

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 13-0853.01 Christy Chase x2008

SENATE BILL 13-228

SENATE SPONSORSHIP

Aguilar, Tochtrop

HOUSE SPONSORSHIP

Kraft-Tharp,

Senate Committees
Health & Human Services

House Committees

A BILL FOR AN ACT

101 **CONCERNING DECEPTIVE TRADE PRACTICES RELATED TO THE**
102 **DISPENSING OF HEARING AIDS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill adds to the "Colorado Consumer Protection Act" (CCPA) deceptive trade practices related to the dispensing of hearing aids and subjects persons who dispense hearing aids to penalties under the CCPA if the dispenser engages in a deceptive trade practice in connection with dispensing a hearing aid.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **recreate and**
3 **reenact, with amendments,** 6-1-701 as follows:

4 **6-1-701. Deceptive trade practices - dispensing hearing aids.**

5 (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
6 REQUIRES:

7 (a) "DISPENSE", WITH REGARD TO A HEARING AID, MEANS TO SELL
8 OR TRANSFER TITLE, POSSESSION, OR THE RIGHT TO USE BY LEASE,
9 BAILMENT, OR ANY OTHER METHOD. THE TERM DOES NOT APPLY TO
10 WHOLESALE TRANSACTIONS WITH DISTRIBUTORS OR DEALERS.

11 (b) "DISPENSER" MEANS A PERSON WHO DISPENSES HEARING AIDS.

12 (c) "HEARING AID" MEANS ANY WEARABLE INSTRUMENT OR
13 DEVICE DESIGNED OR OFFERED TO AID OR COMPENSATE FOR IMPAIRED
14 HUMAN HEARING AND ANY PARTS, ATTACHMENTS, OR ACCESSORIES TO
15 THE INSTRUMENT OR DEVICE, INCLUDING EAR MOLDS BUT EXCLUDING
16 BATTERIES AND CORDS. THE TERM DOES NOT INCLUDE A SURGICALLY
17 IMPLANTED HEARING DEVICE.

18 (d) "PRACTICE OF DISPENSING, FITTING, OR DEALING IN HEARING
19 AIDS" INCLUDES:

20 (I) SELECTING AND ADAPTING HEARING AIDS FOR SALE;

21 (II) TESTING HUMAN HEARING FOR PURPOSES OF SELECTING AND
22 ADAPTING HEARING AIDS FOR SALE; AND

23 (III) MAKING IMPRESSIONS FOR EAR MOLDS AND COUNSELING AND
24 INSTRUCTING PROSPECTIVE USERS FOR PURPOSES OF SELECTING, FITTING,
25 ADAPTING, OR SELLING HEARING AIDS.

26 (e) "SURGICALLY IMPLANTED HEARING DEVICE" MEANS A DEVICE

1 THAT IS DESIGNED TO PRODUCE USEFUL HEARING SENSATIONS TO A
2 PERSON WITH A HEARING IMPAIRMENT AND THAT HAS, AS ONE OR MORE
3 COMPONENTS, A UNIT THAT IS SURGICALLY IMPLANTED INTO THE EAR,
4 SKULL, OR OTHER INTERIOR PART OF THE BODY. THE TERM INCLUDES ANY
5 ASSOCIATED UNIT THAT MAY BE WORN ON THE BODY.

6 (2) IN ADDITION TO ANY OTHER DECEPTIVE TRADE PRACTICES
7 UNDER SECTION 6-1-105, A DISPENSER ENGAGES IN A DECEPTIVE TRADE
8 PRACTICE WHEN THE DISPENSER:

9 (a) FAILS TO DELIVER TO EACH PERSON TO WHOM THE DISPENSER
10 DISPENSES A HEARING AID A RECEIPT THAT:

11 (I) BEARS THE BUSINESS ADDRESS OF THE DISPENSER TOGETHER
12 WITH SPECIFICATIONS AS TO THE MAKE AND SERIAL NUMBER OF THE
13 HEARING AID FURNISHED AND THE FULL TERMS OF THE SALE CLEARLY
14 STATED. IF THE DISPENSER DISPENSES A HEARING AID THAT IS NOT NEW,
15 THE DISPENSER SHALL CLEARLY MARK ON THE HEARING AID CONTAINER
16 AND THE RECEIPT THE TERM "USED" OR "RECONDITIONED", WHICHEVER IS
17 APPLICABLE, WITHIN THE TERMS OF THE GUARANTEE, IF ANY.

18 (II) BEARS, IN NO SMALLER TYPE THAN THE LARGEST USED IN THE
19 BODY OF THE RECEIPT, IN SUBSTANCE, A PROVISION THAT THE BUYER HAS
20 BEEN ADVISED AT THE OUTSET OF THE BUYER'S RELATIONSHIP WITH THE
21 DISPENSER THAT ANY EXAMINATION OR REPRESENTATION MADE BY A
22 DISPENSER IN CONNECTION WITH THE PRACTICE OF DISPENSING, FITTING,
23 OR DEALING IN HEARING AIDS IS NOT AN EXAMINATION, DIAGNOSIS, OR
24 PRESCRIPTION BY A PERSON LICENSED TO PRACTICE MEDICINE IN THIS
25 STATE AND, THEREFORE, MUST NOT BE REGARDED AS MEDICAL OPINION OR
26 ADVICE;

27 (III) BEARS, IN NO SMALLER TYPE THAN THE LARGEST USED IN THE

1 BODY OF THE RECEIPT, A PROVISION INDICATING THAT DISPENSERS WHO
2 ARE LICENSED, CERTIFIED, OR REGISTERED BY THE DEPARTMENT OF
3 REGULATORY AGENCIES ARE REGULATED BY THE DIVISION OF PROFESSIONS
4 AND OCCUPATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES;

5 (IV) BEARS A PROVISION LABELED "WARRANTY" IN WHICH THE
6 EXACT WARRANTY TERMS AND PERIODS AVAILABLE FROM THE
7 MANUFACTURER ARE DOCUMENTED, OR INCLUDES AN ORIGINAL OR
8 PHOTOCOPY OF THE ORIGINAL MANUFACTURER'S WARRANTY WITH THE
9 RECEIPT;

10 (b) DISPENSES A HEARING AID TO A CHILD UNDER EIGHTEEN YEARS
11 OF AGE WITHOUT RECEIVING DOCUMENTATION THAT THE CHILD HAS BEEN
12 EXAMINED BY A LICENSED PHYSICIAN AND AN AUDIOLOGIST WITHIN SIX
13 MONTHS PRIOR TO THE FITTING;

14 (c) (I) FAILS TO RECEIVE FROM A LICENSED PHYSICIAN, BEFORE
15 DISPENSING, FITTING, OR SELLING A HEARING AID TO ANY PERSON, A
16 WRITTEN PRESCRIPTION OR RECOMMENDATION, ISSUED WITHIN THE
17 PREVIOUS SIX MONTHS, THAT SPECIFIES THAT THE PERSON IS A CANDIDATE
18 FOR A HEARING AID; EXCEPT THAT ANY PERSON EIGHTEEN YEARS OF AGE
19 OR OLDER WHO OBJECTS TO MEDICAL EVALUATION ON THE BASIS OF
20 RELIGIOUS OR PERSONAL BELIEFS MAY WAIVE THE REQUIREMENT BY
21 DELIVERING TO THE DISPENSER A WRITTEN WAIVER;

22 (II) DISPENSES, ADJUSTS, PROVIDES TRAINING OR TEACHING IN
23 REGARD TO, OR OTHERWISE SERVICES SURGICALLY IMPLANTED HEARING
24 DEVICES UNLESS THE DISPENSER IS AN AUDIOLOGIST OR PHYSICIAN;

25 (d) FAILS TO RECOMMEND IN WRITING, PRIOR TO FITTING OR
26 DISPENSING A HEARING AID, THAT THE BEST INTERESTS OF THE
27 PROSPECTIVE USER WOULD BE SERVED BY CONSULTING A LICENSED

1 PHYSICIAN SPECIALIZING IN DISEASES OF THE EAR, OR ANY LICENSED
2 PHYSICIAN, IF ANY OF THE FOLLOWING CONDITIONS EXIST:

3 (I) VISIBLE CONGENITAL OR TRAUMATIC DEFORMITY OF THE EAR;

4 (II) ACTIVE DRAINAGE OF THE EAR, OR A HISTORY OF DRAINAGE OF
5 THE EAR WITHIN THE PREVIOUS NINETY DAYS;

6 (III) HISTORY OF SUDDEN OR RAPIDLY PROGRESSIVE HEARING
7 LOSS;

8 (IV) ACUTE OR CHRONIC DIZZINESS;

9 (V) UNILATERAL HEARING LOSS OF SUDDEN ONSET WITHIN THE
10 PREVIOUS NINETY DAYS;

11 (VI) AUDIOMETRIC AIR-BONE GAP EQUAL TO OR GREATER THAN
12 FIFTEEN DECIBELS AT 500 HERTZ (Hz), 1,000 Hz, AND 2,000 Hz;

13 (VII) VISIBLE EVIDENCE OF SIGNIFICANT CERUMEN
14 ACCUMULATION ON, OR A FOREIGN BODY IN, THE EAR CANAL;

15 (VIII) PAIN OR DISCOMFORT IN THE EAR;

16 (e) FAILS TO PROVIDE A THIRTY-DAY-RESCISSION PERIOD WITH THE
17 FOLLOWING TERMS:

18 (I) THE BUYER HAS THE RIGHT TO CANCEL THE PURCHASE FOR ANY
19 REASON BEFORE THE EXPIRATION OF THE RESCISSION PERIOD BY GIVING OR
20 MAILING WRITTEN NOTICE OF CANCELLATION TO THE DISPENSER AND
21 PRESENTING THE HEARING AID TO THE DISPENSER, UNLESS THE HEARING
22 AID HAS BEEN LOST OR SIGNIFICANTLY DAMAGED BEYOND REPAIR WHILE
23 IN THE BUYER'S POSSESSION AND CONTROL. THE THIRTY-DAY RESCISSION
24 PERIOD IS TOLLED FOR ANY PERIOD DURING WHICH A DISPENSER TAKES
25 POSSESSION OR CONTROL OF A HEARING AID AFTER ITS ORIGINAL
26 DELIVERY.

27 (II) THE BUYER, UPON CANCELLATION, IS ENTITLED TO RECEIVE A

1 FULL REFUND OF ANY PAYMENT MADE FOR THE HEARING AID WITHIN
2 THIRTY DAYS AFTER RETURNING THE HEARING AID TO THE DISPENSER,
3 UNLESS THE HEARING AID WAS SIGNIFICANTLY DAMAGED BEYOND REPAIR
4 WHILE THE HEARING AID WAS IN THE BUYER'S POSSESSION AND CONTROL;
5 EXCEPT THAT, IF THE HEARING AID IS RETURNED FOR ANY REASON OTHER
6 THAN A DEFECT IN THE HEARING AID, THE DISPENSER MAY RETAIN AN
7 ITEMIZED AMOUNT TO COVER THE MINIMUM COSTS OF MATERIALS USED BY
8 THE DISPENSER AND A MANUFACTURER'S RETURN FEE, BUT THE AMOUNT
9 MUST NOT BE GREATER THAN FIVE PERCENT OF THE TOTAL CHARGE FOR
10 THE HEARING AID;

11 (III) (A) THE DISPENSER SHALL PROVIDE A WRITTEN RECEIPT OR
12 CONTRACT TO THE BUYER THAT INCLUDES, IN IMMEDIATE PROXIMITY TO
13 THE SPACE RESERVED FOR THE SIGNATURE OF THE BUYER, THE FOLLOWING
14 SPECIFIC STATEMENT IN ALL CAPITAL LETTERS OF NO LESS THAN
15 TEN-POINT, BOLD-FACED TYPE:

16 **THE BUYER HAS THE RIGHT TO CANCEL**
17 **THIS PURCHASE FOR ANY REASON AT ANY**
18 **TIME PRIOR TO 12 MIDNIGHT ON THE 30TH**
19 **CALENDAR DAY AFTER RECEIPT OF THE**
20 **HEARING AID BY GIVING OR MAILING THE**
21 **DISPENSER WRITTEN NOTICE OF**
22 **CANCELLATION AND BY RETURNING THE**
23 **HEARING AID, UNLESS THE HEARING AID HAS**
24 **BEEN SIGNIFICANTLY DAMAGED BEYOND**
25 **REPAIR WHILE THE HEARING AID WAS IN THE**
26 **BUYER'S CONTROL. BY LAW, THE DISPENSER IS**
27 **ALLOWED TO RETAIN AN ITEMIZED AMOUNT,**

1 **NOT TO EXCEED FIVE PERCENT OF THE TOTAL**
2 **CHARGE FOR THE HEARING AID, TO COVER**
3 **THE COSTS OF A MANUFACTURER'S RETURN**
4 **FEE AND THE MINIMUM COSTS OF MATERIALS**
5 **USED BY THE DISPENSER UNLESS THE HEARING**
6 **AID IS RETURNED BECAUSE IT IS DEFECTIVE.**

7 (B) THE WRITTEN CONTRACT OR RECEIPT PROVIDED TO THE BUYER
8 MUST ALSO CONTAIN A STATEMENT, IN PRINT SIZE NO SMALLER THAN
9 TEN-POINT TYPE, THAT THE SALE IS VOID AND UNENFORCEABLE IF THE
10 HEARING AID BEING PURCHASED IS NOT DELIVERED TO THE CONSUMER
11 WITHIN THIRTY DAYS AFTER THE DATE THE WRITTEN CONTRACT IS SIGNED
12 OR THE RECEIPT IS ISSUED, WHICHEVER OCCURS LATER. THE WRITTEN
13 CONTRACT OR RECEIPT MUST ALSO INCLUDE THE DISPENSER'S LICENSE,
14 CERTIFICATION, OR REGISTRATION NUMBER, IF THE DISPENSER IS REQUIRED
15 TO BE LICENSED, CERTIFIED OR REGISTERED BY THE STATE, AND A
16 STATEMENT THAT THE DISPENSER WILL PROMPTLY REFUND ALL MONEYS
17 PAID FOR THE PURCHASE OF A HEARING AID IF IT IS NOT DELIVERED TO THE
18 CONSUMER WITHIN THE THIRTY-DAY PERIOD. THE BUYER CANNOT WAIVE
19 THIS REQUIREMENT, AND ANY ATTEMPT TO WAIVE IT IS VOID.

20 (IV) A REFUND REQUEST FORM MUST BE ATTACHED TO EACH
21 RECEIPT AND MUST CONTAIN THE INFORMATION IN SUBPARAGRAPH (I) OF
22 PARAGRAPH (a) OF THIS SUBSECTION (2) AND THE STATEMENT, IN ALL
23 CAPITAL LETTERS OF NO LESS THAN TEN-POINT, BOLD-FACED TYPE:
24 "REFUND REQUEST - THIS FORM MUST BE POSTMARKED BY _____
25 (DATE TO BE FILLED IN). NO REFUND WILL BE GIVEN UNTIL THE HEARING
26 AID OR HEARING AIDS ARE RETURNED TO THE DISPENSER." A SPACE FOR
27 THE BUYER'S ADDRESS, TELEPHONE NUMBER, AND SIGNATURE MUST BE

1 PROVIDED. THE BUYER IS REQUIRED ONLY TO SIGN, LIST THE BUYER'S
2 CURRENT ADDRESS AND TELEPHONE NUMBER, AND MAIL THE REFUND
3 REQUEST FORM TO THE DISPENSER. IF THE HEARING AID IS SOLD IN THE
4 BUYER'S HOME, THE BUYER MAY REQUIRE THE DISPENSER TO ARRANGE
5 THE RETURN OF THE HEARING AID.

6 (f) REPRESENTS THAT THE SERVICE OR ADVICE OF A PERSON
7 LICENSED TO PRACTICE MEDICINE WILL BE USED OR MADE AVAILABLE IN
8 THE SELECTION, FITTING, ADJUSTMENT, MAINTENANCE, OR REPAIR OF
9 HEARING AIDS WHEN THAT IS NOT TRUE OR USING THE TERMS "DOCTOR",
10 "CLINIC", "STATE-LICENSED CLINIC", "STATE-REGISTERED",
11 "STATE-CERTIFIED", OR "STATE-APPROVED" OR ANY OTHER TERM,
12 ABBREVIATION, OR SYMBOL WHEN IT WOULD:

13 (I) FALSELY GIVE THE IMPRESSION THAT SERVICE IS BEING
14 PROVIDED BY PERSONS TRAINED IN MEDICINE OR THAT THE DISPENSER'S
15 SERVICE HAS BEEN RECOMMENDED BY THE STATE WHEN THAT IS NOT THE
16 CASE; OR

17 (II) BE FALSE OR MISLEADING;

18 (g) DIRECTLY OR INDIRECTLY:

19 (I) GIVES OR OFFERS TO GIVE, OR PERMITS OR CAUSES TO BE GIVEN,
20 MONEY OR ANYTHING OF VALUE TO ANY PERSON WHO ADVISES ANOTHER
21 IN A PROFESSIONAL CAPACITY AS AN INDUCEMENT TO INFLUENCE THE
22 PERSON OR HAVE THE PERSON INFLUENCE OTHERS TO PURCHASE OR
23 CONTRACT TO PURCHASE PRODUCTS SOLD OR OFFERED FOR SALE BY THE
24 DISPENSER; EXCEPT THAT A DISPENSER DOES NOT VIOLATE THIS
25 SUBPARAGRAPH (I) IF THE DISPENSER PAYS AN INDEPENDENT ADVERTISING
26 OR MARKETING AGENT COMPENSATION FOR ADVERTISING OR MARKETING
27 SERVICES THE AGENT RENDERED ON THE DISPENSER'S BEHALF, INCLUDING

1 COMPENSATION THAT IS PAID FOR THE RESULTS OR PERFORMANCE OF THE
2 SERVICES ON A PER-PATIENT BASIS; OR

3 (II) INFLUENCES OR ATTEMPTS TO INFLUENCE ANY PERSON TO
4 REFRAIN FROM DEALING IN THE PRODUCTS OF COMPETITORS;

5 (h) DISPENSES A HEARING AID TO A PERSON WHO HAS NOT BEEN
6 GIVEN TESTS UTILIZING APPROPRIATE ESTABLISHED PROCEDURES AND
7 INSTRUMENTATION IN THE FITTING OF HEARING AIDS, EXCEPT WHEN
8 SELLING A REPLACEMENT HEARING AID WITHIN ONE YEAR AFTER THE DATE
9 OF THE ORIGINAL PURCHASE;

10 (i) MAKES A FALSE OR MISLEADING STATEMENT OF FACT
11 CONCERNING GOODS OR SERVICES OR THE BUYER'S RIGHT TO CANCEL WITH
12 THE INTENTION OR EFFECT OF DETERRING OR PREVENTING THE BUYER
13 FROM EXERCISING THE BUYER'S RIGHT TO CANCEL;

14 (j) CHARGES, COLLECTS, OR RECOVERS ANY COST OR FEE FOR ANY
15 GOOD OR SERVICE THAT HAS BEEN REPRESENTED BY THE DISPENSER AS
16 FREE.

17 (3) (a) THIS SECTION APPLIES TO A DISPENSER WHO DISPENSES
18 HEARING AIDS IN THIS STATE.

19 (b) THIS SECTION DOES NOT APPLY TO THE DISPENSING OF HEARING
20 AIDS OUTSIDE OF THIS STATE SO LONG AS THE TRANSACTION EITHER
21 CONFORMS TO THIS SECTION OR TO THE APPLICABLE LAWS AND RULES OF
22 THE JURISDICTION IN WHICH THE TRANSACTION TAKES PLACE.

23 **SECTION 2.** In Colorado Revised Statutes, 6-1-105, **add** (1)
24 (ddd) as follows:

25 **6-1-105. Deceptive trade practices.** (1) A person engages in a
26 deceptive trade practice when, in the course of such person's business,
27 vocation, or occupation, such person:

1 (ddd) VIOLATES SECTION 6-1-701.

2 **SECTION 3.** In Colorado Revised Statutes, **amend** 6-1-114 as
3 follows:

4 **6-1-114. Criminal penalties.** Upon a first conviction any person
5 who promotes a pyramid promotional scheme in this state or who violates
6 any provision of part 3 of article 5.5 of title 12, C.R.S., SECTION 6-1-701,
7 or section 6-1-717 is guilty of a class 1 misdemeanor, as defined in
8 section 18-1.3-501, C.R.S., and, upon a second or subsequent conviction
9 FOR A VIOLATION of part 3 of article 5.5 of title 12, C.R.S., OR SECTION
10 6-1-701, is guilty of a class 6 felony, as defined in section 18-1.3-401,
11 C.R.S.

12 **SECTION 4. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, and safety.