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HOUSE BILL 25-1090[1]
and its impact on Attorney Engagement Letters

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August 18, 2025

In the 2025 Colorado legislative session, the General Assembly passed, and Governor Polis signed, HB 25-1090 - *Protections Against Deceptive Pricing Practices*. This bill will take effect on January 1, 2026.[2] While it appears primarily aimed at landlord-tenant issues,[3] it is much broader in scope, intending to "[p]rotect people, including tenants, who experience deceptive, unfair, or unconscionable pricing of goods, services, or property in the state." The legislative declaration in paragraph (2) states that "the general assembly further declares that this act should be broadly interpreted to achieve its intended purposes and policies."

THE STATUTE.

The bill adds C.R.S. § 6-1-737 (entitled "*Requirement to disclose certain pricing information – landlords and tenant – remedies – rules - definition*"). Subsection (2)(a) is the material provision that says:

> A person shall not offer, display, or advertise an amount a person may pay for a good, service, or property unless the person offering, displaying, or advertising the good, service, or property clearly and conspicuously discloses the total price for the good, service, or property as a single number without separating the total price into separate fees, charges, or amounts. The Total Price for the good, service, or property must be disclosed more prominently than any other pricing information for the good, service, or property.

Subsection (3)(b) further requires that, "upon offering, displaying, or advertising an amount a person may pay for a good, service, or property and before a person consents to pay for a good, service, or property, the person offering, displaying, or advertising the good, service, or

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1 For an updated version, see Lidstone, Herrick K., *Colorado House Bill 25-2090 and its Impact on Attorney Engagement Letters*, available at https://ssrn.com/abstract=5350241.

2 To review the language of the new statute, click **here**.

3 See Brownstein Client Alert entitled "*Colorado Has New Leasing Protections for Tenants—What Residential Landlords Need to Know*," dated June 24, 2025, available Here.

property shall clearly and conspicuously disclose the nature and purpose of pricing information for the good, service, or property that is not part of the total price for the good, service, or property."

"Total Price" is defined in Subsection 1(m) to mean "the maximum total of all amounts, including fees and charges, that a person must pay for a good, service, or property, including any additional mandatory goods, services, or properties." Total Price must include "all amounts that must be paid to purchase, enjoy, or utilize a good, service, or property, or "are not reasonably avoidable by the person."

The statute specifically requires that the disclosure be "clear and conspicuous." Courts have found notice to be reasonably conspicuous for purposes of constructive notice of a contract term if a reasonable person would have known about the terms and the conduct that would be required to assent to them."[4] In addition, "[w]hether a contract disclaimer signed by an employee is **clear** and **conspicuous** is a question of law for the court."[5] In that case, the Court found the disclaimers in question to be "clear and conspicuous when "[t]he disclaimers in most of the yearly forms signed by Cummings were written in capitalized letters, bolded, and underlined."

Notably, there is no express exception in the statute for the provision of law services where the attorney is proposing billing on a hourly rate without knowing what the ultimate total price may be, where billing is at a fixed fee but there are provisions that the fee may be amended where the representation changes, or for a contingency fee where the contingency fee agreement contains a "statement regarding expenses, including an estimate of the expenses to be incurred and the client's obligation, if any, to pay expenses if there is no recovery."[6]

Section 6-1-737(2)(b)(II) does provide an exception where the person "can demonstrate that the person is offering services for which the total price of the service cannot reasonably be known at the time of the offer due to factors that determine the factors that determine the total price that are beyond the control of the person offering the service, including factors that are determined by consume selections or preferences or that relate to distance or time." In order for that to be applicable, however, the person offering the service must "clearly and conspicuously disclose[]"

(A) The factors that determine the total price;

(B) Any mandatory fees associated with the transaction; and

(C) That the total price of the services may vary.

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[4] *Macasero v. ENT Credit Union*, 2023 COA 40 (COA May 4, 2023).

[5] *Cummings v. Arapahoe Cty. Sheriff's Dep't*, 2018 COA 136 (COA Sep 6, 2018).

[6] Rule 1.5(c)(1)(iv). Other provisions of Rule 1.5(c)(1) regarding contingency fees also contemplate certain compensation or expense reimbursement that may not be determinable in advance.

SAMPLE DISCLOSURE – CLEAR AND CONSPICUOUS.

The following sets forth a sample disclosure that can be included in the typical attorney's fee agreement (or even on an invoice or other attorney-client communication). This paragraph is intended to meet the requirements of C.R.S. § 6-1-737(2)(b)(II). In whatever manner this is disclosed, it should be set forth "clearly and conspicuously" as appropriately modified to fit within the intended disclosure for any engagement that commences or continues on or after January 1, 2026:

> **The total price for legal services to be provided under this agreement cannot be precisely determined at this time due to the variable nature of legal work. Time spent by our lawyers, paralegals, and (where applicable) other staff and reimbursement of expenses incurred in your representation will be the basis for the total price. The hourly rates for our lawyers, paralegals, and (where applicable) other staff are set forth elsewhere in this engagement letter. The time spent and expenses incurred will be set forth on invoices that will be sent to you on a monthly basis. The total price of our legal services and the amount of our expenses incurred on your behalf will vary and may increase or decrease on a month-to-month depending on the needs and progress of your matter.**

In another case, an attorney has recommended that a simpler statement at the beginning of an engagement letter or fee agreement states:

> **The total price of the services may vary according to the factors set forth in section ___ (regarding fees) and section ___ (regarding expenses).**

In the end, each attorney or law firm must decide what language meets the requirements of the statute – whether the longer one, the shorter version, or a different provision. For any notice to be sufficient, however, the drafter needs to be convinced whether bold-faced type is sufficient to render the notice "clear and conspicuous." That may also be a question of where the notice is placed in the engagement letter – at the end in an attached Exhibit A or on the first page of the letter? Should the type be italicized as well as being bold-faced? Should the notice be in capital letters or a larger typeface to better stand out?

Another potential short-coming of the foregoing notice is that the hourly rates are not set forth in the notice – merely a reference to hourly rates for lawyer, paralegals, and others "set forth elsewhere in this engagement letter." Is that notification sufficient to meet the requirements of C.R.S. § 6-1-737(2)(b)(II) which requires that, as a condition of sufficiency of the notice "the factors that determine the total price" be set forth in the "clear and conspicuous notice"?

These are issues to be determined by each lawyer trying to comply with H.B. 25-1090.

APPLICABILITY.

Applicability to Lawyers. In the legal profession, very few engagements are on a pure fixed fee basis without an exception for adding charges or costs where the representation requires it. When a business lawyer is billing on an hourly basis commencing a legal transaction for a client, the lawyer seldom knows what the ultimate time requirement will be, and despite the best efforts of the attorney, time spent frequently expands because of actions by the client, opposing counsel, and the opposing counsel's client. When the client asks the lawyer to estimate the cost, the answer is frequently a range (such as $20,000 to $40,000), qualified by "it depends on a number of other factors."

Lawyers involved in litigation have even less control over the time that they will spend on even the simplest of cases. Generally, the interaction between the lawyer and the client amounts to a small part of the ultimate cost of litigation. The opposing party and its counsel can cause significant additional (and unpredictable) expenses in any litigation by filing meritorious or frivolous pleadings. The court can also lead to unexpected and unquantifiable expenses. How many times have litigators approached the date of trial only to have the court delay the trial for weeks or months because of a trailing docket or for other reasons?

The requirements of H.B. 25-1090 may also apply to lawyers billing on a contingency fee where the expenses to be paid by the client if the case is not successful are not determinable up front or the agreement has other client obligations to pay outside of the pure contingency calculation.

Furthermore, and perhaps more importantly, in many cases lawyers and their law firms act as general counsel for their clients – responding to a variety of questions on different subjects over a period of time – perhaps several years or in some cases, several decades.

Applicability to Other Professions. H.B. 25-1090 is also applicable to other professionals who bill for services on an hourly rate – whether accountants, engineers, or other professionals.

EFFECTIVENESS.

As noted above, this bill is set to take effect on January 1, 2026, but it includes a clause allowing for a referendum. If no petition is filed by August 5, 2025, the bill proceeds as planned. However, if a valid petition is submitted, the bill (or parts of it) will go to voters in November 2026 and will only take effect if approved.

It is important to note that the requirements of this bill for "clear and conspicuous" disclosure is not only for new engagements entered into by lawyers and others. The statutory requirements also apply to the continuation of existing engagements. Thus, the lawyer with a long-term client who continues to perform work for the client past December 31, 2025 will need to

make the disclosure to the existing client. Perhaps the disclosure can be accomplished on the invoice sent immediately before the effective date; perhaps the lawyer wants to send a new engagement letter or include the disclosure after the effective date.

Finally (and potentially importantly), "the attorney general may adopt rules to implement this section."[7] Perhaps the attorney general will realize this this disclosure is inappropriate to disclosure by lawyers, accountants, and other professionals. But then again, the attorney general's term is expiring, and he is running a tough race to become Colorado's next governor. He may not have time to worry about this bill before its effective date.

ENFORCEMENT.

Section 6-1-737(5)(a) provides that a person that violates any of the requirements or prohibitions of C.R.S. § 6-1-737 engages in a deceptive, unfair, and unconscionable act or practice" and is liable for damages as described in Subsection (5)(b).

Importantly, Subsection (5)(c)(I) provides that "a person aggrieved by a violation of this section does not need to send a written demand, or satisfy any other pre-suite requirement, before asserting a claim based on a violation of this section." Thus, clients have a fairly powerful threat against lawyers and can proceed directly to court to interpret their engagement letter and its compliance with the statute.

CONCLUSION.

Lawyers should review the new statute in the context of Colo. RPC 1.5 which continues to govern lawyer fee agreements and should further consider whether existing fee agreements (whether hourly, contingent or fixed fee) meet the requirements of the new statute. In most cases they probably do not, and this will need to be addressed with existing and new clients.

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[7] C.R.S. § 6-1-737(5).