

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1973

ENROLLED

HOUSE BILL No. 545

(By Mr. McManus)
Mrs. Merritt

PASSED April 14 1973

In Effect ninety days from Passage



FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 5/4/73

545

ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 545

(By MR. SPEAKER, MR. MCMANUS, and MRS. MERRITT)

(Originating in the House Committee on the Judiciary)

[Passed April 14, 1973; in effect ninety days from passage.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-four, relating to hearing-aid dealers and fitters generally; providing for the definition of terms; creating a West Virginia board of hearing-aid dealers and providing for its members; providing for the qualifications, terms of office, oath, salary and expenses for such members; the powers and duties of the board generally; providing for the powers of the state department of health and the state director of health with respect to hearing-aid dealers and fitters; providing for the licensing and qualification of hearing-aid dealers and fitters; fees required to be paid by such licensees; requiring an examination to determine the qualification of such licensees and the scope and subject of such examination; providing for the posting and renewal of license; requiring all licensees to maintain a permanent place of business in this state and advising the board with respect to change thereof; providing for reciprocity for persons licensed in other states or jurisdictions; providing for temporary trainee

permits and the conditions under which such permits may be issued; the refusal to issue a license or the suspension or revocation of such license and the grounds therefor; defining false and deceptive advertising and practices; requiring licensees to ascertain certain matters prior to the sale or fitting of hearing aids and the duties of a hearing-aid dealer with respect to such sale; hearing procedures and judicial review thereof; certain prohibited acts and practices; offenses and penalties; injunctive powers of the board; and providing for the construction and severability of this article.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-four, to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 24. HEARING-AID DEALERS AND FITTERS.

§16-24-1. Definitions.

1 Unless the context clearly requires otherwise, as used in
2 this article:

3 (1) "Advertise," and any of its variants, means and
4 includes the use of a newspaper, magazine, or other publica-
5 tion, book, notice, circular, pamphlet, letter, handbill, poster,
6 bill, sign, placard, card, label, tag, window display, store
7 sign, radio, television announcement, or any other means
8 or methods now or hereafter employed to bring to the
9 attention of the public the practice of fitting or dealing in
10 hearing aids.

11 (2) "Board" means the West Virginia board of hearing
12 aid dealers.

13 (3) "Department" means the state department of health
14 and, when appropriate, shall include the state director of health
15 or the state board of health.

16 (4) "Hearing aid" means any wearable device or in-
17 strument or any combination thereof, designed for, represented
18 as or offered for sale for the purpose of aiding, improving
19 or compensating for defective or impaired human hearing
20 and shall include earmold, parts, attachments or other acces-
21 sories thereto, but excluding batteries and cords.

22 (5) "Hearing-air dealer" and "hearing-aid fitter" means
23 any person engaged in the practice of dealing in or fitting
24 of hearing aids.

25 (6) "License" means any license issued under the pro-
26 visions of this article and shall include a temporary license.
27 "Licensee" means any person holding any such license.

28 (7) "Person" means and includes any individual, partner-
29 ship, trust, association, corporation or other like organization,
30 or any combination thereof.

31 (8) "Practice of dealing in or fitting of hearing aids"
32 means and includes:

33 (a) The measurement or other testing of human hearing
34 by means of an audiometer, or by any other means;

35 (b) The selection, adaptation, fitting or sale of hearing
36 aids by a person for the use of another person; or

37 (c) The making of impressions for earmolds.

38 (9) "Sell" or "sale" or any variant thereof, means any
39 transfer of title or of the right to use by lease, bailment or
40 any other contract, but shall not include transactions between
41 distributors, dealers or licensees where the item transferred
42 is intended for sale.

43 (10) "Trainee" means any person training to become a
44 licensed hearing-aid dealer or fitter.

**§16-24-2. Engaging in practice of hearing-aid dealer or trainee with-
out license prohibited; exceptions.**

1 (a) Except as provided in subsections (b), (c) and (d)
2 hereof, no person shall, on or after the effective date of this
3 article, engage in the practice of dealing in or fitting of hearing
4 aids, either as a hearing-aid dealer or fitter or as a trainee, nor
5 shall any person advertise or assume any such practice, with-
6 out first being licensed or otherwise qualified under the pro-
7 visions of this article.

8 (b) If the applicant is a partnership, trust, association, cor-
9 poration or other like organization, the application, in addi-
10 tion to such other information as the board may require, shall
11 be accompanied by an application for a license for each per-
12 son, whether owner or employee, of such applicant who serves
13 in the capacity of a hearing-aid dealer or fitter, or shall con-
14 tain a statement that such applications for all such persons

15 are submitted separately. No partnership, trust, association,
16 corporation or other like organization shall permit any unlic-
17 ensed person to sell hearing aids or to engage in the practice
18 of dealing in or fitting of hearing aids.

19 (c) This article is not intended to prevent any person who
20 is not licensed under this article from engaging in the practice
21 of measuring human hearing for the purpose of selection of
22 hearing aids provided such person or organization employing
23 such person does not sell hearing aids or accessories thereto,
24 except in the case of earmolds to be used only for the purpose
25 of audiologic evaluation.

26 (d) Any person who is licensed to practice medicine in this
27 state or any person holding a degree in audiology may sell
28 hearing aids or accessories thereto without obtaining a license
29 under this article.

**§16-24-3. West Virginia board of hearing-aid dealers created; mem-
bers; qualifications; term; oath; salary and expenses;
powers and duties.**

1 There is hereby created the West Virginia board of hearing-
2 aid dealers, which shall be composed of five members to be
3 appointed by the governor, by and with the advice and consent
4 of the Senate. The members of the board shall be residents of
5 this state. One member shall be a person licensed to practice
6 medicine in this state and one member shall hold a degree in
7 audiology from an accredited college or university. The re-
8 maining three members shall be persons having no less than
9 five years experience as hearing-aid dealers or fitters and
10 shall hold a valid license under the provisions of this article,
11 except that the hearing-aid dealers or fitters to be first appoint-
12 ed to the board shall obtain a license under the provisions of
13 this article within six months following their appointment to the
14 board.

15 The term of office of each member of the board shall be
16 four years, excepting that as to the members first appointed to
17 the board, one shall be appointed for two years; two shall be
18 appointed for three years; and two shall be appointed for four
19 years. A board member shall serve until his successor has been
20 duly appointed and qualified and any vacancy in the office of
21 a member shall be filled by appointment for the unexpired
22 term of such member. Any member of the board shall

23 be eligible for reappointment. Three members of the board
24 shall constitute a quorum.

25 The board shall, annually at its meeting first succeeding
26 July one, elect from its own members a chairman and
27 vice-chairman. The state director of health or his designee
28 shall serve as ex officio secretary of the board.

29 Each member of the board shall receive for each day
30 actually engaged in the duties of his office, a per diem
31 salary of fifty dollars and shall be reimbursed for all rea-
32 sonable and necessary expenses actually incurred in the
33 performance of his duties as a member of such board.
34 All fees and other moneys collected by the board, pur-
35 suant to the provisions of this article, shall be kept in a
36 separate fund and shall be expended solely for the pur-
37 poses of this article. The compensation for the members
38 of the board and all expenses incurred under this article
39 shall be paid from this special fund and no such compensation
40 or expenses shall be paid from the general revenue fund of this
41 state. All disbursements of funds necessary to carry out the
42 provisions of this article shall be so disbursed only upon
43 the authority of the board.

44 The board is hereby empowered, with the assistance of the
45 department and the state director of health, to generally sup-
46 erwise, regulate and control the practice of dealing in or fitting
47 of hearing aids in this state, and in so doing, shall administer
48 qualifying examinations in accordance with the provisions of
49 this article to test the knowledge and proficiency of all pro-
50 spective licensees or trainees.

51 The board may purchase and maintain or rent audio-
52 metric equipment and other facilities necessary to carry
53 out the examination of applicants as provided in this article
54 and may purchase such other equipment and supplies and
55 employ such persons as it deems appropriate to carry out
56 the provisions of this article.

57 The board shall promulgate reasonable rules and regulations
58 in accordance with and subject to the provisions of chapter
59 twenty-nine-a of this code:

60 (a) For the proper performance of its duties;

61 (b) To define and prescribe the ethical practice of dealing
62 in or fitting of hearing aids for the safety, protection and
63 welfare of the public;

64 (c) To govern the time, place and manner of con-
65 ducting the examinations required by this article and the
66 standard, scope and subject of such examinations, which
67 examinations shall, as a minimum, conform with the standards,
68 scope and subjects set forth in section six of this article
69 and the manner and form in which applications for such
70 examinations shall be filed;

71 (d) To establish procedures for determining whether
72 persons holding similar valid licenses from other states or
73 jurisdictions shall be required to take and successfully pass the
74 appropriate qualifying examination as a condition for such
75 licensing in this state.

§16-24-4. Powers and duties of the state department of health.

1 The administrative work of the board shall be performed
2 by the state director of health or his designee. The director
3 shall keep full and complete records of all of the proceedings
4 of the board and of its accounts, which said records and
5 accounts shall be open to the public inspection at all reason-
6 able times. The department is hereby authorized to assist
7 in the supervision and administration of the qualifying
8 examinations authorized and required by this article, to main-
9 tain for the board a register or record of persons who ap-
10 ply for a license or a temporary trainee permit as well
11 as a register or record of the name and last known bus-
12 iness address of all persons to whom a license or trainee
13 permit is issued pursuant to this article.

14 At the direction and request of the board the depart-
15 ment shall conduct periodic inspections of the establish-
16 ment and facilities of persons who are licensed to engage
17 in the practice of dealing in or fitting of hearing aids and
18 shall report its findings and the results of such inspections to
19 the board.

20 When requested by the board, the department may assist
21 the board generally in carrying out any of the powers and
22 duties granted to the board, but none of the cost incidental
23 to such assistance, powers, functions and duties given to
24 the department pursuant to this article shall be borne from
25 any of the appropriations made to the department, but shall
26 be borne by the board and to this extent the department
27 shall be entitled to reimbursement from the funds of the board.

§16-24-5. Application for licenses; qualifications of applicants; fees; duties of the board with respect thereto.

1 Each person desiring to obtain a license from the board to
2 engage in the practice of dealing in or fitting of hearing aids
3 shall make application to the board. The application shall be
4 made in such manner and form as prescribed by the board
5 and shall be accompanied by a fee of fifty dollars. The
6 application shall state under oath that the applicant:

7 (1) Intends to maintain a permanent office or place of
8 business in this state or that the applicant has at the time
9 of application a permanent office or place of business in
10 another state within a reasonable commuting distance from
11 this state. The board shall determine and prescribe by
12 regulation the term "reasonable distance" as used herein;

13 (2) Is a person of good moral character and that he
14 has never been convicted of nor is presently under indict-
15 ment for a crime involving moral turpitude;

16 (3) Is eighteen years of age or older;

17 (4) Has an education equivalent to a four-year course
18 in an accredited high school; and

19 (5) Is free of chronic infectious or contagious diseases.

20 Any person who fails to meet any of the standards set
21 forth in the next-preceding paragraph shall not be eligible
22 or qualified to take the examination nor shall any such
23 person be eligible or qualified to engage in the practice of
24 dealing in or fitting of hearing aids.

25 The board, after first determining that the applicant is
26 qualified and eligible in every respect to take the exami-
27 nation, shall notify the applicant that he has fulfilled all
28 of the qualifications and eligibility requirements as required
29 by this section and shall advise him of the date, time and
30 place for him to appear to be examined as required by the
31 provisions of this article and the regulations promulgated
32 by the board pursuant to this article.

33 The board, with the aid and assistance of the department,
34 shall give at least one annual examination of the type
35 required by this article and may give such additional examina-
36 tions, at such times and places, as the board and the depart-
37 ment may deem proper, giving consideration to the number
38 of applications.

§16-24-6. Standards, scope and subject of examination.

1 The board by rules and regulations shall determine and set
2 minimum standards to be met in the qualifying examination
3 provided for in this article, which examination shall be
4 designed to demonstrate the applicant's technical competency
5 and other qualifications by:

6 (1) A test of knowledge in the following areas as they
7 pertain to the fitting and sale of hearing aids:

8 (a) Basic physics of sound;

9 (b) The anatomy and physiology of the ear; and

10 (c) The function of hearing aids.

11 (2) Practical tests of proficiency in the following tech-
12 niques as they pertain to the fitting of hearing aids:

13 (a) Pure tone audiometry, including air conduction test-
14 ing;

15 (b) Live voice or recorded voice speech audiometry,
16 including speech reception threshold testing and speech dis-
17 crimination testing;

18 (c) Masking when indicated and effective masking.

19 (3) Evidence of:

20 (a) Ability to counsel the person or family who will
21 receive the hearing aid relative to the care and use of the
22 instrument;

23 (b) Knowledge regarding the medical and rehabilitative
24 facilities for hearing-handicapped children and adults in the
25 area being served;

26 (c) Knowledge and understanding of the grounds for re-
27 vocation, suspension, or probation of a license as outlined
28 in this article;

29 (d) Knowledge and understanding of criminal offenses as
30 outlined in this article.

§16-24-7. Results of examination disclosed to applicant; issuance of license; fees.

1 (a) Any person who has taken the examination shall
2 be notified by the board within thirty days following such
3 examination as to whether he has satisfactorily passed the
4 examination. If such person has failed to pass the examina-
5 tion, he shall be notified of the reasons for such failure and
6 the particular portions of the examination which he failed to

7 pass. Such person shall also be advised of his right to take
8 the examination in the future.

9 If such applicant has satisfactorily passed the examina-
10 tion, he shall be advised of that fact by the board and,
11 upon payment of twenty dollars, the board shall register
12 the applicant as a licensee and shall issue a license to such
13 applicant. Such license shall remain in effect for a period of
14 one year from the date of its issuance.

15 (b) Within six months following the effective date of
16 this article, any applicant for license who has been engaged
17 in the practice of dealing in or fitting of hearing aids in this
18 state for a period of three years immediately prior to such
19 effective date, shall be so registered and issued a license
20 without being required to undergo or take the examination
21 required by this article providing such person meets all other
22 requirements of this article and the rules and regulations
23 promulgated pursuant thereto. All of the fees which such
24 prospective licensee would be otherwise required to pay shall
25 be paid by such prospective licensee in the same manner and
26 to the same extent as if such prospective licensee had not so
27 engaged in such practice in this state for such three-year
28 period.

29 (c) The issuance of a license by the board must have
30 the concurrence of a majority of its members.

§16-24-8. Posting of license required; duplicate copies.

1 Each person who holds a hearing aid dealer's or fitter's
2 license and engages in the practice of dealing in the fitting
3 of hearing aids shall display such license in a conspicuous
4 place in his office or place of business at all times. Each
5 person who maintains more than one office or place of
6 business shall post a duplicate copy of the license at each
7 location. The board shall issue duplicate copies of a license
8 upon receipt of a properly completed application and payment
9 of one dollar for each copy requested.

§16-24-9. Renewal of license.

1 A person who is engaged in the practice of dealing in or
2 fitting of hearing aids shall annually pay to the board a
3 fee of forty dollars for a renewal of his license. A thirty-
4 day period shall be allowed after expiration of a license

5 during which any such license may be renewed on payment
6 of a fee of forty-five dollars to the board. After the expiration
7 of such thirty-day period, the board may renew such a license
8 upon the payment of fifty dollars to the board. No person who
9 applies for renewal, whose license was suspended for failure to
10 renew shall be required to submit to any examination as a con-
11 dition of renewal if application for renewal is made within
12 two years and following the date such license was so suspended.

§16-24-10. Notification of change of address of licensee required.

1 Every licensee under the provisions of this article shall
2 notify the board in writing of the address of each place where
3 he is, or intends to be, engaged in the practice of dealing in or
4 fitting of hearing aids. The board shall cause to be kept a
5 record of each place of business of every such licensee. Any
6 notice required to be given by the board or the department
7 to any such licensee shall be given by mailing the same to him
8 at the address shown upon such records.

§16-24-11. Reciprocity.

1 Whenever the board determines that another state or juris-
2 diction has requirements for the licensing of persons to engage
3 in the practice of dealing in or fitting of hearing aids, which
4 requirements meet the minimum requirements and standards
5 set forth in this article and the rules and regulations promul-
6 gated pursuant to this article, the board may, in the manner
7 prescribed by its rules and regulations, issue a license without
8 the examination required by this article, to any person hold-
9 ing license in such other state or jurisdiction, upon ap-
10 plication, providing such prospective licensee meets all of
11 the requirements set forth in this article and the rules and
12 regulations of the board with respect thereto. All of the
13 fees which such prospective licensee would be otherwise
14 required to pay, shall be paid by such prospective licensee
15 in the same manner and to the same extent as if such
16 prospective licensee was not qualified to engage in such
17 other state or jurisdiction.

§16-24-12. Temporary trainee permits.

1 A person who meets all of the qualifications and require-

2 ments set forth in subdivision (2), section five of this
3 article may obtain a temporary trainee permit upon appli-
4 cation to the board. All such applications for a temporary
5 trainee permit shall be made in the manner and form
6 prescribed in the rules and regulations of the board.

7 Upon receiving an application for a temporary trainee
8 permit as prescribed in this section, accompanied by a fee
9 of twenty-five dollars, the board shall issue such permit
10 which shall entitle the applicant trainee to engage in the
11 practice of dealing in or fitting of hearing aids for a period
12 of one year under the supervision and control of a licensee,
13 such licensee to be responsible for the supervision, training
14 and control of such trainee.

15 If a person holding a temporary trainee permit under
16 this section has not successfully passed the licensing examina-
17 tion within one year from the date of issuance of such permit,
18 the permit may be renewed or reissued under such conditions
19 as the board may require in its rules and regulations for
20 an additional one-year period upon the payment of a fee
21 of fifty dollars. No such temporary trainee permit shall be
22 reissued, renewed or extended more than once.

**§16-24-13. Refusal to issue, suspension or revocation of license
or trainee permit; false and deceptive advertising.**

1 (a) The board may either refuse to issue, or may refuse
2 to renew, or may suspend or revoke any license or trainee per-
3 mit for any one, or any combination, of the following causes:
4 Violation of a rule or regulation governing the ethical practice
5 of dealing in or fitting of hearing aids promulgated by the board
6 under the authority granted by this article; conviction of a
7 felony, as shown by a certified copy of the record of the
8 court wherein such conviction was had when such conviction
9 is final; the obtaining of or the attempt to obtain a license,
10 money or any other thing of value, by fraudulent misrep-
11 sentation; malpractice; continued practice of dealing in or
12 fitting of hearing aids by a person knowingly having a chronic
13 infectious or contagious disease; habitual drunkenness or
14 addiction to the use of a controlled substance as defined
15 in chapter sixty-a of this code; advertising, practicing or
16 attempting to practice under a name other than one's own;

17 advertising by means of or selling by the use of knowingly
18 false or deceptive statements.

19 (b) False and deceptive advertisement shall constitute un-
20 ethical practice and the board, by rule and regulation may
21 regulate and prescribe acts considered by it to be false and
22 deceptive advertisement.

23 The rules and regulations promulgated pursuant to this
24 subsection shall include prohibitions against advertising a
25 particular model or type of hearing aid for sale when pur-
26 chasers or prospective purchasers responding to the advertise-
27 ment cannot purchase the advertised model or type, where
28 it is established, that the purpose of the advertisement is to
29 obtain prospects for the sale of a different model or type
30 than that advertised, representing that the service or advice
31 of a person licensed to practice medicine will be used or
32 made available in the selection, fitting, adjustment, mainten-
33 ance or repair of hearing aids when that is not true, or using
34 the words "doctor," "clinic" or similar words, abbreviations or
35 symbols which tend to connote the medical profession when
36 such use is not accurate, advertising a manufacturer's product
37 or using a manufacturer's name or trademark which implies
38 a relationship with the manufacturer that does not exist or
39 using the words "audiologist," "state licensed clinic," "state
40 registered," "state certified," or "state approved" or any other
41 term, abbreviation or symbol when it would falsely give the
42 impression that service is being provided by persons holding
43 a degree in audiology or trained in clinical audiology, or that
44 licensee's service has been recommended by the state when
45 such is not the case.

46 (c) The refusal to issue or renew a license or trainee permit
47 or the suspension or revocation of a license or trainee permit
48 by the board must have the concurrence of a majority of the
49 members of the board.

§16-24-14. Matters to be ascertained by licensee prior to the sale or fitting of hearing aids.

1 (a) Every licensee engaged in the practice of dealing in or
2 fitting of hearing aids shall, prior to the sale or the fitting of a
3 hearing aid intended to be worn or used by a child sixteen
4 years of age or under, first ascertain whether such child has,

5 within the next preceding ninety days, been examined by an
 6 otolaryngologist, or other duly licensed physician or person
 7 holding a degree in audiology or an audiologist holding a
 8 certificate of clinical competence. If such child has been
 9 so examined, the licensee shall, prior to the sale or fitting of
 10 such hearing aid, determine the recommendations of such
 11 otolaryngologist, physician or person holding a degree in
 12 audiology or audiologist. If such child has not been so exam-
 13 ined, the licensee shall recommend that such examination be
 14 made and his recommendation must be made in writing to the
 15 parent or guardian of such child in the manner and form pre-
 16 scribed by the board.

17 (b) Prior to the sale of a hearing aid, every licensee shall
 18 be required to advise in writing, in the manner and form pre-
 19 scribed by the board, the person to whom he intends to sell
 20 or fit with such hearing aid that such person's best interest
 21 would be served by consulting an otolaryngologist or other
 22 physician specializing in diseases of the ear, or any other phy-
 23 sician duly licensed to practice medicine in this state, if any
 24 of the following conditions is found upon examination of
 25 such person:

- 26 (1) Visible congenital or traumatic deformity of the ear;
- 27 (2) History of active ear discharge within the previous nine-
 28 ty days;
- 29 (3) History of a sudden or rapidly progressive hearing loss
 30 within the previous ninety days;
- 31 (4) Acute or chronic dizziness;
- 32 (5) Unilateral hearing loss of sudden or recent onset with-
 33 in the previous ninety days;
- 34 (6) Significant air-bone gap.

35 (c) A copy of any writing or form required to be given to
 36 a prospective purchaser or other person by the terms of this
 37 section shall be retained in the records of the licensee for a
 38 period of seven years following the issuance of each writing.

**§16-24-15. Receipt required to be furnished to a person qualified
 with hearing aid; information required.**

1 Any person who practices the fitting and sale of hearing
 2 aids shall deliver to each person supplied with a hearing
 3 aid a receipt which shall contain his signature and show

4 his business address and the number of his license, to-
5 gether with specifications as to the make and model of
6 the hearing aid furnished, and shall contain the full terms
7 of the sale. If a hearing aid which has been previously sold
8 at retail is sold, the receipt shall be clearly marked as "used"
9 or "reconditioned" whichever is applicable, with terms of
10 of guarantee, if any.

11 Such receipt shall be in the manner and form as prescribed
12 by the board in its rules and regulations. Such rules and
13 regulations shall prescribe the type and size of print to be
14 used in such receipt and the receipt shall set forth such addi-
15 tional information as the board may prescribe. A copy of such
16 receipt shall be retained in the records of the licensee for a
17 period of seven years following the issuance of such receipt.

§16-24-16. Hearing procedures; judicial review.

1 Any person, including a person who brings a complaint
2 against a licensee or trainee before the board, adversely
3 affected by any decision ruling or order of the board shall be
4 entitled to a hearing before the board. The hearing may
5 be held by the board or a majority thereof either in the
6 county wherein the licensee, trainee, prospective licensee
7 or prospective trainee resides or may be held in the county
8 wherein the person adversely affected resides or may be
9 so held in some other county as the board may direct.
10 All of the pertinent provisions of article five, chapter twenty-
11 nine-a of this code shall apply to any hearing held by the
12 board and the administrative procedures in connection with
13 and following such hearing shall apply with like effect
14 as if the provisions of said article five were set forth in
15 extenso in this section. For the purpose of conducting such
16 hearing the board shall have the power and authority to issue
17 subpoenas and subpoenas duces tecum in accordance with the
18 provisions of section one, article five, chapter twenty-nine-a.
19 Any such hearing shall be held within thirty days after the date
20 upon which a request therefor was made. All requests for
21 hearings shall be made in writing to the board by certified or
22 registered mail, return receipt requested. The board may
23 postpone or continue any hearing on its own motion or
24 upon application for good cause shown.

25 Any person, including a person who brings a complaint

26 against a licensee or trainee before the board, who may be
27 adversely affected by any ruling or order made or entered by
28 the board following a hearing, shall be entitled to judicial
29 review of such order, in accordance with the provisions
30 of section four, article five, chapter twenty-nine-a of this
31 code and the provisions of said section four shall apply
32 to and govern such appeal with like affect as if the pro-
33 visions of said section four were set forth in extenso in
34 this section and the provisions of article six of said chap-
35 ter twenty-nine-a shall apply with respect to appeals
36 to the supreme court of appeals in the same manner.

§16-24-17. Prohibited acts and practices.

1 Any of the following acts is hereby prohibited and shall be
2 punishable under section eighteen of this article and shall also
3 constitute unethical practice and no person shall:

4 (1) Sell, barter or offer to sell or barter a license issued
5 pursuant to this article.

6 (2) Purchase or procure by barter any such license with
7 intent to use it as evidence of the holder's qualifications to
8 engage in the practice of dealing in or fitting of hearing aids.

9 (3) Alter materially a license issued pursuant to this article.

10 (4) Use or attempt to use as a valid license any license
11 which has been purchased, fraudulently obtained, counterfeit-
12 ed or materially altered.

13 (5) Willfully make any false statement in an application
14 for license or for renewal thereof.

15 (6) Advertise for the mail-order sale of hearing aids in any
16 advertising medium or sell hearing aids by mail to any person
17 other than distributors, dealers or those excluded from the
18 provisions of this article.

§16-24-18. Offenses and penalties.

1 Any person who shall engage in the practice of dealing in
2 or fitting of hearing aids without qualifying to do so under
3 the provisions of this article or any person who commits any
4 of the acts prohibited under the provisions of section seven-
5 teen of this article shall be guilty of a misdemeanor, and,
6 upon conviction for the first offense, shall be fined not less
7 than one hundred dollars nor more than five hundred dollars

8 or imprisoned in the county jail for not more than six months,
9 or be subject to both such fine and imprisonment, and for
10 the second or any subsequent offense, shall be fined not
11 less than five hundred dollars nor more than one thousand
12 dollars or imprisoned in the county jail for not less than thirty
13 days nor more than one year or be subject to both such
14 fine and imprisonment. Each sale made in violation of this
15 article shall constitute a separate offense. Justices of the
16 peace shall have concurrent jurisdiction with circuit courts or
17 inferior courts of record with criminal jurisdiction for the
18 enforcement of this article.

§16-24-19. Injunction.

1 Notwithstanding the existence of any other remedy, the
2 board may, in the manner provided by law, maintain an action
3 for an injunction against any person to restrain or prevent the
4 practice of dealing in or fitting of hearing aids when such per-
5 son repeatedly refuses to obtain a license therefor and con-
6 tinues such practice without first obtaining a license there-
7 fore in the manner hereinbefore provided, and an action
8 for an injunction may be maintained for any continued and
9 repeated violation of any of the provisions of this article and
10 the rules and regulations promulgated pursuant thereto.

§16-24-20. Construction and severability.

1 The provisions of this article and the regulations pro-
2 mulgated thereunder shall be liberally construed so as to
3 carry into effect its purposes and to protect the health,
4 safety and welfare of the public.

5 If any provision of this article or the application thereof
6 to any person or circumstance shall be held invalid, the
7 remainder of the article and the application of such pro-
8 vision to other persons or circumstances shall not be affected
9 thereby.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. Darrel Darby
Chairman Senate Committee

Clarence C. Christian, Jr.
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Harold W. Carr
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

H. J. B. Bolton
President of the Senate

Lewis J. Thomas
Speaker House of Delegates

The within approved this the 24th
day of April, 1973.

Arch A. Moore, Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 4/24/73

Time 2:34 p.m.