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SENATE BILL 13-238

BY SENATOR(S) Tochtrop, Aguilar, Crowder, Giron, Kefalas, Nicholson, Todd, Morse;
also REPRESENTATIVE(S) Ryden, Buckner, Ginal, Hullinghorst, Labuda, May, Rosenthal, Schafer, Williams.

CONCERNING THE REGULATION OF HEARING AID PROVIDERS BY THE DIVISION OF PROFESSIONS AND OCCUPATIONS WITHIN THE DEPARTMENT OF REGULATORY AGENCIES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, **recreate and reenact, with amendments**, article 5.5 of title 12 as follows:

ARTICLE 5.5
Hearing Aid Providers

PART 1
GENERAL PROVISIONS

12-5.5-101. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

(1) "APPLICANT" MEANS A PERSON APPLYING FOR LICENSURE UNDER THIS ARTICLE.

(2) "APPRENTICE" MEANS A PERSON WHO HOLDS A CURRENT LICENSE AS AN APPRENTICE PURSUANT TO THIS ARTICLE.

(3) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION OR THE DIRECTOR'S DESIGNEE.

(4) "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.

(5) "DIVISION" MEANS THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES.

(6) (a) "HEARING AID" MEANS A WEARABLE DEVICE DESIGNED OR OFFERED TO BE CUSTOMIZED FOR THE PURPOSE OF COMPENSATING FOR IMPAIRED HUMAN HEARING AND INCLUDES:

(I) ANY PARTS, ATTACHMENTS, OR ACCESSORIES TO THE INSTRUMENT OR DEVICE, AS DEFINED IN RULES ADOPTED BY THE DIRECTOR; AND

(II) EAR MOLDS, EXCLUDING BATTERIES AND CORDS.

(b) THE TERM DOES NOT INCLUDE A SURGICALLY IMPLANTED HEARING DEVICE.

(7) "HEARING AID PROVIDER" MEANS A PERSON ENGAGED IN THE PRACTICE OF DISPENSING, FITTING, OR DEALING IN HEARING AIDS.

(8) "LICENSEE" MEANS A PERSON WHO HOLDS A CURRENT LICENSE AS A HEARING AID PROVIDER PURSUANT TO THIS ARTICLE.

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

(a) SELECTING AND ADAPTING HEARING AIDS FOR SALE;

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

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

(10) "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.

12-5.5-102. Scope of article - exemption. (1) THIS ARTICLE DOES NOT APPLY TO PERSONS WHO ARE:

(a) LICENSED PURSUANT TO SECTION 22-60.5-210, C.R.S., AND WHO ARE NOT LICENSED UNDER THIS ARTICLE FOR WORK UNDERTAKEN AS PART OF THEIR EMPLOYMENT BY, OR CONTRACTUAL AGREEMENT WITH, THE PUBLIC SCHOOLS; OR

(b) ENGAGED IN THE PRACTICE OF AUDIOLOGY OR THE PRACTICE OF DISPENSING, FITTING, OR DEALING IN HEARING AIDS IN THE DISCHARGE OF THEIR OFFICIAL DUTIES IN THE SERVICE OF THE UNITED STATES ARMED FORCES, PUBLIC HEALTH SERVICE, COAST GUARD, OR VETERANS ADMINISTRATION.

(2) THIS ARTICLE DOES NOT APPLY TO THE WHOLESALE SALES OF HEARING AIDS.

(3) NOTHING IN THIS ARTICLE AUTHORIZES A HEARING AID PROVIDER TO ENGAGE IN THE PRACTICE OF MEDICINE AS DEFINED IN SECTION 12-36-106.

(4) NOTHING IN THIS ARTICLE PROHIBITS A BUSINESS OR LICENSEE FROM:

(a) HIRING AND EMPLOYING UNLICENSED STAFF TO ASSIST WITH CONDUCTING BUSINESS PRACTICES AND TO ASSIST IN DISPENSING HEARING AIDS IF THE UNLICENSED STAFF ARE PROPERLY SUPERVISED BY A LICENSEE; EXCEPT THAT THE EMPLOYEES MAY NOT CONDUCT HEARING TESTS OR PERFORM THE INITIAL FITTING OF HEARING AIDS; OR

(b) PERFORMING TASKS THAT WOULD BE PERMISSIBLE IF THE LICENSEE WAS NOT LICENSED.

(5) THIS ARTICLE DOES NOT APPLY TO THE DISPENSING OF HEARING AIDS OUTSIDE OF THIS STATE.

(6) AN AUDIOLOGIST LICENSED PURSUANT TO ARTICLE 29.9 OF THIS TITLE IS NOT REQUIRED TO OBTAIN A LICENSE PURSUANT TO THIS ARTICLE.

12-5.5-103. Scope of practice. (1) THE SCOPE OF PRACTICE FOR A HEARING AID PROVIDER INCLUDES:

(a) ELICITING PATIENT CASE HISTORIES, INCLUDING MEDICAL, OTOLOGICAL, PHARMACOLOGICAL, OCCUPATIONAL, AND PREVIOUS AMPLIFICATION HISTORY AND PATIENT ATTITUDES AND EXPECTATIONS;

(b) ADMINISTERING OTOSCOPY FOR THE PURPOSE OF IDENTIFYING POSSIBLE OTOLOGICAL CONDITIONS, INCLUDING CONDITIONS DESCRIBED IN SECTION 12-5.5-301 (1) (b), THAT MAY INDICATE THE NEED FOR MEDICAL REFERRAL OR THAT MAY HAVE A BEARING ON NEEDED REHABILITATIVE MEASURES, OUTCOMES, OR RECOMMENDATIONS;

(c) ADMINISTERING AND INTERPRETING TESTS OF HUMAN HEARING, INCLUDING APPROPRIATE OBJECTIVE AND SUBJECTIVE METHODOLOGY AND MEASURES;

(d) DETERMINING A PERSON'S CANDIDACY FOR HEARING AIDS OR HEARING ASSISTIVE DEVICES, REFERRING THE PERSON FOR SURGICALLY IMPLANTED HEARING DEVICE EVALUATION, OR RECOMMENDING OTHER CLINICAL, REHABILITATIVE, OR MEDICAL INTERVENTIONS;

(e) PRESCRIBING, SELECTING, AND FITTING APPROPRIATE HEARING INSTRUMENTS AND ASSISTIVE DEVICES, INCLUDING APPROPRIATE TECHNOLOGY, ELECTROACOUSTIC TARGETS, PROGRAMMING PARAMETERS,

AND SPECIAL APPLICATIONS, AS INDICATED;

(f) ASSESSING HEARING INSTRUMENT EFFICACY USING APPROPRIATE FITTING VERIFICATION METHODOLOGY, INCLUDING AVAILABLE FITTING VALIDATION METHODS;

(g) TAKING EAR IMPRESSIONS AND PREPARING EAR MOLDS FOR HEARING INSTRUMENTS, ASSISTIVE DEVICES, TELECOMMUNICATIONS APPLICATIONS, EAR PROTECTION, AND OTHER RELATED APPLICATIONS;

(h) DESIGNING AND MODIFYING EAR MOLDS AND AUDITORY EQUIPMENT TO MEET INDIVIDUAL PATIENT NEEDS;

(i) PROVIDING COUNSELING AND AURAL REHABILITATIVE SERVICES IN THE USE AND CARE OF HEARING INSTRUMENTS AND ASSISTIVE DEVICES AND FOR EFFECTIVELY USING COMMUNICATION COPING STRATEGIES AND OTHER APPROACHES TO FOSTER OPTIMAL PATIENT REHABILITATION; AND

(j) PROVIDING SUPERVISION AND TRAINING OF THOSE ENTERING THE DISPENSING PROFESSION.

12-5.5-104. Title protection - use of title. IT IS UNLAWFUL FOR ANY PERSON TO USE THE TITLE "HEARING AID PROVIDER" OR "HEARING AID DISPENSER" UNLESS HE OR SHE IS LICENSED AS A HEARING AID PROVIDER PURSUANT TO THIS ARTICLE.

12-5.5-105. Repeal of article. (1) THIS ARTICLE IS REPEALED, EFFECTIVE SEPTEMBER 1, 2020.

(2) PRIOR TO THIS REPEAL, THE DEPARTMENT OF REGULATORY AGENCIES SHALL REVIEW THE LICENSING AND SUPERVISORY FUNCTIONS OF THE DIRECTOR AS PROVIDED IN SECTION 24-34-104, C.R.S.

PART 2 LICENSING

12-5.5-201. License required - application - qualifications. (1) A HEARING AID PROVIDER SHALL OBTAIN A LICENSE PURSUANT TO THIS SECTION BEFORE ENGAGING IN THE PRACTICE OF DISPENSING, FITTING, OR DEALING IN HEARING AIDS.

(2) (a) AN APPLICANT SHALL SUBMIT AN APPLICATION TO THE DIRECTOR CONTAINING THE INFORMATION DESCRIBED IN THIS SUBSECTION (2) AND SHALL PAY A FEE DETERMINED AND COLLECTED PURSUANT TO SECTION 24-34-105, C.R.S. THE DIRECTOR MAY DENY AN APPLICATION FOR LICENSURE IF THE REQUIRED INFORMATION IS NOT SUBMITTED OR IF AN APPLICANT'S APPRENTICE LICENSE, ISSUED PURSUANT TO SECTION 12-5.5-204, HAS BEEN REVOKED. IF AN APPLICANT OR LICENSEE FAILS TO NOTIFY THE DIRECTOR OF A CHANGE IN THE SUBMITTED INFORMATION WITHIN THIRTY DAYS AFTER THE CHANGE, THE FAILURE IS CAUSE FOR DISCIPLINARY ACTION.

(b) AN APPLICANT SHALL INCLUDE THE FOLLOWING INFORMATION IN EVERY APPLICATION FOR LICENSURE PURSUANT TO THIS SECTION:

(I) THE APPLICANT'S NAME, BUSINESS ADDRESS, AND BUSINESS TELEPHONE NUMBER AND OTHER CONTACT INFORMATION AS DETERMINED BY THE DIRECTOR;

(II) A STATEMENT INDICATING WHETHER:

(A) A HEARING AID PROVIDER LICENSE, CERTIFICATE, OR REGISTRATION WAS ISSUED TO THE APPLICANT BY A LOCAL, STATE, OR NATIONAL HEALTH CARE AGENCY;

(B) THE LICENSE, CERTIFICATE, OR REGISTRATION WAS SUSPENDED OR REVOKED;

(C) CHARGES OR COMPLAINTS ARE PENDING AGAINST THE APPLICANT; AND

(D) DISCIPLINARY ACTION WAS TAKEN.

(3) IN ORDER TO QUALIFY FOR LICENSURE PURSUANT TO THIS SECTION, AN APPLICANT MUST EITHER:

(a) HAVE PASSED THE NATIONAL COMPETENCY EXAMINATION OF THE NATIONAL BOARD FOR CERTIFICATION IN HEARING INSTRUMENT SCIENCES (NBC-HIS), UNLESS THE DIRECTOR DETERMINES, BY RULE, THAT THIS EXAMINATION NO LONGER MEETS THE MINIMUM STANDARDS NECESSARY FOR LICENSURE, IN WHICH CASE, ONLY AN EXAMINATION THAT THE APPLICANT

PASSED PRIOR TO THE DATE OF THE RULING WILL BE ACCEPTABLE; OR

(b) HAVE PASSED AN APPROPRIATE ENTRY-LEVEL EXAMINATION, AS DETERMINED BY THE DIRECTOR, AND:

(I) COMPLETED AT LEAST SIX MONTHS OF TRAINING WITH AN AUDIOLOGIST OR LICENSED HEARING AID PROVIDER, PURSUANT TO SECTION 12-5.5-204; OR

(II) HAVE AN ASSOCIATE'S DEGREE IN HEARING AID FITTING AND DISPENSING THAT, AT THE TIME THE APPLICANT WAS ENROLLED AND GRADUATED, WAS OFFERED BY AN INSTITUTION OF HIGHER EDUCATION OR A POST-SECONDARY EDUCATION PROGRAM ACCREDITED BY A NATIONAL, REGIONAL, OR STATE AGENCY RECOGNIZED BY THE UNITED STATES DEPARTMENT OF EDUCATION, OR A PROGRAM APPROVED BY THE DIRECTOR.

12-5.5-202. Licensure - certificate - expiration - renewal - reinstatement - fees. (1) (a) THE DIRECTOR SHALL LICENSE ALL APPLICANTS WHO MEET THE REQUIREMENTS FOR LICENSURE IN THIS ARTICLE.

(b) THE DIRECTOR SHALL ISSUE OR DENY A LICENSE WITHIN SIXTY DAYS AFTER THE DATE THE APPLICATION IS RECEIVED.

(c) THE DIRECTOR SHALL GIVE EACH LICENSEE A LICENSE BEARING A UNIQUE LICENSE NUMBER. THE LICENSEE SHALL INCLUDE THE LICENSE NUMBER ON ALL WRITTEN CONTRACTS AND RECEIPTS.

(2) LICENSES ISSUED PURSUANT TO THIS ARTICLE EXPIRE PURSUANT TO A SCHEDULE ESTABLISHED BY THE DIRECTOR AND MUST BE RENEWED OR REINSTATED PURSUANT TO SECTION 24-34-102 (8), C.R.S. THE DIRECTOR SHALL ESTABLISH RENEWAL FEES AND DELINQUENCY FEES FOR REINSTATEMENT PURSUANT TO SECTION 24-34-105, C.R.S. IF A PERSON FAILS TO RENEW HIS OR HER LICENSE PURSUANT TO THE SCHEDULE ESTABLISHED BY THE DIRECTOR, THE LICENSE EXPIRES. A PERSON WHOSE LICENSE HAS EXPIRED IS SUBJECT TO THE PENALTIES SET FORTH IN THIS ARTICLE OR IN SECTION 24-34-102 (8), C.R.S.

12-5.5-203. Licensure by endorsement - rules. (1) THE DIRECTOR SHALL ISSUE A LICENSE BY ENDORSEMENT TO PRACTICE AS A HEARING AID PROVIDER IN THIS STATE TO AN INDIVIDUAL WHO POSSESSES AN ACTIVE

LICENSE IN GOOD STANDING TO PRACTICE IN THAT PROFESSION IN ANOTHER STATE OR TERRITORY OF THE UNITED STATES OR IN A FOREIGN COUNTRY IF THE APPLICANT:

(a) PRESENTS PROOF SATISFACTORY TO THE DIRECTOR THAT THE INDIVIDUAL POSSESSES A VALID LICENSE FROM ANOTHER STATE OR JURISDICTION THAT REQUIRES QUALIFICATIONS SUBSTANTIALLY EQUIVALENT TO THE QUALIFICATIONS FOR LICENSURE IN THIS STATE AND MEETS ALL OTHER REQUIREMENTS FOR LICENSURE PURSUANT TO THIS ARTICLE; AND

(b) PAYS THE LICENSURE FEE ESTABLISHED UNDER SECTION 12-5.5-201.

(2) THE DIRECTOR MAY SPECIFY BY RULE WHAT CONSTITUTES SUBSTANTIALLY EQUIVALENT QUALIFICATIONS FOR THE PURPOSES OF THIS SECTION.

12-5.5-204. Apprentice license - expiration - rules. (1) A PERSON TRAINING TO BE A LICENSED HEARING AID PROVIDER SHALL SUBMIT TO THE DIRECTOR AN APPLICATION CONTAINING THE INFORMATION DESCRIBED IN SUBSECTION (2) OF THIS SECTION AND SHALL PAY AN APPRENTICE LICENSE FEE DETERMINED AND COLLECTED PURSUANT TO SECTION 12-5.5-201.

(2) ON AND AFTER JUNE 1, 2014, THE DIRECTOR SHALL ISSUE AN APPRENTICE LICENSE TO A PERSON WHO PROVIDES, TO THE DIRECTOR'S SATISFACTION, VERIFICATION OF TRAINING TO BECOME A LICENSED HEARING AID PROVIDER, WHICH TRAINING IS UNDER THE DIRECT SUPERVISION OF A LICENSED HEARING AID PROVIDER WHOSE LICENSE IS IN GOOD STANDING.

(3) DURING THE TRAINING PERIOD:

(a) AN APPRENTICE IS NOT PERMITTED TO SELL HEARING AIDS INDEPENDENTLY OF THE SUPERVISING LICENSED HEARING AID PROVIDER;

(b) A SUPERVISING LICENSED HEARING AID PROVIDER RETAINS ULTIMATE RESPONSIBILITY FOR THE CARE PROVIDED BY THE APPRENTICE AND IS SUBJECT TO DISCIPLINARY ACTION BY THE DIRECTOR FOR FAILURE TO PROVIDE ADEQUATE SUPERVISION.

(4) ANY PERSON ISSUED AN APPRENTICE LICENSE UNDER THIS

SECTION IS SUBJECT TO:

(a) DISCIPLINE UNDER SECTION 12-5.5-402 FOR ENGAGING IN AN ACT THAT CONSTITUTES GROUNDS FOR DISCIPLINE UNDER SECTION 12-5.5-501; AND

(b) A CEASE-AND-DESIST ORDER UNDER SECTION 12-5.5-403 FOR ENGAGING IN BEHAVIOR SET FORTH IN SECTION 12-5.5-403.

(5) AN APPRENTICE LICENSE ISSUED UNDER THIS SECTION IS RENEWABLE AND IS SUBJECT TO SECTION 12-5.5-202 (2).

(6) AN ASSOCIATE LICENSE ISSUED PURSUANT TO SECTION 12-5.5-202.5 AS IT EXISTED PRIOR TO ITS REPEAL IN 2012 REMAINS VALID UNTIL THE EXPIRATION DATE ON THE LICENSE. THE DIRECTOR SHALL NOT RENEW, OR ISSUE NEW, ASSOCIATE LICENSES.

(7) ON AND AFTER JUNE 1, 2014, A PERSON IN THIS STATE TRAINING TO BE A LICENSED HEARING AID PROVIDER MUST POSSESS A VALID APPRENTICE LICENSE ISSUED BY THE DIRECTOR PURSUANT TO THIS ARTICLE AND RULES PROMULGATED PURSUANT TO THIS ARTICLE.

12-5.5-205. Disposition of fees - legislative intent. IT IS THE INTENT OF THE GENERAL ASSEMBLY TO FUND ALL DIRECT AND INDIRECT COSTS INCURRED IN THE IMPLEMENTATION OF THIS ARTICLE WITH ANNUAL LICENSE AND RENEWAL FEES. THE DIRECTOR SHALL TRANSMIT ALL FEES COLLECTED UNDER THIS ARTICLE TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO THE DIVISION OF PROFESSIONS AND OCCUPATIONS CASH FUND CREATED IN SECTION 24-34-105, C.R.S.

12-5.5-206. Retention of records - licensee's obligation. EACH LICENSEE WHO SELLS A HEARING AID OR PROVIDES GOODS OR SERVICES TO A CUSTOMER SHALL DEVELOP A WRITTEN PLAN TO ENSURE THE MAINTENANCE OF CUSTOMER RECORDS. THE RECORDS MUST BE RETAINED FOR AT LEAST SEVEN YEARS AND IDENTIFY THE CUSTOMER BY NAME; THE GOODS OR SERVICES, EXCEPT BATTERIES, MINOR PARTS, AND ACCESSORIES, PROVIDED TO EACH CUSTOMER; AND THE DATE AND PRICE OF EACH TRANSACTION.

PART 3

DIRECTOR: POWERS, DUTIES, AND RULES

12-5.5-301. Director - powers - duties - rules. (1) THE DIRECTOR MAY MAKE INVESTIGATIONS AND INSPECTIONS AS NECESSARY TO DETERMINE WHETHER AN APPLICANT OR LICENSEE HAS VIOLATED THIS ARTICLE OR ANY RULE ADOPTED BY THE DIRECTOR.

(2) THE DIRECTOR MAY APPLY TO A COURT OF COMPETENT JURISDICTION FOR AN ORDER ENJOINING ANY ACT OR PRACTICE THAT CONSTITUTES A VIOLATION OF THIS ARTICLE. UPON A SHOWING THAT A PERSON IS ENGAGING IN OR INTENDS TO ENGAGE IN THE ACT OR PRACTICE, THE COURT SHALL GRANT AN INJUNCTION, RESTRAINING ORDER, OR OTHER APPROPRIATE ORDER, REGARDLESS OF THE EXISTENCE OF ANOTHER REMEDY. ALL PROCEEDINGS RELATED TO SUCH ORDERS ARE GOVERNED BY THE COLORADO RULES OF CIVIL PROCEDURE.

(3) (a) THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE HAS THE POWER TO ADMINISTER OATHS, TAKE AFFIRMATIONS OF WITNESSES, AND ISSUE SUBPOENAS TO COMPEL THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF ALL RELEVANT PAPERS, BOOKS, RECORDS, DOCUMENTARY EVIDENCE, AND MATERIALS IN ANY HEARING, INVESTIGATION, ACCUSATION, OR OTHER MATTER COMING BEFORE THE DIRECTOR PURSUANT TO THIS ARTICLE. THE DIRECTOR MAY APPOINT AN ADMINISTRATIVE LAW JUDGE PURSUANT TO PART 10 OF ARTICLE 30 OF TITLE 24, C.R.S., TO TAKE EVIDENCE AND TO MAKE FINDINGS AND REPORT THEM TO THE DIRECTOR.

(b) UPON FAILURE OF ANY WITNESS TO COMPLY WITH A SUBPOENA OR PROCESS, THE DISTRICT COURT OF THE COUNTY IN WHICH THE SUBPOENAED PERSON OR LICENSEE RESIDES OR CONDUCTS BUSINESS, UPON APPLICATION BY THE DIRECTOR WITH NOTICE TO THE SUBPOENAED PERSON OR LICENSEE, MAY ISSUE TO THE PERSON OR LICENSEE AN ORDER REQUIRING THAT PERSON OR LICENSEE TO APPEAR BEFORE THE DIRECTOR; TO PRODUCE THE RELEVANT PAPERS, BOOKS, RECORDS, DOCUMENTARY EVIDENCE, OR MATERIALS IF SO ORDERED; OR TO GIVE EVIDENCE TOUCHING THE MATTER UNDER INVESTIGATION OR IN QUESTION. THE COURT MAY PUNISH A FAILURE TO OBEY THE ORDER OF THE COURT AS A CONTEMPT OF COURT.

(4) NO LATER THAN DECEMBER 31, 2013, AND THEREAFTER AS NECESSARY, THE DIRECTOR SHALL ADOPT RULES NECESSARY FOR THE ENFORCEMENT OR ADMINISTRATION OF THIS ARTICLE.

12-5.5-302. Disciplinary actions. (1) IF THE DIRECTOR DETERMINES THAT AN APPLICANT OR LICENSEE HAS COMMITTED ANY OF THE ACTS SPECIFIED IN PART 4 OF THIS ARTICLE, THE DIRECTOR MAY:

(a) ISSUE A LETTER OF ADMONITION;

(b) PLACE A LICENSEE ON PROBATION;

(c) IMPOSE AN ADMINISTRATIVE FINE NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS FOR EACH SEPARATE OFFENSE; OR

(d) DENY, REFUSE TO RENEW, REVOKE, OR SUSPEND THE LICENSE OF AN APPLICANT OR LICENSEE.

(2) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN INSTANCE OF MISCONDUCT THAT, IN THE OPINION OF THE DIRECTOR, WARRANTS FORMAL ACTION, THE COMPLAINT SHALL NOT BE RESOLVED BY A DEFERRED SETTLEMENT, ACTION, JUDGMENT, OR PROSECUTION.

(3) A PERSON WHOSE LICENSE TO PRACTICE AS A HEARING AID PROVIDER OR APPRENTICE UNDER THIS ARTICLE IS REVOKED, OR WHO SURRENDERS HIS OR HER LICENSE TO AVOID DISCIPLINE, IS INELIGIBLE TO APPLY FOR ANY NEW LICENSE UNDER THIS ARTICLE FOR TWO YEARS AFTER THE DATE OF REVOCATION OR SURRENDER OF HIS OR HER LICENSE.

(4) (a) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN INSTANCE OF MISCONDUCT THAT, IN THE OPINION OF THE DIRECTOR, DOES NOT WARRANT FORMAL ACTION BY THE DIRECTOR BUT THAT SHOULD NOT BE DISMISSED AS BEING WITHOUT MERIT, THE DIRECTOR MAY ISSUE AND SEND A LETTER OF ADMONITION TO THE LICENSEE.

(b) (I) WHEN THE DIRECTOR SENDS A LETTER OF ADMONITION TO A LICENSEE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4), THE DIRECTOR SHALL ALSO ADVISE THE LICENSEE THAT HE OR SHE HAS THE RIGHT TO REQUEST IN WRITING, WITHIN TWENTY DAYS AFTER SERVICE OF THE LETTER, THAT THE DIRECTOR INITIATE FORMAL DISCIPLINARY PROCEEDINGS TO ADJUDICATE THE PROPRIETY OF THE CONDUCT UPON WHICH THE LETTER OF ADMONITION IS BASED.

(II) IF THE LICENSEE MAKES THE REQUEST FOR ADJUDICATION, THE

DIRECTOR SHALL VACATE THE LETTER OF ADMONITION AND SHALL PROCESS THE MATTER BY MEANS OF FORMAL DISCIPLINARY PROCEEDINGS.

(5) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN INSTANCE OF CONDUCT THAT DOES NOT WARRANT FORMAL ACTION BY THE DIRECTOR AND, IN THE OPINION OF THE DIRECTOR, SHOULD BE DISMISSED, BUT THE DIRECTOR HAS NOTICED INDICATIONS OF POSSIBLE ERRANT CONDUCT BY THE LICENSEE THAT COULD LEAD TO SERIOUS CONSEQUENCES IF NOT CORRECTED, THE DIRECTOR MAY SEND THE LICENSEE A CONFIDENTIAL LETTER OF CONCERN.

(6) THE DIRECTOR SHALL NOT ENFORCE ANY PROVISIONS OF THIS ARTICLE OR RULES PROMULGATED PURSUANT TO THIS ARTICLE THAT ARE HELD UNCONSTITUTIONAL, INVALID, OR INCONSISTENT WITH FEDERAL LAWS OR REGULATIONS, INCLUDING RULES PROMULGATED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION.

(7) ALL FINES COLLECTED PURSUANT TO THIS SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO THE GENERAL FUND.

12-5.5-303. Cease-and-desist orders - unauthorized practice - penalties. (1) (a) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE EVIDENCE AS PRESENTED IN A WRITTEN COMPLAINT BY ANY PERSON, THAT A LICENSEE IS ACTING IN A MANNER THAT IS A THREAT TO THE HEALTH AND SAFETY OF THE PUBLIC, OR A PERSON IS ACTING OR HAS ACTED WITHOUT THE REQUIRED LICENSE, THE DIRECTOR MAY ISSUE AN ORDER TO CEASE AND DESIST THE ACTIVITY. THE ORDER MUST SET FORTH THE STATUTES AND RULES ALLEGED TO HAVE BEEN VIOLATED, THE FACTS ALLEGED TO HAVE CONSTITUTED THE VIOLATION, THE SPECIFIC HARM THAT THREATENS THE HEALTH AND SAFETY OF THE PUBLIC, AND THE REQUIREMENT THAT ALL UNLAWFUL ACTS OR UNLICENSED PRACTICES IMMEDIATELY CEASE.

(b) WITHIN TEN DAYS AFTER SERVICE OF THE ORDER TO CEASE AND DESIST PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1), THE RESPONDENT MAY REQUEST A HEARING ON THE QUESTION OF WHETHER ACTS OR PRACTICES IN VIOLATION OF THIS ARTICLE HAVE OCCURRED. THE HEARING MUST BE CONDUCTED PURSUANT TO SECTIONS 24-4-104 AND 24-4-105, C.R.S.

(2) (a) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE EVIDENCE AS PRESENTED IN A WRITTEN COMPLAINT BY ANY PERSON, THAT A PERSON HAS VIOLATED ANY OTHER PORTION OF THIS ARTICLE, THEN, IN ADDITION TO ANY SPECIFIC POWERS GRANTED PURSUANT TO THIS ARTICLE, THE DIRECTOR MAY ISSUE TO THE PERSON AN ORDER TO SHOW CAUSE AS TO WHY THE DIRECTOR SHOULD NOT ISSUE A FINAL ORDER DIRECTING THE PERSON TO CEASE AND DESIST FROM THE UNLAWFUL ACT OR PRACTICE.

(b) THE DIRECTOR SHALL PROMPTLY NOTIFY THE PERSON OF THE ISSUANCE OF THE ORDER AND SHALL INCLUDE IN THE NOTICE A COPY OF THE ORDER, THE FACTUAL AND LEGAL BASIS FOR THE ORDER, AND THE DATE SET BY THE DIRECTOR FOR A HEARING ON THE ORDER. THE DIRECTOR MAY SERVE THE NOTICE BY PERSONAL SERVICE, BY FIRST-CLASS UNITED STATES MAIL, POSTAGE PREPAID, OR AS MAY BE PRACTICABLE UPON ANY PERSON AGAINST WHOM THE ORDER IS ISSUED. PERSONAL SERVICE OR PROOF OF RECEIPT OF MAILING OF AN ORDER OR DOCUMENT PURSUANT TO THIS PARAGRAPH (b) CONSTITUTES NOTICE TO THE PERSON OF THE EXISTENCE AND CONTENTS OF THE ORDER OR DOCUMENT.

(c) (I) THE DIRECTOR MUST COMMENCE THE HEARING ON AN ORDER TO SHOW CAUSE NO SOONER THAN TEN, AND NO LATER THAN FORTY-FIVE, CALENDAR DAYS AFTER THE DATE OF TRANSMISSION OR SERVICE OF THE NOTIFICATION BY THE DIRECTOR AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (2). THE DIRECTOR MAY CONTINUE THE HEARING BY AGREEMENT OF ALL PARTIES BASED UPON THE COMPLEXITY OF THE MATTER, NUMBER OF PARTIES TO THE MATTER, AND LEGAL ISSUES PRESENTED IN THE MATTER, BUT IN NO EVENT MAY THE DIRECTOR COMMENCE THE HEARING LATER THAN SIXTY CALENDAR DAYS AFTER THE DATE OF TRANSMISSION OR SERVICE OF THE NOTIFICATION.

(II) IF A PERSON AGAINST WHOM AN ORDER TO SHOW CAUSE HAS BEEN ISSUED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) DOES NOT APPEAR AT THE HEARING, THE DIRECTOR MAY PRESENT EVIDENCE THAT NOTIFICATION WAS PROPERLY SENT OR SERVED UPON THE PERSON PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2) AND ANY OTHER EVIDENCE RELATED TO THE MATTER AS THE DIRECTOR DEEMS APPROPRIATE. THE DIRECTOR SHALL ISSUE THE ORDER WITHIN TEN DAYS AFTER THE DIRECTOR'S DETERMINATION RELATED TO REASONABLE ATTEMPTS TO NOTIFY THE RESPONDENT, AND THE ORDER BECOMES FINAL AS TO THAT PERSON BY OPERATION OF LAW. THE CONDUCT OF THE HEARING IS GOVERNED BY

SECTIONS 24-4-104 AND 24-4-105, C.R.S.

(III) IF THE DIRECTOR REASONABLY FINDS THAT THE PERSON AGAINST WHOM THE ORDER TO SHOW CAUSE WAS ISSUED IS ACTING OR HAS ACTED WITHOUT THE REQUIRED LICENSE OR HAS OR IS ABOUT TO ENGAGE IN ACTS OR PRACTICES CONSTITUTING VIOLATIONS OF THIS ARTICLE OR RULES ADOPTED UNDER THIS ARTICLE, THE DIRECTOR MAY ISSUE A FINAL CEASE-AND-DESIST ORDER DIRECTING THE PERSON TO CEASE AND DESIST FROM FURTHER UNLAWFUL ACTS OR UNLICENSED PRACTICES.

(IV) THE DIRECTOR SHALL PROVIDE NOTICE, IN THE MANNER SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (2), OF THE FINAL CEASE-AND-DESIST ORDER WITHIN TEN CALENDAR DAYS AFTER THE HEARING CONDUCTED PURSUANT TO THIS PARAGRAPH (c) TO EACH PERSON AGAINST WHOM THE FINAL ORDER HAS BEEN ISSUED. THE FINAL ORDER ISSUED PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH (c) IS EFFECTIVE WHEN ISSUED AND CONSTITUTES A FINAL ORDER FOR PURPOSES OF JUDICIAL REVIEW.

(3) THE DIRECTOR MAY ENTER INTO A STIPULATION WITH A PERSON IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE EVIDENCE PRESENTED TO THE DIRECTOR, THAT THE PERSON HAS ENGAGED IN OR IS ABOUT TO ENGAGE IN:

(a) AN UNLICENSED ACT OR PRACTICE;

(b) AN ACT OR PRACTICE CONSTITUTING A VIOLATION OF THIS ARTICLE, A RULE PROMULGATED PURSUANT TO THIS ARTICLE, OR AN ORDER ISSUED PURSUANT TO THIS ARTICLE; OR

(c) AN ACT OR PRACTICE CONSTITUTING GROUNDS FOR ADMINISTRATIVE SANCTION PURSUANT TO THIS ARTICLE.

(4) IF ANY PERSON FAILS TO COMPLY WITH A FINAL CEASE-AND-DESIST ORDER OR A STIPULATION, THE DIRECTOR MAY REQUEST THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY FOR THE JUDICIAL DISTRICT IN WHICH THE ALLEGED VIOLATION EXISTS TO BRING, AND IF SO REQUESTED THE ATTORNEY SHALL BRING, SUIT FOR A TEMPORARY RESTRAINING ORDER AND FOR INJUNCTIVE RELIEF TO PREVENT ANY FURTHER OR CONTINUED VIOLATION OF THE FINAL ORDER.

(5) A PERSON AGGRIEVED BY THE FINAL CEASE-AND-DESIST ORDER MAY SEEK JUDICIAL REVIEW OF THE DIRECTOR'S DETERMINATION OR OF THE DIRECTOR'S FINAL ORDER IN A COURT OF COMPETENT JURISDICTION.

(6) A PERSON WHO PRACTICES OR OFFERS OR ATTEMPTS TO PRACTICE AS A HEARING AID PROVIDER OR WHO ENGAGES IN THE PRACTICE OF DISPENSING, FITTING, OR DEALING IN HEARING AIDS WITHOUT AN ACTIVE HEARING AID PROVIDER LICENSE ISSUED UNDER THIS ARTICLE COMMITS A CLASS 2 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-501, C.R.S., FOR THE FIRST OFFENSE, AND, FOR THE SECOND OR ANY SUBSEQUENT OFFENSE, THE PERSON COMMITS A CLASS 6 FELONY AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-401, C.R.S.

12-5.5-304. Immunity. THE DIRECTOR, THE DIRECTOR'S STAFF, A PERSON ACTING AS A WITNESS OR CONSULTANT TO THE DIRECTOR, AND A WITNESS TESTIFYING IN A PROCEEDING AUTHORIZED UNDER THIS ARTICLE, IS IMMUNE FROM LIABILITY IN ANY CIVIL ACTION BROUGHT AGAINST HIM OR HER FOR ACTS OCCURRING WHILE ACTING IN HIS OR HER CAPACITY AS DIRECTOR, STAFF, CONSULTANT, OR WITNESS, RESPECTIVELY, IF THE INDIVIDUAL WAS ACTING IN GOOD FAITH WITHIN THE SCOPE OF HIS OR HER RESPECTIVE CAPACITY, MADE A REASONABLE EFFORT TO OBTAIN THE FACTS OF THE MATTER AS TO WHICH HE OR SHE ACTED, AND ACTED IN THE REASONABLE BELIEF THAT THE ACTION TAKEN BY HIM OR HER WAS WARRANTED BY THE FACTS. ANY PERSON PARTICIPATING IN GOOD FAITH IN LODGING A COMPLAINT OR PARTICIPATING IN ANY INVESTIGATIVE OR ADMINISTRATIVE PROCEEDING PURSUANT TO THIS ARTICLE IS IMMUNE FROM ANY CIVIL OR CRIMINAL LIABILITY THAT MAY RESULT FROM THAT PARTICIPATION.

PART 4 GROUNDS FOR DISCIPLINE

12-5.5-401. Grounds for discipline. (1) THE FOLLOWING ACTS CONSTITUTE GROUNDS FOR DISCIPLINE:

(a) MAKING A FALSE OR MISLEADING STATEMENT OR OMISSION IN AN APPLICATION FOR LICENSURE;

(b) VIOLATING ANY PROVISION OF THIS ARTICLE, A RULE PROMULGATED BY THE DIRECTOR UNDER THIS ARTICLE, OR AN ORDER ISSUED

BY THE DIRECTOR UNDER THIS ARTICLE;

(c) USING FALSE OR MISLEADING ADVERTISING;

(d) REPRESENTING 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", "STATE-APPROVED", OR ANY OTHER TERM, ABBREVIATION, OR SYMBOL WHEN IT WOULD GIVE THE FALSE IMPRESSION THAT SERVICE IS BEING PROVIDED BY PERSONS TRAINED IN MEDICINE OR THAT THE LICENSEE'S SERVICE HAS BEEN RECOMMENDED BY THE STATE WHEN THAT IS NOT THE CASE, OR WHEN IT WOULD BE FALSE OR MISLEADING;

(e) DIRECTLY OR INDIRECTLY GIVING OR OFFERING TO GIVE 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 A LICENSEE OR INFLUENCING PERSONS TO REFRAIN FROM DEALING IN THE PRODUCTS OF COMPETITORS;

(f) EMPLOYING A DEVICE, A SCHEME, OR ARTIFICE WITH THE INTENT TO DEFRAUD A PURCHASER OF A HEARING AID;

(g) SELLING 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;

(h) INTENTIONALLY DISPOSING OF, CONCEALING, DIVERTING, CONVERTING, OR OTHERWISE FAILING TO ACCOUNT FOR ANY FUNDS OR ASSETS OF A PURCHASER OF A HEARING AID THAT IS UNDER THE APPLICANT'S, LICENSEE'S, OR APPRENTICE'S CONTROL;

(i) MAKING 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 REFUSING 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 SECTION 12-5.5-301 (2) (g);

(j) CHARGING, COLLECTING, OR RECOVERING ANY COST OR FEE FOR ANY GOOD OR SERVICE THAT HAS BEEN REPRESENTED BY THE LICENSEE AS FREE;

(k) FAILING TO ADEQUATELY SUPERVISE A LICENSED HEARING AID PROVIDER APPRENTICE OR ANY EMPLOYEE PURSUANT TO SECTION 12-5.5-204 OR SECTION 12-5.5-102 (4) (a);

(l) EMPLOYING A SALES AGENT OR EMPLOYEE WHO VIOLATES ANY PROVISION OF THIS ARTICLE, A RULE PROMULGATED BY THE DIRECTOR UNDER THIS ARTICLE, OR AN ORDER ISSUED BY THE DIRECTOR UNDER THIS ARTICLE;

(m) FAILING TO COMPLY WITH A STIPULATION OR AGREEMENT MADE WITH THE DIRECTOR OR WITH A FINAL AGENCY ORDER;

(n) FAILING TO RESPOND IN AN HONEST, MATERIALLY RESPONSIVE, AND TIMELY MANNER TO A COMPLAINT ISSUED PURSUANT TO SECTION 12-5.5-402 (4);

(o) BEING CONVICTED OF, ACCEPTING A PLEA OF GUILTY OR NOLO CONTENDERE TO, OR RECEIPT OF A DEFERRED SENTENCE IN ANY COURT FOR A FELONY OR FOR ANY CRIME INVOLVING FRAUD, DECEPTION, FALSE PRETENSE, THEFT, MISREPRESENTATION, FALSE ADVERTISING, OR DISHONEST DEALING;

(p) SELLING, DISPENSING, ADJUSTING, PROVIDING TRAINING OR TEACHING IN REGARD TO, OR OTHERWISE SERVICING SURGICALLY IMPLANTED HEARING DEVICES UNLESS THE HEARING AID PROVIDER IS AN AUDIOLOGIST OR A PHYSICIAN; AND

(q) VIOLATING THE "COLORADO CONSUMER PROTECTION ACT", ARTICLE 1, OF TITLE 6, C.R.S.

SECTION 2. 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., 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 of part 3 of article 5.5 of title 12, C.R.S., is guilty of a class 6 felony, as defined in section 18-1.3-401, C.R.S.

SECTION 3. In Colorado Revised Statutes, 24-34-104 **amend** (51.5) introductory portion; and **add** (51.5) (f) as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (51.5) The following agencies, functions, or both, shall terminate on September 1, 2020:

(f) THE LICENSING OF HEARING AID PROVIDERS BY THE DIVISION OF PROFESSIONS AND OCCUPATIONS, PURSUANT TO ARTICLE 5.5 OF TITLE 12, C.R.S.

SECTION 4. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of professions and occupations cash fund created in section 24-34-105 (2) (b) (I), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for the fiscal year beginning July 1, 2013, the sum of \$5,794, or so much thereof as may be necessary, to be allocated to the executive director's office and administrative services for legal services related to the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2013, the sum of \$5,794, or so much thereof as may be necessary, for the provision of legal services for the department of regulatory agencies related to the implementation of this act. Said sum is from reappropriated funds received from the department of regulatory agencies out of the appropriation made in subsection (1) of this section.

SECTION 5. Effective date. This act takes effect July 1, 2013.

SECTION 6. 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.

John P. Morse
PRESIDENT OF
THE SENATE

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO