

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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) (I) "HEARING AID" MEANS ANY WEARABLE INSTRUMENT OR
13 DEVICE DESIGNED OR OFFERED TO AID OR COMPENSATE FOR IMPAIRED
14 HUMAN HEARING AND INCLUDES:

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

19 (B) EAR MOLDS, EXCLUDING BATTERIES AND CORDS.

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

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

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

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

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

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

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

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

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

22 (II) BEARS, IN NO SMALLER TYPE THAN THE LARGEST USED IN THE
23 BODY OF THE RECEIPT, IN SUBSTANCE, A PROVISION THAT THE BUYER HAS
24 BEEN ADVISED AT THE OUTSET OF THE BUYER'S RELATIONSHIP WITH THE
25 DISPENSER THAT ANY EXAMINATION OR REPRESENTATION MADE BY A
26 DISPENSER IN CONNECTION WITH THE PRACTICE OF DISPENSING, FITTING,
27 OR DEALING IN HEARING AIDS IS NOT AN EXAMINATION, DIAGNOSIS, OR

1 PRESCRIPTION BY A PERSON LICENSED TO PRACTICE MEDICINE IN THIS
2 STATE AND, THEREFORE, MUST NOT BE REGARDED AS MEDICAL OPINION OR
3 ADVICE;

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

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

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

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

26 (II) DISPENSES, ADJUSTS, PROVIDES TRAINING OR TEACHING IN
27 REGARD TO, OR OTHERWISE SERVICES SURGICALLY IMPLANTED HEARING

1 DEVICES UNLESS THE DISPENSER IS AN AUDIOLOGIST OR PHYSICIAN;

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

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

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

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

12 (IV) ACUTE OR CHRONIC DIZZINESS;

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

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

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

19 (VIII) PAIN OR DISCOMFORT IN THE EAR;

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

22 (I) THE BUYER HAS THE RIGHT TO CANCEL THE PURCHASE FOR ANY
23 REASON BEFORE THE EXPIRATION OF THE RESCISSION PERIOD BY GIVING OR
24 MAILING WRITTEN NOTICE OF CANCELLATION TO THE DISPENSER AND
25 PRESENTING THE HEARING AID TO THE DISPENSER, UNLESS THE HEARING
26 AID HAS BEEN LOST OR SIGNIFICANTLY DAMAGED BEYOND REPAIR WHILE
27 IN THE BUYER'S POSSESSION AND CONTROL. THE RESCISSION PERIOD IS

1 TOLLED FOR ANY PERIOD DURING WHICH A DISPENSER TAKES POSSESSION
2 OR CONTROL OF A HEARING AID AFTER ITS ORIGINAL DELIVERY.

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

8 ==

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

14 **THE BUYER HAS THE RIGHT TO CANCEL**
15 **THIS PURCHASE FOR ANY REASON AT ANY**
16 **TIME PRIOR TO 12 MIDNIGHT ON THE [INSERT**
17 **APPLICABLE RESCISSION PERIOD, WHICH MUST BE NO**
18 **SHORTER THAN THIRTY DAYS AFTER RECEIPT OF THE**
19 **HEARING AID] CALENDAR DAY AFTER RECEIPT OF**
20 **THE 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.** ==

27 (B) THE WRITTEN CONTRACT OR RECEIPT PROVIDED TO THE BUYER

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

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

26 (f) REPRESENTS THAT THE SERVICE OR ADVICE OF A PERSON
27 LICENSED TO PRACTICE MEDICINE WILL BE USED OR MADE AVAILABLE IN

1 THE SELECTION, FITTING, ADJUSTMENT, MAINTENANCE, OR REPAIR OF
2 HEARING AIDS WHEN THAT IS NOT TRUE OR USING THE TERMS "DOCTOR",
3 "CLINIC", "STATE-LICENSED CLINIC", "STATE-REGISTERED",
4 "STATE-CERTIFIED", OR "STATE-APPROVED" OR ANY OTHER TERM,
5 ABBREVIATION, OR SYMBOL WHEN IT WOULD:

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

10 (II) BE FALSE OR MISLEADING;

11 (g) DIRECTLY OR INDIRECTLY:

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

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

25 (h) DISPENSES A HEARING AID TO A PERSON WHO HAS NOT BEEN
26 GIVEN TESTS UTILIZING APPROPRIATE ESTABLISHED PROCEDURES AND
27 INSTRUMENTATION IN THE FITTING OF HEARING AIDS, EXCEPT WHEN

1 SELLING A REPLACEMENT HEARING AID WITHIN ONE YEAR AFTER THE DATE
2 OF THE ORIGINAL PURCHASE;

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

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

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

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

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

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

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

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

1 vocation, or occupation, such person:

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

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

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

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