Business Law Legislative Update

2025

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COLORADO

I. HB 25-1001: Enforcement of Wage and Hour Laws

a. Background: Colorado has steadily expanded its labor protections in recent years, particularly in response to wage theft, employee misclassification, and inadequate enforcement mechanisms. HB25-1001 continues this trend by strengthening oversight, enhancing penalties for violations, expanding individual liability, and improving remedies for employees. The bill reflects increasing political and social pressure to hold both businesses and individual owners accountable for wage law violations, and to ensure that workers can enforce their rights without fear of retaliation.

b. Bill Summary: HB25-1001 introduces several substantial updates to Colorado's wage and hour enforcement framework:

   a. Expanded Definition of Employer:

      i. Individuals owning or controlling at least 25% of an entity are now personally included in the definition of "employer" for wage and hour purposes, potentially exposing them to direct liability. The original version of HB25-1001 did not provide for any exceptions to this newly drafted "employer" definition. However, HB25-1001 carves out one notable exception. Under the exception, if a person is a minority owner of an employer who can demonstrate that he or she has fully delegated authority to control the day-to-day operations of said employer entity, the person will not be held accountable for wage violations the employer is found to have committed.

   b. Payroll Deduction Protections:

      i. Employers may not make payroll deductions that reduce a worker's pay below minimum wage.

   c. Penalty Waiver Discretion:

      i. The Division of Labor Standards and Statistics (the "**Division**") may waive penalties for late wage payments within 14 days of written demand if specified conditions are met.

   d. Court Authority and Equitable Relief:

      i. Courts are no longer required to find that an employee's claim lacked substantial justification before awarding attorney's fees to employers.

      ii. Courts may now award equitable relief (e.g., injunctions) to deter violations and prevent unjust enrichment in unpaid wage actions.

   e. Increased Wage Claim Thresholds:

i. The cap on wage claims the Division can adjudicate increases from $7,500 to $13,000 (effective July 1, 2026–Dec 31, 2027), with inflation-based adjustments starting Jan 1, 2028.

f. <u>City/County Authority & Division Deadlines</u>:

i. Clarifies that local governments may enforce their own wage laws.

ii. Repeals the requirement that the Division must issue wage determinations within 90 days.

g. <u>Misclassification Fines</u>:

i. Employers found to have misclassified employees as independent contractors face the following fines:

1. $5,000 for a willful violation;
2. $10,000 if not remedied within 60 days;
3. $25,000 for a repeat willful violation within 5 years;
4. $50,000 if a repeat violation is not remedied within 60 days.

ii. These fines will be adjusted for inflation starting Jan 1, 2028, and biennially thereafter.

h. <u>Faster Access to Wage Theft Fund</u>:

i. Reduces the waiting period for an employee to be paid from the Wage Theft Enforcement Fund from 6 months to 120 days.

i. <u>Expanded Retaliation Protections</u>:

i. Expands anti-retaliation provisions to cover more types of protected conduct and extends liability beyond just employers.

ii. Protects employees regardless of immigration status, and makes any attempt to use immigration status against a worker a prohibited retaliatory act.

iii. Permits the Division to award attorney fees and costs to workers who prevail on retaliation or discrimination claims.

c. <u>Effective Date</u>: Signed May 12, 2025; Effective 90 days after adjournment.

II. HB 25-1010: Prohibiting Price Gouging in Sales of Necessities

a. <u>Background</u>: Price gouging (i.e., unjustified price increases on essential goods and services during emergencies) has increasingly drawn scrutiny, especially following public health crises, natural disasters, and supply chain shocks. Colorado law previously prohibited price gouging only in limited circumstances, specifically during declared disasters. However, advocates and lawmakers identified a need for more explicit standards to deter profiteering and protect consumers during emergencies. HB25-1010 is part of a broader movement to codify clearer protections under consumer law.

b. Bill Summary: HB25-1010 strengthens Colorado's consumer protection laws by more precisely defining and expanding the scope of price gouging prohibitions:

   i. Codification of Price Gouging as an Unfair Act:

      1. The bill specifies that engaging in price gouging in the sale of necessities constitutes an unfair and unconscionable act or practice under Colorado's consumer protection statutes.

   ii. Presumption of Price Gouging:

      1. Creates a presumption of price gouging if, following a gubernatorial disaster emergency declaration, the price of a necessity is increased by 10% or more above:

         (1) The average price of that good or service during the 90 days prior to the increase; or

         (2) The price at which a comparable good or service was offered or sold before the disaster began.

   iii. Definition of "Necessities":

      1. "Necessities" are defined as goods or services essential to the health, safety, and welfare of individual consumers or the general public.

      2. This could include food, fuel, medical supplies, shelter, sanitation products, utilities, and other critical services or items.

c. Effective Date: Signed May 9, 2025; Effective 90 days after adjournment.

III. HB 25-1090: Protections Against Deceptive Pricing Practices

a. Background: With growing consumer concern over so-called "junk fees" and misleading price displays, particularly in the travel, event ticketing, dining, broadband, and rental housing sectors, lawmakers across the U.S. have sought to increase pricing transparency. Colorado's HB25-1090 addresses this issue by prohibiting deceptive pricing tactics and mandating that businesses disclose the full costs consumers may face upfront. The bill is designed to prevent "bait-and-switch" advertising, surprise fees, and obfuscation in service industries and housing.

b. Bill Summary: HB25-1090 strengthens consumer protection laws by establishing strict requirements for pricing disclosures and by defining violations as deceptive, unfair, and unconscionable acts under Colorado law. Key provisions include:

i. Total Price Disclosure Requirement:

   1. A business must disclose the maximum total price a person may pay for any good, service, or property, excluding government taxes or shipping fees.
   2. Pricing information that is not part of the total price must be clearly labeled with its nature and purpose.

ii. Prohibited Practices:

   1. Misrepresenting the purpose or nature of a price component is banned.
   2. Landlords are prohibited from charging tenants certain undisclosed fees, including those that violate the disclosure requirements outlined in this bill.

iii. Exemptions and Safe Harbors:

   1. A business is not in violation of the total price disclosure rule if it:
      (1) Is a food or beverage service provider that:
         i. Discloses mandatory service charges in the total price and explains their distribution.
         ii. Distributes those charges exclusively to nonmanagerial employees in compliance with the law.
      (2) Can show the total price is indeterminate at the time of offer, provided it discloses:
         i. Pricing factors, mandatory fees, and that total pricing may vary.
      (3) Is governed by and compliant with federal pricing transparency regulations that preempt state law.
      (4) Charges additional fees in connection with real estate settlement services, as long as they are not broker commissions.
      (5) Is a provider of broadband internet access and complies with specified federal rules.

iv. Enforcement and Remedies:

   1. A violation permits civil action by an aggrieved person, following a written demand.
   2. If the violator fails to cure the issue within 14 days of demand, they are liable for:
      (1) Actual damages + 18% annual interest (compounded), or
      (2) Three times actual damages, or

(3) A statutory amount of $100–$1,000 per person per violation, whichever is greater.

v. Rental Agreement Provisions:

1. Section 3 and 4 modify existing landlord-tenant law by prohibiting lease terms that:

(1) Require tenants to pay any fee or amount violating the new disclosure requirements.

(2) This includes prior restrictions on third-party service markups.

c. Effective Date: Signed April 21, 2025; Effective 90 days after adjournment.

IV. HB 25-1284: Regulating Apprentices in Licensed Trades

a. Background: Colorado's construction and trades sectors, particularly electrical and plumbing, are facing heightened scrutiny over training quality, workforce readiness, and licensing compliance. Under current law, employers must register apprentices with the appropriate licensing boards, but enforcement gaps and inconsistent reporting have raised concerns about the integrity of the apprenticeship pipeline. HB25-1284 responds to these challenges by tightening registration and renewal rules, aligning apprentice training with federally recognized programs, and giving boards more oversight over noncompliant apprentices and employers.

b. Bill Summary: This bill introduces several reforms designed to enhance regulatory control over apprentices in licensed trades, especially plumbing and electrical work.

c. Effective Date: Signed June 3, 2025; Effective 90 days after adjournment.

V. SB 25-070: Online Marketplaces & Third-Party Sellers

a. Background: As organized retail crime continues to escalate nationwide, stolen goods are increasingly being resold through online marketplaces, complicating enforcement and enabling anonymous third-party sellers to reach consumers across state lines. In response, states like Colorado are enacting legislation to compel greater cooperation between online platforms and law enforcement. SB25-070 seeks to strengthen consumer protection and combat retail theft by placing new obligations on digital platforms to identify and report suspicious seller behavior.

b. Bill Summary: SB25-070 imposes new duties on online marketplaces when engaging with third-party sellers in Colorado:

i. Mandatory Reporting to Law Enforcement:

1. An online marketplace must alert a law enforcement agency if it knows or should have known that a third-party seller is selling or attempting to sell stolen goods to a Colorado consumer.
2. This obligation does not apply if the marketplace has already received a law enforcement notice identifying the same third-party seller for the same alleged conduct.

ii. Communication Mechanism Requirement:

1. Online marketplaces are required to create a mechanism to communicate confidentially and in a timely manner with law enforcement agencies.

iii. Monitoring and Prevention Systems:

1. Marketplaces must also implement internal policies, systems, and staff specifically aimed at:
   (1) Monitoring product listings, and
   (2) Detecting and preventing instances of organized retail crime.

iv. These requirements aim to disrupt the flow of illicit goods through digital storefronts and enhance accountability within e-commerce ecosystems.

c. Effective Date: Signed June 4, 2025

VI. SB 25-079: Colorado Vending of Digital Assets Act

a. Background: As consumer access to cryptocurrency continues to grow—particularly through automated machines known as virtual currency kiosks—concerns have emerged regarding consumer protection, transparency, and fraud prevention. These kiosks, often referred to as "crypto ATMs," can be vulnerable to misuse, including scams involving international wallets. In response, the Colorado legislature enacted the "Colorado Vending of Digital Assets Act" to establish minimum standards for transparency, security, and transaction limits in the digital asset vending space.

b. Bill Summary: SB25-079 introduces a regulatory framework governing virtual currency kiosks operating in Colorado:

i. Customer Disclosures and Receipts:

1. Kiosk operators must provide clear disclosures to customers before transactions.
2. Each customer must receive an electronic receipt detailing their virtual currency transaction.

ii. Fraud Refund Provision:

1. For a customer's first transaction involving a wallet or exchange located outside the United States, the kiosk operator must issue a full refund if:
    (1) The customer reports the transaction as fraudulent within 60 days; and
    (2) The customer contacts both the operator and a government or law enforcement agency and submits proof of fraud.

iii. Transaction Limits:
1. New customers (less than 7 days with the kiosk operator) are limited to $2,000 per day.
2. Existing customers (7 days or more) are limited to $10,500 per day.

iv. Key Definitions:
1. "Virtual currency": A digital unit used as a medium of exchange or digitally stored value, including units used in payment systems.
2. "Virtual currency kiosk": An electronic terminal acting as an agent of the operator to enable the exchange of virtual currency for fiat currency or other digital assets.
3. "New customer": Any customer using a kiosk for fewer than 7 days.

v. This act aims to reduce consumer exposure to digital asset fraud, especially from international scams, and to impose accountability on kiosk operators in a growing and lightly regulated space.

c. Effective Date: Signed June 2, 2025; Effective

VII. SB 25-083: Limitations on Restrictive Employment Agreements

a. Background: Colorado has taken a national leadership role in restricting non-compete and non-solicitation clauses in employment contracts, particularly to protect employee mobility and access to care in the healthcare sector. Existing law permits restrictive covenants only for highly compensated workers under defined conditions. However, concerns have grown around the use of these covenants in healthcare professions, where restrictions may impede patient access, continuity of care, and the free practice of medicine. SB25-083 further narrows the allowable scope of restrictive employment agreements, especially in the medical, dental, and advanced nursing fields.

b. Bill Summary: SB25-083 makes several targeted changes to Colorado's restrictive covenant statutes:

i. Healthcare Exclusion from Highly Compensated Worker Exemption:
1. Non-compete covenants are no longer enforceable even for highly compensated workers if they restrict:

(1) The practice of medicine;

(2) The practice of advanced practice registered nursing; or

(3) The practice of dentistry in Colorado.

ii. Narrowing of Nonsolicitation Covenant Exception:

1. Similarly, nonsolicitation agreements (restricting contact with clients or patients) are excluded from enforcement, even under the highly compensated worker exemption, if they pertain to the medical, advanced practice nursing, or dental professions.

iii. Minority Owner Covenant Calculation: For individuals who hold a minority ownership interest in a business (obtained through equity or services rendered), a non-compete may be valid only if its duration in years does not exceed:

1. The total consideration received from the sale of the ownership interest divided by the average annualized compensation (including distributions) received in the shorter of the past 2 years or the individual's entire tenure with the business.

iv. Patient Notification Rights in Healthcare Departures:

1. The bill prohibits any covenant that would prevent or materially restrict a departing healthcare provider from informing former patients about:

(1) The provider's ongoing practice;

(2) The provider's new professional contact details;

(3) The patient's right to choose their healthcare provider.

v. These provisions ensure that patients maintain access to providers of their choice and that providers can transition their practice without legal obstruction.

c. Effective Date: Signed June 3, 2025.

VIII. SB 25-126: Uniform Antitrust Pre-Merger Notification Act

a. Background: As corporate consolidation and cross-border mergers increase, states are taking a more active role in scrutinizing deals that could impact local economies and market competition. Although the federal Hart-Scott-Rodino (HSR) Act requires pre-merger filings with federal authorities, states often lack visibility into transactions affecting their jurisdictions. The Uniform Antitrust Pre-Merger Notification Act, drafted by the Uniform Law Commission, seeks to bridge this gap. SB25-126 brings Colorado in line with this national effort by requiring concurrent state-level filings to enhance antitrust enforcement capabilities.

b. Bill Summary: SB25-126 enacts the Uniform Antitrust Pre-Merger Notification Act in Colorado, establishing new state-level obligations for parties involved in significant mergers or acquisitions:

    i. State-Level Filing Requirement:

        1. Any party required to file a pre-merger notification under the federal HSR Act must contemporaneously file the same materials with the Colorado Attorney General if:

            (1) The party has its principal place of business in Colorado, or

            (2) Has annual net sales in Colorado equal to or exceeding 20% of the HSR filing threshold.

    ii. Materials to be Filed:

        1. Filings must include complete electronic copies of:

            (1) The federal HSR form, and

            (2) Any supporting documentary materials submitted as part of the federal pre-merger notification.

    iii. Confidentiality Protections:

        1. The Attorney General must maintain the confidentiality of all submitted materials, with limited exceptions for disclosure authorized under the Act.

    iv. Penalties for Noncompliance:

        1. A civil penalty of up to $10,000 per day may be imposed on any party that fails to comply with the state filing requirement.

c. Effective Date: Signed June 4, 2025

IX. SB 25-133: Colorado Voidable Transactions Act

a. Background: Colorado has long governed the avoidance of fraudulent asset transfers through the Colorado Uniform Fraudulent Transfers Act (CUFTA), aimed at protecting creditors from debtors who attempt to shield assets to avoid payment. However, CUFTA's terminology and provisions have become outdated and inconsistent with modern practices and the national Uniform Voidable Transactions Act (UVTA). To promote clarity, uniformity, and alignment with contemporary legal standards, SB25-133 updates Colorado's law and renames it the Colorado Voidable Transactions Act.

b. Bill Summary: SB25-133 modernizes Colorado's creditor protection statutes by making the following key changes:

    i. Terminology Overhaul:

1. Renames the existing Colorado Uniform Fraudulent Transfers Act to the Colorado Voidable Transactions Act.
2. Updates language throughout the statute, replacing references to "fraudulent transfers" with the more legally accurate term "voidable transactions."

ii. Alignment with Uniform Law:

1. Conforms Colorado law with the Uniform Law Commission's Uniform Voidable Transactions Act, improving consistency with laws in other states.

iii. Evidentiary and Procedural Clarifications:

1. Establishes burdens of proof and evidentiary standards for claims made under the Act.
2. Clarifies the roles and responsibilities of parties in proving or defending against voidable transaction allegations.

iv. Jurisdictional Rules:

1. Specifies which state's laws apply to certain claims, depending on the debtor's location and the nature of the transaction.
2. Aims to reduce ambiguity in multi-jurisdictional disputes involving asset transfers.

v. Technical and Structural Updates:

1. Makes various technical corrections and organizational improvements to enhance the clarity and usability of the Act.

vi. These updates ensure the statute reflects modern creditor-debtor practices while maintaining robust protections against asset shielding.

c. Effective Date: Signed April 7, 2025

X. SB 25-145: Online Cancellation of Automatic Renewal Contracts

a. Background: Automatic renewal contracts—often used for subscriptions to digital services, gym memberships, and product deliveries—have become a common consumer complaint, particularly when cancellations are difficult or restricted to offline methods. Under current Colorado law, sellers who obtain consent for an automatic renewal through an online medium may offer cancellation either online or in person. However, this flexibility has created friction for consumers who expect digital cancellation to match digital enrollment. SB25-145 seeks to remedy this gap by requiring cancellation to be available through the same medium used for consent.

b. Bill Summary: SB25-145 strengthens consumer protection by mandating accessible online cancellation for automatic renewal contracts:

i. Online Cancellation Requirement:

1. If a consumer consents to an automatic renewal contract through an online medium, the seller must also provide a means to cancel the contract online.

2. This changes the previous law, which allowed cancellation either online or in person, regardless of how consent was given.

ii. Optional Promotional Content at Cancellation Point:

1. Sellers are permitted to present:

(1) Discounted offers,

(2) Retention benefits, or

(3) Information about the effects of cancellation

2. But only simultaneously with a direct link to cancel the automatic renewal. These cannot obstruct or delay the cancellation process.

iii. Enforcement and Rulemaking Authority:

1. The Colorado Attorney General is granted authority to adopt rules for implementation and enforcement.

iv. This bill aligns with broader consumer privacy and convenience trends, ensuring that cancellation is as simple and accessible as enrollment, especially for online transactions.

c. Effective Date: Signed June 3, 2025

DELAWARE

I. SB 98: Delaware LLC Act Update

a. Background: The Delaware General Assembly, consistent with its practice of periodically updating the Delaware LLC Act to maintain its national leadership in business entity law, has introduced Senate Bill No. 98 as part of its 2025 legislative session. These proposed changes aim to address recent Delaware case law (notably *Holifield v. XRI Inv. Holdings, LLC* and *XRI Inv. Holdings LLC v. Holifield*) and modernize administrative processes under the Act. The amendments provide additional flexibility for ratifying defective actions, clarify rules for certificate corrections and consolidations, and ensure better oversight of registered agents operating in Delaware.

b. Bill Summary:

   i. Ratification of Void or Voidable Acts (§18-106(e))

      1. Expands the safe harbor provision for ratifying acts or transactions that were void or voidable when taken, applying it not just to acts of the LLC itself but also to those taken by members, managers, or others.
      2. Allows ratification or waiver to be express or implied, including by conduct such as acquiescence or silence.
      3. Clarifies that notice of ratification (when required by the operating agreement) does not condition the effectiveness of such ratification.
      4. This change overrules case law limiting ratification under §18-106(e) to only actions of the LLC itself and prohibiting implied ratification

   ii. Certificate Nullification and Corrections (§18-203(b) & §18-211)

      1. Affirms that previously filed certificates (such as a mistaken certificate of cancellation) may be nullified using a certificate of correction.
      2. The nullification mechanism enhances clarity for correcting filings that were invalid or erroneously executed.

   iii. Consolidation Filings (§18-209(c))

      1. Requires that in the event of a consolidation resulting in a new Delaware LLC, the certificate of consolidation must include the certificate of formation of the resulting entity.
      2. Improves the Secretary of State's ability to properly register newly formed entities after consolidation.

   iv. Registered Agent Restrictions (§18-104(e))

1. Registered agents cannot perform their duties solely through virtual offices or mail forwarding services.
2. A physical office presence in Delaware is now required, ensuring the agent can reliably perform its statutory functions such as accepting service of process.

v. Amendments to Operating Agreements (§18-302)

1. Clarifies that LLC agreements may be amended during a merger or division process per §§18-217(f) and 18-221(e).
2. Confirms supermajority provisions apply only to those explicitly listed in the LLC agreement.

vi. Annual Tax Payment Clarification (§18-1107(c))

1. Confirms that full annual tax is due when a certificate is filed that terminates the existence of a domestic LLC or the registration of a foreign LLC.

c. Takeaways:

i. Broader Ratification Powers: Counsel should advise clients that acts previously deemed void (including unauthorized equity issuances or member actions) may now be more easily ratified, including by conduct. This is especially important in closely held companies where formalities are sometimes lacking.

ii. Administrative Clean-up Opportunities: LLCs now have a clearer path to nullify mistaken filings, such as erroneously filed cancellations, without requiring full reinstatement proceedings.

iii. Virtual Agents Not Enough: Law firms acting as or coordinating with Delaware registered agents must ensure compliance with the new physical presence requirement to avoid administrative penalties or service failures.

iv. Corporate Transactions: When handling consolidations, lawyers must now attach the new entity's certificate of formation, which may require earlier document preparation during the closing process.

v. Operating Agreement Drafting: Take note of the clarified rules on amendment processes and ratification. Supermajority provisions should be carefully drafted to ensure they apply only as intended.

vi. These amendments reinforce Delaware’s responsiveness to evolving case law and business practices while bolstering statutory reliability for transactional counsel and entity managers alike.

d. Effective Date: All the proposed amendments under Senate Bill No. 98 are scheduled to become effective on August 1, 2025

II. 2024–2025 amendments to the Delaware General Corporation Law (DGCL)

a. Background: Prompted by the Delaware Court of Chancery's decision in Moelis (Feb. 2024), which held that governance rights granted in stockholder agreements (rather than in the charter) violated DGCL §141(a), the Delaware legislature sought to affirm and clarify the enforceability of such rights through statutory amendments.

b. Bill Summary:

   i. **Stockholder Agreements**. A new subsection (18) was added to §122 explicitly authorizing corporations to enter into stockholder agreements granting governance rights—such as consent, nomination, and approval rights—to current or prospective stockholders or their designees.

      1. These rights are valid if the agreement is supported by consideration and do not otherwise violate other DGCL provisions.

      2. Notably, these agreements:

         a. May now be facially valid without inclusion in the charter or bylaws.

         b. Do not affect over-delegation rules or pre-existing plans (e.g., poison pills).

         c. Allow for specific performance remedies if breached.

         d. Are not rendered invalid simply due to fiduciary conflicts unless they violate other provisions.

         e. Can include exclusive forum and arbitration provisions.

   ii. **Amendments to Section 220 (Books and Records)**: There has been growing concern about the expansive use of Section 220 demands by stockholders, leading to burdensome discovery requests. The Legislature responded with Senate Bill 21 to rein in these practices and define clearer boundaries.

      1. Narrowed Scope: Section 220 now restricts the definition of "books and records" to nine specific categories (e.g., charter, bylaws, meeting minutes, board materials, financials for past 3 years).

      2. Three-Year Limitation: Many document categories are limited to the past three years from the date of demand.

      3. "Compelling Need" Exception: Courts may permit access to other records only if a stockholder shows:

      4. Statutory compliance,

      5. A compelling need, and

      6. Clear and convincing evidence of necessity.

7. Confidentiality and Use: New statutory authority for companies to redact and restrict use of produced records.
8. Codified Procedures: Demands must be made in good faith, describe purpose and records with reasonable particularity, and show relevance to the stated purpose.

c. Takeaways:

i. Governance rights in stockholders agreements now enjoy statutory support, reducing litigation risk if properly drafted.
ii. Practitioners must still navigate possible conflicts with §141(a) and fiduciary principles.
iii. Structure agreements carefully, particularly around approval rights and enforcement provisions
iv. Corporations can now invoke statutory limitations and procedural defenses against overbroad 220 demands.
v. Emphasizes the importance of maintaining clean, timely records like board minutes and director questionnaires.
vi. Lawyers should advise clients to incorporate confidentiality language and clearly define inspection parameters in organizational documents.

FEDERAL

I. SEC No-Action Letter

a. Background: Rule 506(c) of Regulation D under the Securities Act of 1933 permits issuers to engage in general solicitation and advertising when offering securities, provided they take “reasonable steps” to verify that all purchasers are accredited investors. Historically, the SEC offered a non-exclusive safe harbor that involved invasive verification steps such as reviewing investors' financial documentation or obtaining certifications from third-party professionals. While this safe harbor provided a clear compliance pathway, its operational burdens discouraged many fund managers, especially those offering private funds, from utilizing Rule 506(c), thus limiting broader adoption. Given the compliance challenges and the market’s demand for more practical alternatives, the SEC’s Division of Corporate Finance issued a no-action letter on March 12, 2025, offering issuers an additional, more flexible verification pathway.

b. Summary: The SEC staff stated that an issuer may be deemed to have taken reasonable steps to verify accredited investor status if certain conditions involving minimum investment thresholds and written representations are met.

   i. Natural Persons:
      1. Minimum investment of $200,000
      2. Written representation that:
         a. The investor is accredited, and
         b. The investment is not financed by a third party

   ii. Legal Entities (accredited based on assets):
      1. Minimum investment of $1,000,000
      2. Similar written representation as above

   iii. Entities accredited via equity owners:
      1. Minimum investment of $1,000,000, or
      2. $200,000 per equity owner if there are fewer than five natural person equity owners
      3. Written representation confirming the accredited status and lack of third-party financing

   iv. Additionally, issuers must not have actual knowledge that contradicts these representations (e.g., if the issuer knows the investment was financed by a loan, the safe harbor would not apply).

II. Click to Cancel Law

a. Background: The Federal Trade Commission (FTC) finalized its long-anticipated "Click to Cancel" rule in October 2024 as part of broader efforts to curb deceptive practices associated with negative option marketing—commonly seen in automatic renewal subscriptions and continuity plans. The rule targets what the FTC refers to as "dark patterns," manipulative user interface designs that make it difficult for consumers to cancel services, particularly those initiated online. The move follows years of growing concern from regulators, consumer advocates, and legislatures about the proliferation of subscription traps—where users are enticed into services they struggle to exit. This rule aims to set a national standard for cancellation practices across all types of recurring billing schemes, including those used in B2C and B2B contexts.

b. Bill Summary: The FTC's "Click to Cancel" rule imposes several consumer protection requirements on businesses that offer negative option features. The rule broadly applies to:

   i. Automatic renewals
   ii. Free-to-pay or fee-to-pay conversions
   iii. Continuity programs
   iv. Pre-notification negative option plans

c. Key Requirements.

   i. Simple Cancellation: Consumers must be able to cancel subscriptions easily—via the same medium through which they enrolled (e.g., online cancellation if sign-up was online). This "one-click" cancellation must stop all future billing immediately.

   ii. No Misrepresentations: Sellers must not misrepresent any material terms related to negative option plans.

   iii. Disclosure Before Billing: Sellers must present key billing information before obtaining a consumer's payment details.

   iv. Affirmative Consent: Sellers must obtain the consumer's express, unambiguous, and informed consent to be charged under a negative option plan. Consent cannot be bundled with other consents or obscured by fine print.

   v. Pre-Renewal Notice: Businesses must notify consumers in advance of automatic renewals, detailing price, timing, and cancellation options.

   vi. Uniformity Across Channels: If a company allows subscription via phone, web, or app, all those channels must offer cancellation as well.

   vii. Ban on Retention Tactics: Sellers cannot force consumers to navigate "save offers," lengthy chats, or other tactics to cancel. Making the customer talk to a chatbot or live agent to cancel (if not required to sign up) is disallowed.

d. Comparison: Colorado SB 25-145 (signed into law in 2025) mirrors many elements of the FTC rule but with key distinctions relevant to state-level compliance. Here's how the two align and diverge:

Feature	**FTC Rule**	**Colorado SB 25-145**
Applicability	Nationwide; applies to both B2C and B2B in any media	Applies to Colorado consumers; limited to B2C
Cancellation Mechanism	Requires online cancellation via the same medium as sign-up	Requires a *"cancel subscription"* link for online sign-ups
Pre-Renewal Notice	Mandated for all negative option plans	Also required; must be sent between 3–30 days before renewal
Consent Requirement	Must be express, informed, and separate	Also requires clear affirmative consent for auto-renewals
Retention Tactics	Prohibited from obstructing cancellation or using manipulative offers	Silent on specific manipulation tactics, but bars unreasonable barriers
Enforcement	FTC enforcement; private actions not clearly permitted	Enforced by Colorado Attorney General and District Attorneys; no private right of action
Penalties	Civil penalties, injunctive relief, and potential class actions	Civil penalties under Colorado Consumer Protection Act

i. While the FTC rule sets a "floor" for consumer protection, it does not preempt state laws that offer greater protections. Colorado's law therefore remains enforceable where it imposes equal or stricter standards. However, if a state law conflicts with the FTC rule by offering less protection or requiring obstructionist tactics, the FTC rule prevails.

e. Conclusion. Both the FTC and Colorado have taken strong steps to ensure consumer-friendly cancellation procedures for subscription services. The federal "Click to Cancel" rule establishes a national baseline and aggressive enforcement mechanism, while Colorado's SB 25-145 reinforces similar values with clear statutory obligations and localized oversight. Businesses operating in Colorado, and nationally, must adapt their subscription and cancellation flows to align with the most stringent applicable standard. Legal advisors should prioritize compliance audits, contract reviews, and system redesigns to reduce litigation exposure and ensure regulatory alignment.