dd), (1)(ee.5), (1)(ee.7), (1)(ee.8), (1)(ff), (1)(ii), and (1)(qq) repealed and (1)(x) amended, pp. 655, 652, §§ 14, 3, effective May 18; (1)(qq) amended, p. 897, § 2, effective October 1. **L. 2000:** (1)(rr) added, p. 867, § 2, effective August 2; (1)(nn)(II) added by revision, pp. 2, 3, §§ 1, 6; (1)(ss) added, p. 1162, § 3, effective July 1, 2001. **L. 2001:** (1)(gg) amended, p. 1445, § 37, effective July 1; (1)(tt) added, p. 1461, § 2, effective August 8. **L. 2002:** (1)(uu) added, p. 1602, § 3, effective June 7. **L. 2003:** (1)(ss) amended, p. 550, § 3, effective March 5. **L. 2004:** (1)(vv) added, p. 181, § 2, effective July 1; (1)(ww) added, p. 407, § 2, effective August 4. **L. 2006:** (1)(xx) added, p. 1344, § 2, effective May 30.

**Editor's note:** (1) Subsection (1)(dd)(I)(F) provided for the repeal of subsection (1)(dd)(I)(F), effective July 1, 1994. (See L.91, p. 331.)

(2) Subsections (1)(p.3), (1)(p.5), (1)(p.7), (1)(s), (1)(t), (1)(w), (1)(bb), (1)(dd), (1)(ee.5), (1)(ee.7), (1)(ee.8), (1)(ff), (1)(ii), and (1)(qq) were repealed and relocated in 1999 to part 7 of this article.

(3) Subsection (1)(qq) as amended by House Bill 99-1270 was renumbered as and harmonized with section [6-1-709](#) as relocated from section [6-1-105](#) in Senate Bill 99-143.

(4) Subsection (1)(nn)(II) provided for the repeal of subsection (1)(nn), effective July 1, 2001. (See L. 2000, p. 3.)

(5) Subsection (1)(ww) was originally lettered as (1)(vv) in House Bill 04-1125, but has been relettered on revision for ease of

location.

## ANNOTATION

**Am. Jur.2d.** See 37 Am. Jur.2d, Fraud and Deceit, §§ 56, 59, 150, 167, 234; 74 Am. Jur.2d, Trademarks and Tradenames, §§ 82, 85, 86, 89.

**C.J.S.** See 87 C.J.S., Trade-Marks, Trade-Names, and Unfair Competition, §§ 124-130, 134-136, 348-352.

**Law reviews.** For article discussing remedies available for deceptive trade practices involving the misappropriation and use of a trade secret, see 48 U. Colo. L. Rev. 189 (1977). For article, "Franchise Regulation", see 15 Colo. Law. 395 (1986). For article, "Commercial Law", which discusses Tenth Circuit decisions dealing with questions of commercial law, see 63 Den. U.L. Rev. 225 (1986). For article, "Legal Aspects of Health and Fitness Clubs: A Healthy and Dangerous Industry", see 15 Colo. Law. 1787 (1986). For article, "Representing the Franchisee", see 18 Colo. Law. 2105 (1989). For article, "Default Judgments Against Consumers: Has the System Failed?", see 67 Den. U. L. Rev. 357 (1990). For article, "Regulating Faxing Activity Under State and Federal Law", see 34 Colo. Law. 63 (December 2005).

**To prove a private cause of action under the Colorado Consumer Protection Act (CCPA), a plaintiff must show that:** (1) The defendant engaged in an unfair or deceptive trade practice; (2) the challenged practice occurred in the course of defendant's business, vocation, or occupation; (3) it significantly impacts the public as actual or potential consumers of the defendant's goods, services, or property; (4) the plaintiff suffered injury in fact to a legally protected interest; and (5) the challenged practice caused the plaintiff's injury. *Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc.*, 62 P.3d 142 (Colo. 2003); *Nobody in Particular Presents, Inc. v. Clear Channel Commc'ns, Inc.*, 311 F. Supp. 2d (D. Colo. 2004).

**The list of deceptive trade practices in this section is not exhaustive and, because deceptive or unfair practices in the business of insurance could clearly injure the public, they are within the purview of the CCPA.** *Showpiece Homes Corp. v. Assurance Co. of Am.*, 38 P.3d 47 (Colo. 2001).

**"Person", as used in this section, includes business corporations.** *Heller v. Lexton-Ancira Real Estate Fund*, 809 P.2d 1016 (Colo. App. 1990).

**The inclusion of the term "vocation" indicates that professionals may be held accountable** under the CCPA. *Crowe v. Tull*, 126 P.3d 196 (Colo. 2006).

**"Passing off", as used in this section, is sufficiently plain in its meaning** and does not require a special jury instruction. *Heller v. Lexton-Ancira Real Estate Fund*, 809 P.2d 1016 (Colo. App. 1990).

**For purposes of showing that a defendant knowingly makes a "false representation", the representation must either induce a party to act, refrain from acting, or have the capacity or tendency to attract customers.** *Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc.*, 62 P.3d 142 (Colo. 2003).

**A plaintiff must establish not only that the defendant engaged in a deceptive trade practice but also that the defendant's challenged practice significantly impacts the public as actual or potential consumers of the defendant's goods, services, or property.** To make this determination, relevant considerations include the number of consumers directly affected by the challenged practice, the relative sophistication and bargaining power of the consumers affected by the challenged practice, and evidence that the challenged practice has previously impacted other consumers or has the significant potential to do so in the future. *Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc.*, 62 P.3d 142 (Colo. 2003).

**A promise of territorial exclusivity in a dealership agreement did not constitute a false representation absent a finding of fact that the company did not intend to honor its promise at the time the contract was executed.** *Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc.*, 62 P.3d 142 (Colo. 2003).

**False representation as to the use or benefits of services**, such as recommending an automotive fuel injector flush as a routine preventive maintenance service, violates this section. *Jones v. Stevinson's Golden Ford*, 36 P.3d 129 (Colo. App. 2001).

**Where a business first advertises a product at a very attractive price in order to invite inquiry, then disparages or "knocks" the product** when members of the public make inquiry, and finally offers another item for sale which is more expensive than the first but which seems like a "bargain" in comparison to the disparaged product that was originally advertised, such practice constitutes deceptive use of advertising as a lure to sell other nonadvertised products or services which is exactly the kind of trade practice which the CCPA prohibits. *People ex rel. Dunbar v. Gym of America, Inc.*, 177 Colo. 97, 493 P.2d 660 (1972).

**Such "bait and switch" advertising and selling techniques have long been recognized** in the legal literature and have long been subject to equitable sanctions. *People ex rel. Dunbar v. Gym of America, Inc.*, 177 Colo. 97, 493 P.2d 660 (1972).

**Likewise, the concept of a "tie-in sale" is not new** to the law, as its practice has long been prohibited by the anti-trust laws. *People ex rel. Dunbar v. Gym of America, Inc.*, 177 Colo. 97, 493 P.2d 660 (1972).

**The fact that a "tie-in sale", like "disparagement", and "bait and switch" tactics is not a new** or unfamiliar term to most business enterprises leads to the conclusion that its use in the CCPA does establish a standard against which one's business and trade activities can be tested, with a definite background of experience and precedent to illuminate the meaning of the words employed in the statute. *People ex rel. Dunbar v. Gym of America, Inc.*, 177 Colo. 97, 493 P.2d 660 (1972).

**Advertisement or sale of real property covered.** The general assembly has included sales and advertisements respecting real property in its broad but undefined use of the term "services" in subsections (1)(e), (g), (i), and (l), which makes false or misleading statements in the advertisement or sale of real property subject to the provisions of the CCPA. *People ex rel. MacFarlane v. Alpert Corp.*, 660 P.2d 1295 (Colo. App. 1982).

**The sale of insurance can be classified as a sale of goods, services, or property** and is thus subject to the provisions of the CCPA. *Showpiece Homes Corp. v. Assurance Co. of Am.*, 38 P.3d 47 (Colo. 2001).

**A violation of § 10-3-1104 does not constitute a per se violation of this section.** This section creates a private right of action whereas § 10-3-1104 does not. *Coors v. Sec. Life of Denver Ins. Co.*, 91 P.3d 393 (Colo. App. 2003), *aff'd* by operation of law, 112 P.3d 59 (Colo. 2005).

**The CCPA is applicable to an insurer's post-sale unfair or bad faith conduct.** *Showpiece Homes Corp. v. Assurance Co. of Am.*, 38 P.3d 47 (Colo. 2001).

**Attorneys may be found liable for CCPA violations.** The proper test for CCPA liability is whether or not an attorney's conduct constitutes a deceptive trade practice with the requisite intent and meets the elements of public impact and causation. The CCPA applies to protect the vulnerable consumer of legal services and the consumer public as a whole in the situation in which the purveyor of those services knowingly misrepresents the quality and likely benefit of those services. *Crowe v. Tull*, 126 P.3d 196 (Colo. 2006).

**Setting the price of an item so high that the market analysis shows that very few items will be sold at that price,** offering the item for sale at that price for a very short period of time, and showing the price as reduced and the item discounted in comparative price advertisements is a deceptive and misleading practice pursuant to the CCPA. *State ex rel. Woodard v. May Dept. Stores Co.*, 849 P.2d 802 (Colo. App. 1992).

**Rescission and refunds under subsection (1)(t)(I) and (1)(t)(IV) were not available** where buyer had previously cancelled contract, since at that point there was no contract to rescind and, after two years' use of club's facilities and services by buyer, parties could not be restored to their precontract status. *Robinson v. Lynmar Racquet Club, Inc.*, 851 P.2d 274 (Colo. App. 1993).

**Right of action based on failure to give notice of right to rescind under subsection (1)(t)(II) did not accrue until buyer learned of right to rescind by other means.** Therefore, applicable limitation period did not begin to run and action was not time-barred. *Robinson v. Lynmar Racquet Club, Inc.*, 851 P.2d 274 (Colo. App. 1993).

**A breach of contract claim, without additional conduct, cannot constitute an actionable claim under this article.** Unlike a breach of contract claim, which arises when one contracting party breaks a promise, a claim under this article arises when a party knowingly makes a misrepresentation or makes a false representation that has the capacity to deceive. A promise cannot constitute a misrepresentation unless the promisor did not intend to honor it at the time it was made. *Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc.*, 62 P.3d 142 (Colo. 2003).

**This article is inapplicable to excavating contracts.** *Herman v. Steamboat Springs Super 8 Motel, Inc.*, 634 P.2d 1005 (Colo. App. 1981).

**Article inapplicable where the lease of a computer system was nothing other than a commercial transaction** or where the alleged fraudulent misrepresentations had no effect on consumers generally. *U.S. Welding, Inc. v. Burroughs Corp.*, 615 F. Supp. 554 (D. Colo. 1985).

**Subsection (1)(z) does not provide notice of any requirement to obtain a license to sell collision damage waivers.** Notice is only given that it is a violation of the act to fail to obtain "all governmental licenses or permits required". Consequently, because no statute or appellate decision has defined "insurance" to include collision damage waivers, and the Colorado supreme court has declared that the issue of whether a collision damage waiver is insurance has not been resolved, the trial court correctly held that plaintiff could not recover on his claim that defendants violated the licensing requirement. *Mangone v. U-Haul Int'l, Inc.*, 7 P.3d 189 (Colo. App. 1999).

Although plaintiff cannot recover damages under his subsection (1)(z) claim, the trial court erred in excluding that portion of

the purchase price relating to collision damage waivers from plaintiff's non-insurance claims pursuant to subsections (1)(e) and (1)(u). *Mangone v. U-Haul Int'l, Inc.*, 7 P.3d 189 (Colo. App. 1999).

**Allegation of claim under this section need not be specifically pleaded.** *Heller v. Lexton-Ancira Real Estate Fund*, 809 P.2d 1016 (Colo. App. 1990).

**Certificate of review required by § 13-20-602 is not a prerequisite to a lawsuit against licensed real estate brokers based on paragraphs (1)(e) and (1)(g)** where plaintiffs who had purchased a home alleged that licensed real estate brokers failed to disclose hidden damage to the home's foundation walls of which they had actual knowledge. Expert testimony would not be necessary to prove plaintiffs' claims of actual knowledge of the damage. However, plaintiffs' claim that brokers should have known about damage required a certificate of review and was properly dismissed because expert testimony would be necessary to establish the proper standard of care. *Baumgarten v. Coppage*, 15 P.3d 304 (Colo. App. 2000).

**Subsection (3) does not allow recovery on two separate theories based on the same facts.** *Lexton-Ancira Real Estate Fund v. Heller*, 826 P.2d 819 (Colo. 1992); *Crowe v. Tull*, 126 P.3d 196 (Colo. 2006).

**Trial court did not err in refusing to direct a verdict for defendants** where evidence revealed that, by representing to their customers that an easement existed across plaintiffs' property, defendants caused damage to the road and caused two prospective pasture leases to be lost, and where it was undisputed that the actions and representations of defendants caused fences to be torn down, locks to be cut, and gates to be left open. *Walter v. Hall*, 940 P.2d 991 (Colo. App. 1996), *aff'd*, 969 P.2d 224 (Colo. 1998).

**Colorado state courts have jurisdiction over private actions under the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227, under the supremacy clause of the United States Constitution, and the TCPA does not limit this jurisdiction, even assuming congress could do so.** When congress created a private right of action that could be prosecuted in state courts, it was acknowledging that the states could apply their own rules of procedure to such an action, but it did not intend to require that any state adopt a further law or rule of court to allow the prosecution of such actions in its courts. The supremacy clause requires the exercise of such jurisdiction as the state court possesses. *Consumer Crusade, Inc. v. Affordable Health Care Solutions, Inc.*, 121 P.3d 350 (Colo. App. 2005).

**"If otherwise permitted" phrase under TCPA provisions creating a private right of action is merely an acknowledgment by congress that states have the right to structure their own court systems and that state courts are not obligated to change their procedural rules to accommodate TCPA claims.** Under this view, no state can refuse to entertain a private TCPA action, but a state is not compelled to adopt a special procedural rule for such actions. *Consumer Crusade, Inc. v. Affordable Health Care Solutions, Inc.*, 121 P.3d 350 (Colo. App. 2005).

**Applied** in *Am. Television & Commc'ns Corp. v. Manning*, 651 P.2d 440 (Colo. App. 1982); *Nobody in Particular Presents, Inc. v. Clear Channel Commc'ns, Inc.*, 311 F. Supp. 2d (D. Colo. 2004).