

No: 2667

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987



# ENROLLED

HOUSE BILL No. *2667*

(By Delegates *Leary and Childers*)



Passed *March 14,* 1987

In Effect *Ninety Days from* Passage

**ENROLLED**  
**H. B. 2667**

(By DELEGATES LEARY and CHILDERS)

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[Passed March 14, 1987; in effect ninety days from passage.]

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AN ACT to amend and reenact sections two, three, seven, nine, fourteen and fifteen, article twenty-six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to hearing-aid dealers and fitters; prohibiting state or local governmental organizations or agencies from licensure eligibility; changing the annual meeting of the board of hearing-aid dealers; increasing the per diem salary for board members; increasing the licensing fee; requiring continuing education as a prerequisite for renewal of license; clarifying matters to be ascertained by a licensee prior to the sale or fitting of hearing aids; and simplifying the information to be furnished to a person supplied with a hearing aid.

*Be it enacted by the Legislature of West Virginia:*

That sections two, three, seven, nine, fourteen and fifteen, article twenty-six, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 26. HEARING-AID DEALERS AND FITTERS.**

**§30-26-2. Engaging in practice of hearing-aid dealer or trainee without 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

3 this article, engage in the practice of dealing in or  
4 fitting of hearing aids, either as a hearing-aid dealer,  
5 fitter or as a trainee, nor shall any person advertise or  
6 assume any such practice, without first being licensed  
7 or otherwise qualified under the provisions of this  
8 article.

9 (b) If the applicant is a partnership, trust, association,  
10 corporation or other like organization, the application,  
11 in addition to such other information as the board may  
12 require, shall be accompanied by an application for a  
13 license for each person, whether owner or employee, of  
14 such applicant who serves in the capacity of a hearing-  
15 aid dealer or fitter, or shall contain a statement that  
16 such applications for all such persons are submitted  
17 separately. No partnership, trust, association, corpora-  
18 tion or other like organization shall permit any unli-  
19 censed person to sell hearing aids or to engage in the  
20 practice of dealing in or fitting of hearing aids.

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

29 State or local governmental organizations or agencies  
30 and organizations chartered as not-for-profit shall not be  
31 eligible for licensure to fit and dispense hearing aids.

**§30-26-3. West Virginia board of hearing-aid dealers  
created; members; qualifications; term;  
oath; salary and expenses; powers and  
duties.**

1 There is hereby created the West Virginia board of  
2 hearing-aid dealers, which shall be composed of five  
3 members to be appointed by the governor, by and with  
4 the advice and consent of the Senate. The members of  
5 the board shall be residents of this state. One member  
6 shall be a person licensed to practice medicine in this  
7 state and one member shall hold a degree in audiology

8 from an accredited college or university. The remaining  
9 three members shall be persons having no less than five  
10 years' experience as hearing-aid dealers or fitters and  
11 shall hold a valid license under the provisions of this  
12 article, except that the hearing-aid dealers or fitters to  
13 be first appointed to the board shall obtain a license  
14 under the provisions of this article within six months  
15 following their appointment to the board.

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

26 The board shall annually at its meeting first succeed-  
27 ing the first day of May elect from its own members a  
28 chairman and vice chairman.

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 one hundred dollars and shall be reimbursed  
32 for all reasonable and necessary expenses actually  
33 incurred in the performance of his duties as a member  
34 of such board. All fees and other moneys collected by  
35 the board, pursuant to the provisions of this article, shall  
36 be kept in a separate fund and shall be expended solely  
37 for the purposes of this article. The compensation for the  
38 members of the board and all expenses incurred under  
39 this article shall be paid from this special fund and no  
40 such compensation or expenses shall be paid from the  
41 general revenue fund of this state. All disbursements of  
42 funds necessary to carry out the provisions of this article  
43 shall be so disbursed only upon the authority of the  
44 board.

45 The board is hereby empowered, with the assistance  
46 of the department to generally supervise, regulate and  
47 control the practice of dealing in or fitting of hearing

48 aids in this state, and in so doing, shall administer  
49 qualifying examinations in accordance with the provi-  
50 sions of this article to test the knowledge and proficiency  
51 of all prospective licensees or trainees.

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

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

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

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

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

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

**§30-26-7. 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  
3 such examination as to whether he has satisfactorily  
4 passed the examination. If such person has failed to pass  
5 the examination, he shall be notified of the reasons for  
6 such failure and the particular portions of the exami-  
7 nation which he failed to pass. Such person shall also

8 be advised of his right to take the examination in the  
9 future.

10 If such applicant has satisfactorily passed the exam-  
11 ination, he shall be advised of that fact by the board and,  
12 upon payment of fifty dollars, the board shall register  
13 the applicant as a licensee and shall issue a license to  
14 such applicant. Such license shall remain in effect until  
15 the next succeeding thirtieth day of June.

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

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

**§30-26-9. Renewal of license.**

1 (a) A person who is engaged in the practice of dealing  
2 in or fitting of hearing aids shall annually pay to the  
3 board a fee of forty dollars for a renewal of his license.  
4 A thirty-day period shall be allowed after expiration of  
5 a license during which any such license may be renewed  
6 on payment of a fee of forty-five dollars to the board.  
7 After the expiration of such thirty-day period, the board  
8 may renew such license upon the payment of fifty  
9 dollars to the board. No person who applies for renewal,  
10 whose license was suspended for failure to renew, shall  
11 be required to submit to any examination as a condition  
12 of renewal if application is made within two years  
13 following the date such license was so suspended.

14 (b) In each even numbered year beginning with the  
15 year one thousand nine hundred eighty-eight, each  
16 applicant for renewal of license shall present to the  
17 board evidence of continuing study and education of not  
18 less than twenty hours in a course of study approved by  
19 the board. Such twenty hours of instruction must have  
20 been gained during the immediately preceding two  
21 years.

**§30-26-14. 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  
2 in or fitting of hearing aids shall, prior to the sale or  
3 the fitting of a hearing aid intended to be worn or used  
4 by any person under eighteen years of age, first  
5 ascertain whether such person has within the next  
6 preceding six months been examined for the defective  
7 or impaired hearing condition sought to be relieved by  
8 an otolaryngologist or other duly licensed physician. If  
9 such person has been so examined, the licensee shall,  
10 prior to the sale or fitting of such hearing aid, obtain  
11 from such otolaryngologist or physician written author-  
12 ity to fit a hearing aid. If such person has not been so  
13 examined, the licensee shall not proceed to the sale or  
14 fitting of a hearing aid until after such person has been  
15 so examined. If the prospective user is eighteen years  
16 of age or older, the hearing aid dispenser may afford  
17 the prospective user an opportunity to waive the medical  
18 evaluation requirement provided that the hearing aid  
19 dispenser:

20 (1) Informs the prospective user that the exercise of  
21 the waiver is not in the user's best health interest;

22 (2) Does not in any way actively encourage the  
23 prospective user to waive such a medical evaluation;

24 (3) Affords the prospective user the opportunity to  
25 sign the following statement: I have been advised by  
26 (hearing aid dispenser's name) that the Food and Drug  
27 Administration has determined that my best health  
28 interest would be served if I had a medical evaluation  
29 by a licensed physician, preferably one who specializes  
30 in diseases of the ear, before purchasing a hearing aid.

31 I do not wish a medical evaluation before purchasing a  
32 hearing aid.

33 (b) Prior to the sale of a hearing aid, every licensee  
34 shall be required to advise in writing, in the manner and  
35 form prescribed by the board, the person to whom he  
36 intends to sell or fit with such hearing aid that such  
37 person's best interest would be served by consulting an  
38 otolaryngologist or other physician specializing in  
39 diseases of the ear, or any other physician duly licensed  
40 to practice medicine in this state, if any of the following  
41 conditions are found upon examination of such person:

42 (1) Visible congenital or traumatic deformity of the  
43 ear;

44 (2) History of active ear discharge within the previous  
45 ninety days;

46 (3) History of a sudden or rapidly progressive hearing  
47 loss within the previous ninety days;

48 (4) Acute or chronic dizziness;

49 (5) Unilateral hearing loss of sudden or recent onset  
50 within the previous ninety days; or

51 (6) Significant air-bone gap.

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

**§30-26-15. Receipt required to be furnished to a person  
supplied with hearing aid; information  
required; right to rescind purchase  
agreement.**

1 (a) Any person who practices the fitting and sale of  
2 hearing aids shall deliver to each person supplied with  
3 a hearing aid a receipt which shall contain his signa-  
4 ture, his business address and the number of his license;  
5 the specifications as to the make and model of the  
6 hearing aid furnished; the full terms of the sale,  
7 including the date upon which the hearing aid was

8 supplied to the person; and the following statement:  
9 "Any person supplied with a hearing aid by a hearing-  
10 aid dealer licensed in this state has the right to return  
11 the hearing aid to the dealer from whom the aid was  
12 purchased within thirty days after receipt of the aid and  
13 rescind the purchase agreement except for reasonable  
14 fitting and examination charges if the person is  
15 dissatisfied with the hearing aid." If a hearing aid which  
16 has been previously sold at retail is sold, the receipt  
17 shall be clearly marked as "used" or "reconditioned,"  
18 whichever is applicable, with terms of guarantee, if any.

19 Such receipt shall be in the manner and form as  
20 prescribed by the board in its rules and regulations.  
21 Such rules and regulations shall prescribe the type and  
22 size of print to be used in such receipt and the receipt  
23 shall set forth such additional information as the board  
24 may prescribe. A copy of such receipt shall be retained  
25 in the records of the licensee for a period of seven years  
26 following the issuance of such receipt.

27 (b) Each person supplied with a hearing aid by a  
28 hearing-aid dealer licensed pursuant to the provisions of  
29 this article shall have the right to return the hearing  
30 aid to the dealer within thirty calendar days of receipt  
31 and rescind the purchase agreement if the hearing aid  
32 does not function properly, cannot be adjusted to  
33 satisfactorily correct the deficiency in the person's  
34 hearing or the person is otherwise dissatisfied with the  
35 hearing aid. If a hearing-aid dealer, pursuant to being  
36 notified by a person to whom he has supplied a hearing  
37 aid that the hearing aid does not function properly, does  
38 not satisfactorily correct the deficiency in the person's  
39 hearing or that the person is otherwise dissatisfied with  
40 the hearing aid, makes an adjustment to the hearing aid  
41 or advises the person to continue use of the hearing aid  
42 for the purpose of becoming more accustomed thereto  
43 or any other reason, the right of the person to whom the  
44 hearing aid was supplied shall be extended for thirty  
45 calendar days following the date upon which such  
46 adjustment was made or advisement was given.

47 (c) An exercise of the right to rescind the purchase  
48 agreement by a person to whom a hearing aid has been

49 supplied may not preclude the dealer from charging  
50 reasonable fees for examination and fitting. The  
51 maximum fees which may be charged by a hearing-aid  
52 dealer for examination and fitting shall be fixed by the  
53 West Virginia board of hearing-aid dealers by rule and  
54 regulation lawfully promulgated in accordance with the  
55 provisions of chapter twenty-nine-a of this code.

*Handwritten signatures and initials, including "W.V. Board of Hearing-Aid Dealers" and "J. B. ..."*

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

*Bruce O. Williams*  
Chairman Senate Committee

*Lyle Settee*  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Todd C. Willis*  
Clerk of the Senate

*Donald K. Hopp*  
Clerk of the House of Delegates

*Don Tomkomid*  
President of the Senate

*Robert C. Clark*  
Speaker of the House of Delegates

The within *approved* this the *2<sup>nd</sup>*  
day of *April*, 1987.

*Hubert A. Skarup*  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/27/87

Time 2:37 p.m.