

CHAPTER 188

CONSUMER AND COMMERCIAL TRANSACTIONS

SENATE BILL 99-143

BY SENATORS Perlmutter, Andrews, Chlouber, Lacy, Powers, Tebedo, and Teck;
also REPRESENTATIVES Kaufman, George, Gotlieb, Lawrence, McElhany, McPherson, and Veiga.

AN ACT

CONCERNING AMENDMENTS TO THE "COLORADO CONSUMER PROTECTION ACT", AND, IN CONNECTION THEREWITH, LIMITING THE CLASS OF POTENTIAL PLAINTIFFS TO CONSUMERS OF A DEFENDANT'S GOODS, SERVICES, OR PROPERTY, RESTRUCTURING THE NONECONOMIC DAMAGES PROVISIONS, AND REORGANIZING PROVISIONS FOR CLARITY.

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

SECTION 1. 6-1-113, Colorado Revised Statutes, is amended to read:

6-1-113. Damages. (1) The provisions of this article shall be available ~~to any person~~ in a civil action for any claim against any person who has engaged in or caused another to engage in any deceptive trade practice listed in ~~section 6-1-105 or 6-1-105.5~~ THIS ARTICLE. AN ACTION UNDER THIS SECTION SHALL BE AVAILABLE TO ANY PERSON WHO:

(a) IS AN ACTUAL OR POTENTIAL CONSUMER OF THE DEFENDANT'S GOODS, SERVICES, OR PROPERTY AND IS INJURED AS A RESULT OF SUCH DECEPTIVE TRADE PRACTICE; OR

(b) IS ANY SUCCESSOR IN INTEREST TO AN ACTUAL CONSUMER WHO PURCHASED THE DEFENDANT'S GOODS, SERVICES, OR PROPERTY; OR

(c) IN THE COURSE OF THE PERSON'S BUSINESS OR OCCUPATION, IS INJURED AS A RESULT OF SUCH DECEPTIVE TRADE PRACTICE.

(2) Except in a class action or a case brought for a violation of section ~~6-1-105 (1)~~ ~~(qq)~~ 6-1-709, any person who, in a private civil action, is found to have engaged in or caused another to engage in any deceptive trade practice listed in ~~section 6-1-105 or 6-1-105.5~~ THIS ARTICLE shall be liable in an amount equal to the sum of:

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

(a) ~~Three times~~ THE GREATER OF:

(I) The amount of actual damages sustained; or

(II) ~~two hundred fifty~~ FIVE HUNDRED dollars; ~~whichever is greater; and~~ OR

(III) THREE TIMES THE AMOUNT OF ACTUAL DAMAGES SUSTAINED, IF IT IS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT SUCH PERSON ENGAGED IN BAD FAITH CONDUCT; PLUS

(b) In the case of any successful action to enforce said liability, the costs of the action together with reasonable attorney fees as determined by the court.

(2.3) AS USED IN SUBSECTION (2) OF THIS SECTION, "BAD FAITH CONDUCT" MEANS FRAUDULENT, WILLFUL, KNOWING, OR INTENTIONAL CONDUCT THAT CAUSES INJURY.

(2.5) Notwithstanding the provisions of subsection (2) of this section, in the case of any violation of section ~~6-1-105(1)(cc)~~ 6-1-709, in addition to interest, costs of the action, and reasonable attorney fees as determined by the court, the prevailing party shall be entitled only to damages in an amount sufficient to refund moneys actually paid for a manufactured home not delivered in accordance with the provisions of section ~~6-1-105(1)(cc)~~ 6-1-709.

(3) Any person who brings an action under this article ~~which~~ THAT is found by the court to be groundless and in bad faith or for the purpose of harassment shall be liable to the defendant for the costs of the action together with reasonable attorney fees as determined by the court.

(4) Costs and attorney fees shall be awarded to the attorney general or a district attorney in all actions where the attorney general or the district attorney successfully enforces this article.

SECTION 2. Article 1 of title 6, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART CONTAINING RELOCATED PROVISIONS, WITH AMENDMENTS, to read:

PART 7 SPECIFIC PROVISIONS

6-1-701. [Formerly 6-1-105.5] Hearing aid dealers - deceptive trade practices. (1) As used in this section, unless the context otherwise requires:

(a) "Audiologist" means an individual who ~~holds a master's or doctoral degree in audiology, who has passed an examination conducted under the auspices of the American speech-language-hearing association or an equivalent examination, and who has obtained a certificate of competency in audiology from a nationally recognized certification agency~~ IS REGISTERED AS AN AUDIOLOGIST PURSUANT TO PART 1 OF ARTICLE 5.5 OF TITLE 12, C.R.S., or who has been certified as a school audiologist by the Colorado department of education pursuant to section 22-60-104, C.R.S.

~~(a.5)~~ (b) "Dispense" means any transfer of title, possession, or the right to use by lease, bailment, or any other method, but excludes transactions with distributors or dealers.

~~(b)~~ (c) (I) "Hearing aid" means any wearable instrument or device designed or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories thereto, including ear molds but excluding batteries and cords; except that "hearing aid" does not include a "cochlear implant" or "cochlear prosthesis".

(II) "Cochlear implant" or "cochlear prosthesis" means an electrode or electrodes surgically implanted in the cochlea, which are attached to an induction coil buried under the skin near the ear, and the associated unit, which is worn on the body.

~~(c)~~ (d) "Hearing aid dealer" means ~~any person engaged in the practice of dispensing, fitting, or dealing in hearing aids~~ AN INDIVIDUAL WHO IS REGISTERED AS A HEARING AID DEALER PURSUANT TO PART 2 OF ARTICLE 5.5 OF TITLE 12, C.R.S.

~~(d)~~ (e) "Practice of dispensing, fitting, or dealing in hearing aids" includes the selection and adaptation for the sale of hearing aids and includes the testing of hearing for these purposes. The practice also includes the making of impressions for ear molds, plus counseling and instruction pertaining to the selection, fitting, adaptation, or sale of hearing aids.

~~(e)~~ (f) "Trial period" means the first thirty days the buyer has the hearing aid or aids in such buyer's possession. Any such trial period shall be extended by mutual agreement of the buyer and the hearing aid dealer.

(2) In addition to any other deceptive trade practices under section 6-1-105 OR THIS PART 7, a hearing aid dealer or, with respect to only paragraph (a) of this subsection (2), an audiologist engages in a deceptive trade practice when such dealer:

(a) Fails to deliver to each person supplied with a hearing aid a receipt ~~which~~ THAT:

(I) Bears the business address of the hearing aid dealer 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 a hearing aid ~~which~~ THAT is not new is sold, the container thereof and the receipt shall be clearly marked as "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 purchaser has been advised at the outset of ~~his~~ THE PURCHASER'S relationship with the hearing aid dealer that any examination or representation made by a hearing aid dealer 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 consumer complaints ~~which~~ THAT cannot be resolved with

the dealer may be filed initially with the office of the district attorney for the jurisdiction where the device was sold or with the state attorney general's office and the address and telephone number of the district attorney's office or attorney general's office where such complaints may be filed;

(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) Sells a hearing aid to a child eighteen years of age or younger without ascertaining whether 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, prior to dispensing, fitting, or dealing in a hearing aid to any person, a written prescription or recommendation ~~which~~ THAT specifies that the person is in fact in need of a hearing aid; except that any person eighteen years of age or older who objects to medical evaluation for religious or personal beliefs may waive the requirement in ~~his~~ SUCH PERSON'S own handwriting;

(II) Sells, provides, dispenses, adjusts, provides training or teaching in regard to, or otherwise services cochlear implants unless ~~he~~ SUCH HEARING AID DEALER is an audiologist or a 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 exists:

(I) Visible congenital or traumatic deformity of the ear;

(II) History of or active 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 cerumen accumulation on or a foreign body in the ear canal;

(VIII) Pain or discomfort in the ear;

(e) Fails to provide a thirty-day rescission period with the following terms:

(I) The buyer shall have 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 seller. The thirty-day rescission period shall be tolled for any period during which a hearing aid dealer 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 ~~of~~ AFTER return of the hearing aid to the seller; except that, if the hearing aid is returned for any reason other than a defect in such hearing aid, the seller may retain an itemized amount to cover the minimum costs of materials used by the dealer and a manufacturer's return fee, but such amount may not be greater than five percent of the total charge for the hearing aid.

(III) (A) The seller shall provide a written receipt or contract to the buyer ~~which~~ 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 OF THE 30TH CALENDAR DAY AFTER RECEIPT OF THE HEARING AID BY GIVING OR MAILING THE SELLER WRITTEN NOTICE OF CANCELLATION AND BY RETURNING THE HEARING AID. BY LAW, THE SELLER IS ALLOWED TO RETAIN AN ITEMIZED AMOUNT, NOT TO EXCEED FIVE PERCENT OF THE TOTAL CHARGE FOR THE HEARING AID, TO COVER THE COSTS OF A MANUFACTURER'S RETURN FEE AND THE MINIMUM COSTS OF MATERIALS USED BY THE DEALER, UNLESS THE HEARING AID IS RETURNED BECAUSE IT IS DEFECTIVE."

(B) The written contract or receipt provided to the buyer shall 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 shall also include the hearing aid dealer's registration number and a statement that the hearing aid dealer shall promptly refund all moneys paid for the purchase of a hearing aid if it is not delivered to the consumer within such thirty-day period. Such statement is not subject to waiver by the buyer.

(IV) A refund request form shall be attached to each receipt and shall 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 seller." A space for the buyer's address, telephone number, and signature must be provided. The buyer shall only be required to sign, list the buyer's current address and telephone number, and mail the refund request form to the seller. If the hearing aid is sold in the buyer's home, at the buyer's option, the seller shall be responsible for arranging 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 falsely give the impression that service is being provided by persons trained in medicine or that the hearing aid dealer's service has been recommended by the state when such is not the case or when that would be false or misleading;

(g) Directly or indirectly 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 ~~him~~ SUCH PERSON or have ~~him~~ SUCH PERSON influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dealer or influences persons 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 in cases of selling replacement hearing aids 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;

(j) Charges, collects, or recovers any cost or fee for any good or service that has been represented by the hearing aid dealer as free.

(3) Fines collected pursuant to this part 1 shall be distributed in the following manner: Fifty percent shall be divided by the court between state and local law enforcement agencies assisting with the prosecution, including but not limited to the office of the attorney general and the district attorney's office, and fifty percent shall be paid to the state treasurer, who shall credit the same to the general fund.

6-1-702. [Formerly 6-1-105 (1) (p.3), (1) (p.5), and (1) (p.7)] Telephone and facsimile solicitations - 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:

~~(p.3)~~ (a) (I) Solicits a consumer residing in Colorado by telephone as a seller, unless the seller, within one minute after beginning the conversation, identifies himself or herself, whom he or she represents, and the purpose of the call or repeatedly causes any telephone to ring or engages any person in a telephone conversation repeatedly or continuously with the intent to annoy, abuse, or harass any person at the telephone number called.

(II) The provisions of this paragraph ~~(p.3)~~ (a) shall not apply to a telephone solicitation between a seller and a consumer if there is an existing business relationship between the seller and the consumer at the time of the telephone solicitation or if the call is initiated by the consumer.

~~(p.5)~~ (b) (I) Solicits a consumer residing in Colorado by a facsimile transmission

without including in the facsimile message a toll-free telephone number ~~which~~ THAT a recipient of the unsolicited transmission may use to notify the sender not to transmit to the recipient any further unsolicited transmissions.

(II) The provisions of this paragraph ~~(p.5)~~ (b) shall not apply to unsolicited transmissions if there is an existing business relationship between the seller and the consumer at the time of the solicitation or if the facsimile transmission was requested or initiated by the consumer. The provisions of this paragraph ~~(p.5)~~ (b) shall not apply to the transmission of documents by a telecommunications provider to the extent that the telecommunications provider merely provides transmission facilities.

~~(p.7)~~ (c) Sells a consumer's facsimile number without either giving notice to the consumer that the number could be sold to other persons or without allowing the consumer the option of preventing the sale of the consumer's number to others.

6-1-703. [Formerly 6-1-105 (1) (s)] Time shares - 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

~~(s)~~ engages in one or more of the following activities in connection with the advertisement or sale of a time share:

~~(f)~~ (a) Misrepresents the investment, resale, or rental value of any time share; the conditions under which a purchaser may exchange the right to use accommodations or facilities in one location for the right to use accommodations or facilities in another location; or the period of time during which the accommodations or facilities contracted for will be available to the purchaser;

~~(ff)~~ (b) Fails to allow any purchaser of a time share a right to rescind the sale within five calendar days after the sale;

~~(fff)~~ (c) Fails to provide conspicuous notice on the contract of the right of a purchaser of a time share to rescind the sale either by telegram, mail, or hand delivery. For purposes of this ~~paragraph (s)~~ SECTION, notice of rescission is considered given, if by mail when postmarked, if by telegram when filed for telegraphic transmission, or if by hand delivery when delivered to the seller's place of business; OR

~~(fv)~~ (d) Fails to refund any down payment or deposit made pursuant to a time share contract within seven days after the seller receives the purchaser's written notice of rescission.

~~(v)~~ Repeated:

6-1-704. [Formerly 6-1-105 (1) (t)] Health clubs - 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

~~(t)~~ engages in one or more of the following activities in connection with the advertisement or sale of a membership in a health club:

~~(H)~~ (a) Fails to allow any buyer of a membership in a health club to rescind the membership contract within three business days after receipt by the buyer of a copy of the contract;

~~(H)~~ (b) Fails to provide conspicuous notice of the right of a purchaser of a health club membership to rescind the sale either by telegram, mail, or hand delivery. For purposes of this ~~paragraph (b)~~ SECTION, notice of rescission is considered given, ~~when specified in subparagraph (H) of paragraph (s) of this subsection (1)~~ IF BY MAIL WHEN POSTMARKED, IF BY TELEGRAM WHEN FILED FOR TELEGRAPHIC TRANSMISSION, OR IF BY HAND DELIVERY WHEN DELIVERED TO THE SELLER'S PLACE OF BUSINESS.

~~(H)~~ (c) Fails to allow the buyer, or the estate of the buyer, to cancel the membership contract when:

~~(A)~~ (I) The buyer dies;

~~(B)~~ (II) The buyer becomes totally physically disabled as determined by a licensed physician for the duration of the membership contract;

~~(C)~~ (III) The health club is moved to a location that is more than five miles from the location of the establishment when the buyer entered into the membership contract;

~~(D)~~ (IV) The membership in the health club is transferred to a location of the same club or another club, which location is more than five miles from the location of the club when the buyer entered into the contract, and this transfer occurs because of cessation of health club services at the club location from which the membership is transferred;

~~(E)~~ (V) The seller permanently discontinues operation of the health club or sells the health club and the sale results in substantial alteration of the quality of health club services or facilities or the nature of benefits so that they no longer conform to the provisions of the membership contract, but there shall be a thirty-day "right to cure" during which the fees payable by the buyer under the membership contract shall be suspended and the health club may bring the services, facilities, and benefits into conformance with the provisions of the membership contract;

~~(F)~~ (d) Fails to refund all payments made pursuant to the membership contract, less a prorated fee for days of actual use of the health club by the buyer, within fifteen days after the seller receives the buyer's written notice of rescission;

~~(V)~~ (e) When a health club is planned or under construction, and the sale of the membership takes place before the health club is completed, fails to:

~~(A)~~ (I) Disclose clearly and conspicuously in the membership contract the date on which the health club will open for use;

~~(B)~~ (II) Escrow all preopening membership sales receipts in a separate account in a bank or trust company doing business in the state of Colorado or provide a cash bond, letter of credit, certificate of deposit, or other similar surety, in the amount of fifty thousand dollars, for the repayment of amounts actually paid under preopening

membership agreements until the health club is open for business;

~~(C)~~ (III) Allow the buyer to cancel the membership contract and receive a full refund of all payments made pursuant to the membership contract if the date the health club will open for use is delayed more than sixty days from the date of opening specified in the membership contract;

~~(F)~~ (f) Sells any membership contract, the actual or financial duration of which, including any option to renew, is longer than twenty-four months; except that a person does not engage in a deceptive trade practice when such person sells any membership contract the actual or financial duration of which is not longer than thirty-six months with a buyer's option to renew annually thereafter if:

~~(A)~~ (I) The health club has been in operation in this state more than two years; and

~~(B)~~ (II) The health club maintains a bond with a corporate surety from a company authorized to do business in this state or other security acceptable to and approved by the attorney general; and

~~(C)~~ (III) The aggregate amount of the bond is one hundred thousand dollars for each club location; and

~~(D)~~ (IV) The bond is payable to the state for the benefit of any buyer injured in the event the health club goes out of business prior to the expiration of the buyer's membership contract; and

~~(E)~~ (V) The bond is maintained for so long as the health club has any membership contracts in place and outstanding, the specified term for which exceeds twenty-four months; and

~~(F)~~ (VI) The bond is not cancelled, revoked, or terminated except after notice to, and with the written consent of, the attorney general at least forty-five days in advance of such cancellation, revocation, or termination; and

~~(G)~~ (VII) The annual renewal option for continued membership contained in the membership contract is not automatic but requires that the buyer affirmatively accept the renewal option by notice in writing to the person selling the membership contract for reasonable consideration on or before the expiration of each contract term, but not more than six months prior to the expiration of any contract term; and

~~(H)~~ (VIII) IN THE EVENT THAT the health club elects to cancel, revoke, or terminate the bond, it ~~shall post~~ POSTS a notice of such action, in twenty-four-point bold-faced type, to its customers, on the front door of such health club; OR

~~(H)~~ (g) Makes any representation, orally or in writing, in connection with the offer or sale of a membership in a health club that a membership contract is for a lifetime or is for a perpetual membership, or uses coercive sales tactics, or misrepresents the quality, benefits, or nature of the services.

6-1-705. [Formerly 6-1-105 (1) (w)] Dance studios - 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

~~(w)~~ engages in one or more of the following activities or practices in connection with the advertisement, sale, or performance of contracts for dance studio services in which the total amount of the obligation that the purchaser undertakes is in excess of five hundred dollars:

~~(F)~~ (a) Fails to execute a written contract and to provide a copy of the contract to the purchaser at the time the purchaser signs it;

~~(H)~~ (b) Fails to include, printed in ten-point, bold-faced type in the contract:

~~(A)~~ (I) The total amount of the obligation the purchaser undertakes;

~~(B)~~ (II) All goods and services that the purchaser is to receive under the contract set forth in specific terms, including the total number or hours of dance instruction to be given by the dance studio under the contract broken down by different hourly rates, if applicable, and all other goods and services;

~~(C)~~ (III) The itemized cost of all goods and services to be provided under the contract, including but not limited to the cost per hour of dance instruction and the different hourly rates for different types of dance lessons, if any, and any charges to be paid by the purchaser for cost of travel, accommodations, or other expenses of dance studio owners, operators, managers, agents, or employees, the total cost of which shall equal the amount to be specified in the contract pursuant to ~~sub-paragraph (A) of this subparagraph~~ ~~(H) (I) OF THIS PARAGRAPH (b); and~~

~~(D)~~ (IV) The purchaser's right to cancel as specified in ~~subparagraphs (H) to (V) of this paragraph~~ ~~(w) PARAGRAPHS (c) TO (e) OF THIS SUBSECTION (1);~~

~~(H)~~ (c) Fails to include in the contract the following statement in bold-faced type under the conspicuous caption, "PURCHASER'S RIGHT TO CANCEL":

"YOU, THE PURCHASER, MAY CANCEL THIS CONTRACT AT ANY TIME DURING THE TERM OF ITS EFFECTIVENESS. YOU MUST GIVE WRITTEN NOTICE TO THE DANCE STUDIO THAT YOU DO NOT WANT TO BE FURTHER BOUND BY THIS CONTRACT. THE NOTICE OF CANCELLATION MAY BE SERVED IN PERSON, BY TELEGRAM, OR BY MAIL TO THE DANCE STUDIO AT THE ADDRESS STATED IN THIS CONTRACT OR AT THE LOCATION WHERE DANCE LESSONS ARE CONDUCTED. WITHIN THIRTY DAYS ~~OF~~ AFTER RECEIPT OF YOUR NOTICE OF CANCELLATION, THE DANCE STUDIO SHALL REFUND TO YOU THE CONTRACT PRICE LESS THE COST OF GOODS AND SERVICES ALREADY RECEIVED BY YOU AND AN AMOUNT OF LIQUIDATED DAMAGES EQUAL TO NOT MORE THAN TEN PERCENT OF THE COST OF THE REMAINING GOODS AND SERVICES.";

~~(V)~~ (d) Fails to allow the contract to be cancelled by the purchaser upon the purchaser's serving written notice to the dance studio;

~~(V)~~ (e) Fails, upon cancellation of a contract for dance studio services, to refund

to the purchaser all prepayments made under the contract, minus the total of:

~~(A)~~ (I) The amount equal to the cost of goods and services actually received by the purchaser under the contract; and

~~(B)~~ (II) An amount of liquidated damages equal to not more than ten percent of the cost of the remaining goods and services not received by the purchaser;

~~(VI)~~ (f) Subtracts a total amount under ~~sub-paragraphs (A) and (B) of sub-paragraph (V) of this paragraph~~ ~~(w)~~ SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (e) OF THIS SUBSECTION (1) that exceeds the total amount of the obligation as set out in ~~sub-paragraph (A) of sub-paragraph (H) (I) of this paragraph~~ ~~(w)~~ (b) OF THIS SUBSECTION (1);

~~(VII)~~ (g) Fails to have a performance bond in the amount of twenty-five thousand dollars, as to each studio, location, or owner, for the benefit of any person who enters into a contract for dance studio services in which the total amount of the obligation that the purchaser undertakes is in excess of five hundred dollars and who is damaged by the failure of the dance studio to provide the services specified in the contract or by the failure of the dance studio to comply with this section, which performance bond guarantees the dance studio's performance of its contractual obligations with the purchaser in accordance with the provisions of this section, or fails to disclose in the contract with such purchaser the existence of the performance bond;

~~(VIII)~~ (h) Sells or induces any person to purchase or to become obligated directly or contingently, or both, under more than one contract for dance studio services at the same time for the purpose of avoiding the provisions of this section; OR

~~(IX)~~ (i) Assigns or accepts an assignment of dance studio services without the written consent of the purchaser.

6-1-706. [Formerly 6-1-105 (1) (bb)] Buyers' clubs - 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

~~(bb)~~ engages in one or more of the following activities or practices in connection with the advertisement, sale, or performance of any contract of membership in a buyers' club in which the price of the membership equals or exceeds one hundred dollars:

~~(H)~~ (a) Fails to allow any purchaser of a membership in a buyers' club to rescind the membership contract at any time prior to the close of business on the next business day following the day the purchaser signs the contract;

~~(H)~~ (b) Fails to provide in the membership contract the following mandatory disclosure under the heading, "PURCHASER'S RIGHT TO CANCEL": "THE PURCHASER MAY CANCEL THIS CONTRACT FOR ANY REASON AT ANY TIME PRIOR TO THE CLOSE OF BUSINESS ON THE NEXT BUSINESS DAY FOLLOWING THE DAY THE PURCHASER SIGNS THE MEMBERSHIP CONTRACT BY DELIVERING OR MAILING TO THE BUYERS' CLUB WRITTEN NOTICE OF CANCELLATION. NOTICE OF CANCELLATION, IF

SENT BY MAIL, IS DEEMED TO BE GIVEN AS OF THE DATE THE MAILED NOTICE WAS POSTMARKED." Said heading and disclosure shall be in capital letters in no less than ten-point, bold-faced type.

~~(H)~~ (c) Fails to refund all payments made pursuant to the membership contract within fifteen days after the buyers' club receives notice of cancellation from the purchaser.

6-1-707. [Formerly 6-1-105 (1) (dd), (1) (ee.5), (1) (ee.7), and (1) (ee.8)] Use of title or degree - deceptive trade practice. (1) A PERSON ENGAGES IN A DECEPTIVE TRADE PRACTICE WHEN, IN THE COURSE OF SUCH PERSON'S BUSINESS, VOCATION, OR OCCUPATION, SUCH PERSON:

~~(dd)~~ (I) Claims, either orally or in writing, to possess either an academic degree or an honorary degree or the title associated with said degree, unless the person has, in fact, been awarded said degree from an institution that is:

(A) Accredited by a regional or professional accrediting agency recognized by the United States department of education or the council on postsecondary accreditation, or is recognized as a candidate for accreditation by such an agency;

(B) Provided, operated, and supported by a state government or any of its political subdivisions or by the federal government;

(C) A school, institute, college, or university chartered outside the United States, the academic degree from which has been validated by an accrediting agency approved by the United States department of education as equivalent to the baccalaureate or postbaccalaureate degree conferred by a regionally accredited college or university in the United States;

(D) A religious seminary, institute, college, or university ~~which~~ THAT offers only educational programs that prepare students for a religious vocation, career, occupation, profession, or lifework, and the nomenclature of whose certificates, diplomas, or degrees clearly identifies the religious character of the educational program;

(E) Authorized to grant degrees pursuant to article 2 of title 23, C.R.S.

~~(F) Repealed.~~

~~(I.5)~~ (II) This paragraph ~~(dd)~~ (a) shall not apply to persons claiming degrees or certificates that were submitted as a requirement of the application process for licensure, certification, or registration pursuant to title 12, C.R.S.

~~(H)~~ (III) No person awarded a doctorate degree from an institution not listed in ~~subparagraph (I) of this paragraph (dd)~~ PARAGRAPH (a) OF THIS SUBSECTION (1) shall claim in the state, either orally or in writing, the title "Dr." before the person's name or any mark, appellation, or series of letters, numbers, or words, such as, but not limited to, "Ph.D.", "Ed.D.", "D.N.", or "D.Th.", which signify, purport, or are generally taken to signify satisfactory completion of the requirements of a doctorate degree, after the person's name.

~~(ee.5)~~ (b) Claims either orally or in writing to be a "dietitian", "dietician", "certified dietitian", "certified dietician", "C.D.", or "D." to indicate that such person is a dietitian, unless such person:

(I) Possesses a baccalaureate, masters, or doctorate degree in human nutrition, foods and nutrition, dietetics, nutrition education, food systems management, or public health nutrition from an institution that is:

(A) Accredited by a regional or professional accrediting agency recognized by the United States department of education or the council on postsecondary accreditation, or is recognized as a candidate for accreditation by such accrediting agency;

(B) Authorized to grant degrees pursuant to article 2 of title 23, C.R.S.; or

(C) A school, institute, college, or university chartered outside the United States, the academic degree from which has been validated by an accrediting agency approved by the United States department of education as equivalent to a baccalaureate or postbaccalaureate degree conferred by a regionally accredited college or university in the United States; and

(II) Meets one of the following:

(A) Completes at least nine hundred hours of a planned, continuous, preprofessional work experience in a nutrition or dietetic practice under the supervision of a qualified dietitian; or

(B) Holds a certificate of registered dietician through the commission on dietetic registration;

~~(ee.7)~~ (c) Claims either orally or in writing to be a "certified occupational therapist", an "occupational therapist registered", a "licensed occupational therapist", or an "occupational therapist" or uses the abbreviation "O.T.R." or "O.T.R./L." to indicate that such person is an occupational therapist unless such person:

(I) Has earned a baccalaureate, masters, or doctorate degree in occupational therapy from an institution that is:

(A) Accredited by the north central council of colleges and schools and by the American occupational therapy association's accreditation council for occupational therapy education; or

(B) A school, institute, college, or university chartered outside the United States, the academic degree from which has been validated by the world federation of occupational therapists, the American occupational therapy association, or other nationally recognized accrediting agency; and

(II) Meets all of the following:

(A) Has completed a minimum of six months or nine hundred forty hours of advanced internship under the supervision of an occupational therapist;

(B) Successfully passed the current certification examination given by the American occupational therapy certification board; and

(C) Holds a certificate through the American occupational therapy certification board; or ~~in lieu of the requirements of subparagraphs (I) and (II) of this paragraph (ee.7);~~

(III) IN LIEU OF THE REQUIREMENTS OF SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH (c) has earned an associates degree in occupational therapy from an institution that is:

(A) Accredited by the north central council of colleges and schools and by the American occupational therapy association's accreditation council for occupational therapy education; or

(B) A school, institute, college, or university chartered outside the United States, the academic degree from which has been validated by the world federation of occupational therapists, the American occupational therapy association, or other nationally recognized accrediting agency; and

~~(H.5)~~ (IV) If such person satisfies the requirements of subparagraph (III) of this paragraph ~~(ee.7)~~ (c), such person shall also meet all of the following requirements:

(A) Has a minimum of three years experience in occupational therapy field work under the supervision of an occupational therapist holding a certificate through the American occupational therapy certification board;

(B) Successfully passed the current certification examination given by the American occupational therapy certification board; and

(C) Holds a certificate through the American occupational therapy certification board;

~~(ee.8)~~ (d) (I) Claims either orally or in writing to be a "certified optician" or "certified opticien", unless such person holds a current certificate of competence issued by the American board of opticianry. Each certificate shall be prominently displayed or maintained in such person's place of business and made available for immediate inspection and review by any consumer or agent of the state of Colorado. No person may associate a service, product, or business name with the title "certified optician" unless such person holds the required certificate of competence. This paragraph ~~(ee.8)~~ (d) shall not apply to persons authorized under article 36 or 40 of title 12, C.R.S., to practice medicine or optometry.

(II) Performs or claims orally or in writing to be able to perform the following procedures, and such person is a certified optician:

(A) Vision therapy;

(B) Refractions;

(C) Automated refractions; except that a certified optician may use an auto

refractor to provide vision screenings for the sole purpose of determining if the subject of the screening needs a further eye examination;

(D) Refractometry;

(E) Fitting contact lenses;

(F) Keratometry or automated keratometry; or

(G) Any other act that constitutes the practice of optometry or the practice of medicine.

(III) A certified optician does not engage in a deceptive trade practice under subparagraph (II) of this paragraph ~~(ee-8)~~ (d), if said optician performs the described procedures under the direction and supervision of a person who has statutory authority under title 12, C.R.S., to supervise the work of others within the scope of his or her license.

6-1-708. [Formerly 6-1-105 (1) (ff) (I)] Motor vehicle sales - 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:

~~(ff) (f)~~ (a) Commits any of the following acts pertaining to the sale of a motor vehicle or a used motor vehicle:

~~(A)~~ (I) Guarantees to a purchaser of a motor vehicle or used motor vehicle who conditions such purchase on the approval of a consumer credit sale as defined in section 5-2-104, C.R.S., or a consumer loan as defined in section 5-3-104, C.R.S., that such purchaser has been approved for either a consumer credit sale or a consumer loan if such approval is not final. For purposes of this ~~sub-subparagraph (A)~~ SUBPARAGRAPH (I), "guarantee" means a written document or oral representation between the purchaser and the person selling the vehicle that leads such purchaser to a reasonable good faith belief that the financing of such vehicle is certain.

~~(B)~~ (II) Accepts a used motor vehicle as a trade-in on the purchase of a motor vehicle or used motor vehicle and sells such used motor vehicle before the purchaser has been approved for a consumer credit sale as defined in section 5-2-104, C.R.S., or a consumer loan as defined in section 5-3-104, C.R.S., if such approval is a condition of the purchase;

~~(C)~~ (III) Fails to return to the purchaser any collateral or down payment tendered by such purchaser conditioned upon a guarantee by a motor vehicle or used motor vehicle dealer that a consumer credit sale as defined in section 5-2-104, C.R.S., or a consumer loan as defined in section 5-3-104, C.R.S., has been approved for such purchaser, if such approval was a condition of the sale and if such financing is not approved and the purchaser is required to return the vehicle;

~~(ii)~~ (b) [Formerly 6-1-105 (1) (ii)] Fails to disclose in writing, prior to sale, to the purchaser that a motor vehicle is a salvage vehicle, as defined in section 42-6-102 (13), C.R.S., that a vehicle was repurchased by or returned to the manufacturer from a previous owner for inability to conform the motor vehicle to the manufacturer's

warranty in accordance with article 10 of title 42, C.R.S., or with any other state or federal motor vehicle warranty law, or knowingly fails to disclose, in writing, prior to sale, to the purchaser that a motor vehicle has sustained material damage at any one time from any one incident.

~~(H)~~ (2) [Formerly 6-1-105 (1) (ff) (II)] For purposes of ~~subparagraph (I) of this paragraph~~ ~~(ff)~~ THIS SECTION, if a motor vehicle or used motor vehicle dealer guarantees financing and if approval for financing is a condition of the sale, such motor vehicle or used motor vehicle dealer shall not retain any portion of such purchaser's down payment or any trade-in vehicle as payment of rent on any vehicle released by such dealer to such purchaser pending approval of financing even if such dealer has obtained a waiver of such purchaser's right to return a vehicle or has contracted for a rental agreement with such purchaser.

6-1-709. [Formerly 6-1-105 (1) (qq)] Sales of manufactured homes - 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:

~~(qq)~~ (a) Except with respect to activities subject to article 61 of title 12, C.R.S., and those that would be covered except for a specific exemption set forth in said article 61 of title 12, C.R.S., in connection with the advertisement or sale of a manufactured home:

(I) Fails to disclose clearly and conspicuously in the contract the date on which the manufactured home will be delivered, subject to the possibility of unavoidable delay;

(II) (A) Fails to escrow home sale deposits in a separate fiduciary account for the benefit of home purchasers in a bank or trust company doing business in the state of Colorado or provide a letter of credit, certificate of deposit issued by a licensed financial institution, or a surety bond issued by an authorized insurer in a form approved by the attorney general of the state of Colorado and conditioned upon the person's refund of any home sale deposit received under agreements for the sale of manufactured homes. No financial institution or corporate surety shall be required to make any payment to any person claiming under such deposit or bond until a final determination of fraud, defalcation of funds, or conversion has been made by a court of competent jurisdiction or upon a bankruptcy filing by the seller, or upon the failure to refund or pay a reasonable per diem living expense pursuant to subparagraph (III) of this paragraph ~~(qq)~~ (a).

(B) Any letter of credit, certificate of deposit, surety bond, or other similar surety shall be filed with and drawn in favor of the attorney general of the state of Colorado for use of the people of the state of Colorado who are purchasers of manufactured homes and shall be revocable only with the written consent of the attorney general.

(C) In any contract for the sale of a manufactured home, the seller shall disclose in the contract that the buyer may have no legal right to rescind the contract unless specifically provided by the terms of the contract or for delinquent delivery and that the seller has a separate fiduciary account for the escrow of home sale deposits pending delivery or a letter of credit, certificate of deposit, surety bond, or other similar surety filed with the attorney general of the state of Colorado for the

repayment of home sale deposits pending delivery of manufactured homes. Any such contract shall also disclose that escrow deposit complaints against sellers of manufactured homes may be filed with the office of the attorney general of the state of Colorado or the district attorney for the judicial district where the sale occurs. Any such contract shall also disclose that an aggrieved person may bring a civil action under the "Colorado Consumer Protection Act" to remedy violations of the provisions of this paragraph ~~(qq)~~ (a).

(III) All contracts for the sale of a manufactured home must provide a date certain for delivery of the home or a specification of delivery preconditions ~~which~~ THAT must occur before the date of home delivery can be determined. Unless delay in delivery is unavoidable, or caused by the buyer, the contract for manufactured home sale shall further provide that, at seller's election, ~~he~~ THE SELLER will refund the home sale deposit or pay a reasonable buyer living expense per diem ~~which~~ THAT relates back to the contract delivery date if the date of delivery is more than sixty days after the contract date of delivery or the completion of delivery preconditions set forth in the contract if no delivery date certain has been set.

SECTION 3. 6-1-105 (1) (x), Colorado Revised Statutes, is amended to read:

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:

(x) Violates the provisions of sections 6-1-203 to 6-1-205 OR OF PART 7 OF THIS ARTICLE;

SECTION 4. 6-1-104, Colorado Revised Statutes, is amended to read:

6-1-104. Cooperative reporting. The district attorneys may cooperate in a statewide reporting system by receiving, on forms provided by the attorney general, complaints from persons concerning deceptive trade practices listed in sections 6-1-105 and ~~6-1-105.5~~ PART 7 OF THIS ARTICLE and transmitting such complaints to the attorney general.

SECTION 5. The introductory portion to 6-1-107 (1), Colorado Revised Statutes, is amended to read:

6-1-107. Powers of attorney general and district attorneys. (1) When the attorney general or a district attorney has cause to believe that any person has engaged in or is engaging in any deceptive trade practice listed in section 6-1-105 or ~~6-1-105.5~~, ~~he~~ PART 7 OF THIS ARTICLE, THE ATTORNEY GENERAL OR DISTRICT ATTORNEY may:

SECTION 6. 6-1-110, Colorado Revised Statutes, is amended to read:

6-1-110. Restraining orders - injunctions - assurances of discontinuance. (1) Whenever the attorney general or a district attorney has cause to believe that a person has engaged in or is engaging in any deceptive trade practice listed in section 6-1-105 or ~~6-1-105.5~~, ~~he~~ PART 7 OF THIS ARTICLE, THE ATTORNEY GENERAL OR DISTRICT ATTORNEY may apply for and obtain, in an action in the appropriate district

court of this state, a temporary restraining order or injunction, or both, pursuant to the Colorado rules of civil procedure, prohibiting such person from continuing such practices, or engaging therein, or doing any act in furtherance thereof. The court may make such orders or judgments as may be necessary to prevent the use or employment by such person of any such deceptive trade practice or which may be necessary to completely compensate or restore to ~~his~~ THE original position OF any person injured by means of any such practice or to prevent any unjust enrichment by any person through the use or employment of any deceptive trade practice.

(2) Where the attorney general or a district attorney has authority to institute a civil action or other proceeding pursuant to the provisions of this article, ~~he~~ THE ATTORNEY GENERAL OR DISTRICT ATTORNEY may accept, in lieu thereof or as a part thereof, an assurance of discontinuance of any deceptive trade practice listed in section 6-1-105 or ~~6-1-105.5~~ PART 7 OF THIS ARTICLE. Such assurance may include a stipulation for the voluntary payment by the alleged violator of the costs of investigation and any action or proceeding by the attorney general or a district attorney and any amount necessary to restore to any person any money or property ~~which~~ THAT may have been acquired by such alleged violator by means of any such deceptive trade practice. Any such assurance of discontinuance accepted by the attorney general or a district attorney and any such stipulation filed with the court as a part of any such action or proceeding shall be a matter of public record unless the attorney general or the district attorney determines, at his OR HER discretion, that it will be confidential to the parties to the action or proceeding and to the court and its employees. Upon the filing of a civil action by the attorney general or a district attorney alleging that a confidential assurance of discontinuance or stipulation accepted pursuant to this subsection (2) has been violated, said assurance of discontinuance or stipulation shall thereupon be deemed a public record and open to inspection by any person. Proof by a preponderance of the evidence of a violation of any such assurance or stipulation shall constitute prima facie evidence of a deceptive trade practice for the purposes of any civil action or proceeding brought thereafter by the attorney general or a district attorney, whether a new action or a subsequent motion or petition in any pending action or proceeding.

SECTION 7. 6-1-114, Colorado Revised Statutes, is amended to read:

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 section ~~6-1-105.5~~ 6-1-701 is guilty of a class 1 misdemeanor, as defined in section 18-1-106, C.R.S., and upon a second or subsequent conviction is guilty of a class 6 felony, as defined in section 18-1-105, C.R.S.

SECTION 8. 6-1-304 (1) (h), Colorado Revised Statutes, is amended to read:

6-1-304. Unlawful telemarketing practices. (1) A commercial telephone seller engages in an unlawful telemarketing practice when, in the course of any commercial telephone solicitation, the seller:

(h) Engages in any deceptive trade practice defined in section 6-1-105 or ~~6-1-105.5~~ PART 7 OF THIS ARTICLE.

SECTION 9. 6-1-501 (7) (a), Colorado Revised Statutes, is amended to read:

6-1-501. Definitions. As used in this part 5, unless the context otherwise requires:

(7) "Facilitative device" means a device that has a retail price equal to or greater than one hundred dollars and that is exclusively designed and manufactured to assist a person with a disability with such person's specific disability, through the use of facilitative technology, to be self-sufficient or to maintain or improve that person's quality of life. "Facilitative device" does not include wheelchairs as that term is defined in section 6-1-402 (17). "Facilitative device" does include the following:

(a) Telephone communication devices for the hearing impaired and other facilitative listening devices except for hearing aids as defined in section ~~6-1-105.5 (1)(b)(H)~~ 6-1-701 (1) (c) (I) and cochlear implants as defined in section ~~6-1-105.5 (1)(b)(H)~~ 6-1-701 (1) (c) (II);

SECTION 10. 12-5.5-102 (1), Colorado Revised Statutes, is amended to read:

12-5.5-102. Registration required - application - bond. (1) An audiologist shall register with the division of registrations before performing audiology services in this state. Upon registering, the audiologist shall be given a certificate of registration bearing a unique registration number. The audiologist shall include the registration number on all written contracts and receipts, as required pursuant to section ~~6-1-105.5 (2)(a)~~ 6-1-701 (2) (a), C.R.S.

SECTION 11. 12-5.5-202 (1), Colorado Revised Statutes, is amended to read:

12-5.5-202. Registration required - application - bond. (1) A hearing aid dealer shall register pursuant to this part 2 before selling or negotiating to sell, directly or indirectly, any hearing device for the hearing impaired, unless such dealer holds a current registration pursuant to part 1 of this article. Upon registering, the hearing aid dealer shall be given a certificate of registration bearing a unique registration number. The hearing aid dealer shall include the registration number on all written contracts and receipts, as required pursuant to section ~~6-1-105.5 (2)(a)~~ 6-1-701 (2) (a), C.R.S. A hearing aid dealer who is also an audiologist and is registered only under part 1 of this article shall include the registration number issued pursuant to such part 1 on all written contracts and receipts.

SECTION 12. 12-5.5-205 (1) (b) (V), Colorado Revised Statutes, is amended to read:

12-5.5-205. Grounds for discipline - disciplinary action. (1) (b) The following acts shall constitute grounds for discipline:

(V) Refusing to honor a buyer's request to cancel a contract for the purchase of a hearing device for the hearing impaired, if such request was made during the rescission period set forth in section ~~6-1-105.5 (2)(e)~~ 6-1-701 (2) (e), C.R.S.;

SECTION 13. 42-6-205, Colorado Revised Statutes, is amended to read:

42-6-205. Consumer protection. All provisions of section ~~6-1-105 (1)(ff)~~ 6-1-708, C.R.S., concerning deceptive trade practices in the sale of motor vehicles shall apply to the sale of used motor vehicles.

SECTION 14. Repeal of provisions being relocated in this act. 6-1-105 (1) (p.3), (1) (p.5), (1) (p.7), (1) (s), (1) (t), (1) (w), (1) (bb), (1) (dd), (1) (ee.5), (1) (ee.7), (1) (ee.8), (1) (ff), (1) (ii), and (1) (qq), and 6-1-105.5, Colorado Revised Statutes, are repealed.

SECTION 15. Effective date - applicability. Sections 2 through 16 of this act shall take effect upon passage and shall apply to acts committed on or after said date. Section 1 of this act shall take effect upon passage and shall apply to civil actions filed on or after said date.

SECTION 16. 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.

Approved: May 18, 1999