

**STATE and LOCAL  
FISCAL IMPACT**

**Drafting Number:** LLS 13-0853

**Date:** March 26, 2013

**Prime Sponsor(s):** Sen. Aguilar  
Rep. Kraft-Tharp

**Bill Status:** Senate Health and Human Services  
**Fiscal Analyst:** Josh Abram (303-866-3561)

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

<b>Fiscal Impact Summary</b>	<b>FY 2013-2014</b>	<b>FY 2014-2015</b>
<b>State Revenue</b>		
General Fund		
Cash Funds		
Fines Collection Cash Fund	<\$5,000	<\$5,000
<b>State Expenditures</b>		
<b>FTE Position Change</b>		
<b>Effective Date:</b> Upon signature of the Governor, or upon becoming law without his signature.		
<b>Appropriation Summary for FY 2013-2014:</b> None required.		
<b>Local Government Impact:</b> See Local Government Impact section.		

**Summary of Legislation**

The bill creates a new cause of action under the Colorado Consumer Protection Act for deceptive trade practices related to the provision of hearing aids. Deceptive trade practices occur when hearing aid dispensers, among other infractions:

- fail to provide a detailed receipt of the hearing aid transaction, including prescribed disclosures;
- provide a hearing aid to a child under age 18 without first receiving documentation that the child has been examined by a physician and an audiologist within 6 months prior to fitting;
- fail to recommend that a prospective user consult a licensed physician if certain medical conditions exist;
- fail to provide a 30-day rescission period and properly notify customers of return and refund policies; or
- falsely give the impression that the hearing aid service is provided by a trained medical professional or has been recommended by the state when that is not the case.

Persons convicted of a deceptive trade practice related to dispensing hearing aids commit a class 1 misdemeanor, and, upon a second or subsequent conviction, are guilty of a class 6 felony.

### **State Revenue**

The bill may increase state revenue from fines, although less than \$5,000 in new state revenue is expected per year. Per Section 18-1.3-501, C.R.S., the penalty for a class 1 misdemeanor is 6 to 8 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. Per Section 18-1.3-401 (III) (A), C.R.S., the penalty for a class 6 felony is 12 to 18 months imprisonment in a county jail, a fine of \$1,000 to \$100,000, or both. Felony convictions are anticipated to be negligible. Because the courts have the discretion of ordering incarceration or imposing a fine, the impact to state revenue cannot be determined. Fine revenue that is not otherwise appropriated is deposited into the Fines Collection Cash Fund.

### **State Expenditures**

Prosecution of deceptive trade practices is the responsibility of both the Attorney General and local district attorneys. Private parties may also bring suit for damages. Few cases of this type of deceptive trade practice are anticipated, and any associated increase in the courts' workload will be absorbed within existing appropriations.

***Felony offense.*** A subsequent conviction of a deceptive trade practice by a hearing aid dispenser is punishable as a class 6 felony. The penalty for a class 6 felony may include a fine, imprisonment at a state correctional facility, or both. Information from the Judicial Branch indicates that no second or subsequent offenses have been filed as either misdemeanors or felonies related to professions and occupations in the last 5 years. Thus, the number of cases filed against hearing aid dispensers is expected to be small, and convictions extremely infrequent. The fiscal note assumes that this bill will not create the need for additional prison space.

### **Local Government Impact**

Because the courts have the discretion of ordering incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. On average, the state reimburses county jails at a daily rate of \$55 to house state inmates during the current fiscal year. It is assumed that the impact of this new misdemeanor will be minimal and will not create the need for additional county jail space.

### **Departments Contacted**

Judicial

Law

Regulatory Agencies