WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987

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ENROLLED

HOUSE BILL No. 2667

(By Delegate Leary and Childress)

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Passed March 14, 1987

In Effect Ninety Days from Passage
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.

(a) Except as provided in subsections (b), (c) and (d) hereof no person shall, on or after the effective date of
this article, engage in the practice of dealing in or fitting of hearing aids, either as a hearing-aid dealer, fitter or as a trainee, nor shall any person advertise or assume any such practice, without first being licensed or otherwise qualified under the provisions of this article.

(b) If the applicant is a partnership, trust, association, corporation or other like organization, the application, in addition to such other information as the board may require, shall be accompanied by an application for a license for each person, whether owner or employee, of such applicant who serves in the capacity of a hearing-aid dealer or fitter, or shall contain a statement that such applications for all such persons are submitted separately. No partnership, trust, association, corporation or other like organization shall permit any unlicensed person to sell hearing aids or to engage in the practice of dealing in or fitting of hearing aids.

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

State or local governmental organizations or agencies and organizations chartered as not-for-profit shall not be 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.

There is hereby created the West Virginia board of hearing-aid dealers, which shall be composed of five members to be appointed by the governor, by and with the advice and consent of the Senate. The members of the board shall be residents of this state. One member shall be a person licensed to practice medicine in this state and one member shall hold a degree in audiology
from an accredited college or university. The remaining
three members shall be persons having no less than five
years' experience as hearing-aid dealers or fitters and
shall hold a valid license under the provisions of this
article, except that the hearing-aid dealers or fitters to
be first appointed to the board shall obtain a license
under the provisions of this article within six months
following their appointment to the board.

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

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

Each member of the board shall receive for each day
actually engaged in the duties of his office, a per diem
salary of one hundred dollars and shall be reimbursed
for all reasonable and necessary expenses actually
incurred in the performance of his duties as a member
of such board. All fees and other moneys collected by
the board, pursuant to the provisions of this article, shall
be kept in a separate fund and shall be expended solely
for the purposes of this article. The compensation for the
members of the board and all expenses incurred under
this article shall be paid from this special fund and no
such compensation or expenses shall be paid from the
general revenue fund of this state. All disbursements of
funds necessary to carry out the provisions of this article
shall be so disbursed only upon the authority of the
board.

The board is hereby empowered, with the assistance
of the department to generally supervise, regulate and
control the practice of dealing in or fitting of hearing
aids in this state, and in so doing, shall administer
qualifying examinations in accordance with the provi-
sions of this article to test the knowledge and proficiency
of all prospective licensees or trainees.

The board may purchase and maintain or rent
audiometric equipment and other facilities necessary to
carry out the examination of applicants as provided in
this article and may purchase such other equipment and
supplies and employ such persons as it deems approp-
riate to carry out the provisions of this article.

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

(a) For the proper performance of its duties;

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

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

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

§30-26-7. Results of examination disclosed to applicant;
issuance of license; fees.

(a) Any person who has taken the examination shall
be notified by the board within thirty days following
such examination as to whether he has satisfactorily
passed the examination. If such person has failed to pass
the examination, he shall be notified of the reasons for
such failure and the particular portions of the exami-
nation which he failed to pass. Such person shall also
be advised of his right to take the examination in the
future.

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

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

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

§30-26-9. Renewal of license.

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

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

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

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

(c) An exercise of the right to rescind the purchase
agreement by a person to whom a hearing aid has been
supplied may not preclude the dealer from charging reasonable fees for examination and fitting. The maximum fees which may be charged by a hearing-aid dealer for examination and fitting shall be fixed by the West Virginia board of hearing-aid dealers by rule and regulation lawfully promulgated in accordance with the provisions of chapter twenty-nine-a of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within ........................................... this the ..........................

day of ........................................., 1987.

Governor