

**NOTE: The governor signed this measure on 5/24/2013.**

# An Act

SENATE BILL 13-228

BY SENATOR(S) Aguilar, Tochtrop, Giron, Kefalas, Nicholson, Todd;  
also REPRESENTATIVE(S) Kraft-Tharp, Ginal, Pabon, Primavera,  
Schafer, Singer, Williams.

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

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

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

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

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

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

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

(c) (I) "HEARING AID" MEANS ANY WEARABLE INSTRUMENT OR

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

DEVICE DESIGNED OR OFFERED TO AID OR COMPENSATE FOR IMPAIRED HUMAN HEARING AND INCLUDES:

(A) ANY PARTS, ATTACHMENTS, OR ACCESSORIES TO THE INSTRUMENT OR DEVICE, AS DEFINED IN RULES ADOPTED BY THE DIRECTOR OF THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES; AND

(B) EAR MOLDS, EXCLUDING BATTERIES AND CORDS.

(II) "HEARING AID" DOES NOT INCLUDE A SURGICALLY IMPLANTED HEARING DEVICE.

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

(I) SELECTING AND ADAPTING HEARING AIDS FOR SALE;

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

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

(e) "SURGICALLY IMPLANTED HEARING DEVICE" MEANS A DEVICE THAT IS DESIGNED TO PRODUCE USEFUL HEARING SENSATIONS TO A PERSON WITH A HEARING IMPAIRMENT AND THAT HAS, AS ONE OR MORE COMPONENTS, A UNIT THAT IS SURGICALLY IMPLANTED INTO THE EAR, SKULL, OR OTHER INTERIOR PART OF THE BODY. THE TERM INCLUDES ANY ASSOCIATED UNIT THAT MAY BE WORN ON THE BODY.

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

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

(I) BEARS THE BUSINESS ADDRESS OF THE DISPENSER TOGETHER

WITH SPECIFICATIONS AS TO THE MAKE AND SERIAL NUMBER OF THE HEARING AID FURNISHED AND THE FULL TERMS OF THE SALE CLEARLY STATED. IF THE DISPENSER DISPENSES A HEARING AID THAT IS NOT NEW, THE DISPENSER SHALL CLEARLY MARK ON THE HEARING AID CONTAINER AND THE RECEIPT THE TERM "USED" OR "RECONDITIONED", WHICHEVER IS APPLICABLE, WITHIN THE TERMS OF THE GUARANTEE, IF ANY.

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

(III) BEARS, IN NO SMALLER TYPE THAN THE LARGEST USED IN THE BODY OF THE RECEIPT, A PROVISION INDICATING THAT DISPENSERS WHO ARE LICENSED, CERTIFIED, OR REGISTERED BY THE DEPARTMENT OF REGULATORY AGENCIES ARE REGULATED BY THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES;

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

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

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

THE DISPENSER A WRITTEN WAIVER;

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

(d) FAILS TO RECOMMEND IN WRITING, PRIOR TO FITTING OR DISPENSING A HEARING AID, THAT THE BEST INTERESTS OF THE PROSPECTIVE USER WOULD BE SERVED BY CONSULTING A LICENSED PHYSICIAN SPECIALIZING IN DISEASES OF THE EAR, OR ANY LICENSED PHYSICIAN, IF ANY OF THE FOLLOWING CONDITIONS EXIST:

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

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

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

(IV) ACUTE OR CHRONIC DIZZINESS;

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

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

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

(VIII) PAIN OR DISCOMFORT IN THE EAR;

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

(I) THE BUYER HAS THE RIGHT TO CANCEL THE PURCHASE FOR ANY REASON BEFORE THE EXPIRATION OF THE RESCISSION PERIOD BY GIVING OR MAILING WRITTEN NOTICE OF CANCELLATION TO THE DISPENSER AND PRESENTING THE HEARING AID TO THE DISPENSER, UNLESS THE HEARING AID HAS BEEN LOST OR SIGNIFICANTLY DAMAGED BEYOND REPAIR WHILE IN THE

BUYER'S POSSESSION AND CONTROL. THE RESCISSION PERIOD IS TOLLED FOR ANY PERIOD DURING WHICH A DISPENSER TAKES POSSESSION OR CONTROL OF A HEARING AID AFTER ITS ORIGINAL DELIVERY.

(II) THE BUYER, UPON CANCELLATION, IS ENTITLED TO RECEIVE A FULL REFUND OF ANY PAYMENT MADE FOR THE HEARING AID WITHIN THIRTY DAYS AFTER RETURNING THE HEARING AID TO THE DISPENSER, UNLESS THE HEARING AID WAS SIGNIFICANTLY DAMAGED BEYOND REPAIR WHILE THE HEARING AID WAS IN THE BUYER'S POSSESSION AND CONTROL;

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

**THE BUYER HAS THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT ANY TIME PRIOR TO 12 MIDNIGHT ON THE [INSERT APPLICABLE RESCISSION PERIOD, WHICH MUST BE NO SHORTER THAN THIRTY DAYS AFTER RECEIPT OF THE HEARING AID] CALENDAR DAY AFTER RECEIPT OF THE HEARING AID BY GIVING OR MAILING THE DISPENSER WRITTEN NOTICE OF CANCELLATION AND BY RETURNING THE HEARING AID, UNLESS THE HEARING AID HAS BEEN SIGNIFICANTLY DAMAGED BEYOND REPAIR WHILE THE HEARING AID WAS IN THE BUYER'S CONTROL.**

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

(IV) A REFUND REQUEST FORM MUST BE ATTACHED TO EACH RECEIPT AND MUST CONTAIN THE INFORMATION IN SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (2) AND THE STATEMENT, IN ALL CAPITAL LETTERS OF NO LESS THAN TEN-POINT, BOLD-FACED TYPE: "REFUND REQUEST - THIS FORM MUST BE POSTMARKED BY \_\_\_\_\_ (DATE TO BE FILLED IN). NO REFUND WILL BE GIVEN UNTIL THE HEARING AID OR HEARING AIDS ARE RETURNED TO THE DISPENSER." A SPACE FOR THE BUYER'S ADDRESS, TELEPHONE NUMBER, AND SIGNATURE MUST BE PROVIDED. THE BUYER IS REQUIRED ONLY TO SIGN, LIST THE BUYER'S CURRENT ADDRESS AND TELEPHONE NUMBER, AND MAIL THE REFUND REQUEST FORM TO THE DISPENSER. IF THE HEARING AID IS SOLD IN THE BUYER'S HOME, THE BUYER MAY REQUIRE THE DISPENSER TO ARRANGE THE RETURN OF THE HEARING AID.

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

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

(II) BE FALSE OR MISLEADING;

(g) DIRECTLY OR INDIRECTLY:

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

PER-PATIENT BASIS; OR

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

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

(i) MAKES A FALSE OR MISLEADING STATEMENT OF FACT CONCERNING GOODS OR SERVICES OR THE BUYER'S RIGHT TO CANCEL WITH THE INTENTION OR EFFECT OF DETERRING OR PREVENTING THE BUYER FROM EXERCISING THE BUYER'S RIGHT TO CANCEL, OR REFUSES TO HONOR A BUYER'S REQUEST TO CANCEL A CONTRACT FOR THE PURCHASE OF A HEARING AID, IF THE REQUEST WAS MADE DURING THE RESCISSION PERIOD SET FORTH IN PARAGRAPH (e) OF THIS SUBSECTION (2);

(j) EMPLOYS A DEVICE, A SCHEME, OR ARTIFICE WITH THE INTENT TO DEFRAUD A BUYER OF A HEARING AID;

(k) INTENTIONALLY DISPOSES OF, CONCEALS, DIVERTS, CONVERTS, OR OTHERWISE FAILS TO ACCOUNT FOR ANY FUNDS OR ASSETS OF A BUYER OF A HEARING AID THAT IS UNDER THE DISPENSER'S CONTROL; OR

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

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

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

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

**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:

(eee) VIOLATES SECTION 6-1-701.

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

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

**SECTION 4. Safety clause.** The general assembly hereby finds,



determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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John P. Morse  
PRESIDENT OF  
THE SENATE

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Mark Ferrandino  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Cindi L. Markwell  
SECRETARY OF  
THE SENATE

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Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

APPROVED \_\_\_\_\_

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John W. Hickenlooper  
GOVERNOR OF THE STATE OF COLORADO