



HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

MEMO

September 11, 1975

**SUBJECT:** Analysis of House Bill 164 - Hearing Aids Printer's No. 169

**TO:** Honorable C. L. Schmitt, Chairman  
Consumer Protection Committee

**FROM:** Sharon Whipkey, Intern

Section 101 "Pennsylvania Hearing Aid Sales Registration Law"

Section 102 Purpose

Control over the hearing aid sales industry was inspired by the technical nature and high potential for fraud in the fitting and sales of these devices.

Section 103 Application

(a) registration is required of persons involved in the direct fitting and dispensing of hearing aids.

(b) persons may engage in the business of selling hearing aids without being registered provided that they employ only registered dealers in the direct fitting and sales of the aids and that they submit an annual list of all registered employees

Section 104 Definitions

"Advertise" means any means employed to bring to the public attention the practice of fitting and sale of hearing aids.

"Audiologist" means a person holding the certificate of Clinical Competence in Audiology awarded by the American Speech and Hearing Association or one who can provide evidence of having successfully completed equivalent academic training and clinical experience.

"Conviction" means conviction made to a charge or plea of guilty to a crime involving moral turpitude.

"Department" means the Department of Health.

"Hearing aid" means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing.

"Practice of fitting and selling hearing aids" means those practices used solely for the purpose of making selections, adaptations and sale of hearing aids.

"Registrant" means a person holding a certificate of registration.

"Registration certificate" includes a temporary or apprentice registration certificate.

"Secretary" means the secretary of the Department of Health.

#### Section 201 Examinations

The department shall provide for the preparation, grading and conduction of examinations of applicants for certificates of registration and shall approve the actual examination.

#### Section 202 Records

The department shall keep records of all prosecutions under this act and of all examinations for registration certificates.

#### Section 203 Course of Instruction

Recommendation of a course of instruction may be given to the Department of Education. After 1977, applicants must satisfy the course of instruction or otherwise satisfy the department of their competence in fitting and selling of hearing aids.

#### Section 204 Publishing Information

Examination requirements may be published by the department.

#### Section 205 Rules and Regulations

The department shall establish the necessary rules and regulations providing for the administration of this act.

Section 206 Administration of Act

The Attorney General shall have the power to enforce this Act. Inspections or investigations shall be made by the department, or by the Attorney General or by local law enforcement authorities.

Section 301 Applications

Application for registration as a hearing aid salesperson should be made to the department and be accompanied by the appropriate fee.

Section 302 Applicant Qualifications

The secretary may require the proof of good reputation of the applicant and shall determine the extent of knowledge demonstrated by the applicant by examination in the following areas:

- (1) The anatomy and physiology of the ear.
- (2) The function of hearing aids
- (3) The knowledge and understanding of this Act and its requirements.
- (4) Procedures and use of equipment established by the department for the fitting and selling of hearing aids.
- (5) Taking ear mold impressions
- (6) Knowledge of medical and rehabilitation facilities available in areas served
- (7) A knowledge of criteria for medical referral when found to exist from observation or from the medical history of the prospective user to include:
  - (i) Visible deformity of the ear
  - (ii) History or active drainage of the ear in the previous 90 days
  - (iii) Sudden <sup>or progressive</sup> hearing loss within the previous 90 days
  - (iv) Acute or chronic dizziness
  - (v) Visible evidence of wax accumulation or a foreign body in the ear canal

Section 303 Time of Examination

The department would be required to give examinations twice a year.

Section 304 Failure to Pass Examination

In the event of failure of the examination, the applicant would be re-examined only in the area in which he failed previously.

Section 305 Issuance of Registration Certificate

Applicants who have satisfied the requirements of this act shall be issued a registration certificate.

Section 306 Temporary Registration Certificate

(a) A temporary certificate may be issued to an applicant who has engaged in the fitting and sales of hearing aids in another state for a period of two years in the last five previous years. The temporary certificate will be valid for a period of 30 days after the qualifying examination is given, provided that the examination is given, not less than 90 days nor more than one year after the issuance of the temporary certificate.

(b) An applicant who will be trained by a person who holds a valid registration certificate may have an apprentice registration certificate issued to him which entitles him to engage in the fitting and sales of hearing aids under supervision, for six months or until 30 days after the qualifying examination is given not earlier than 150 days after issuance of the apprentice certificate.

Section 307 Reciprocal Registration

(a) An applicant from a state which extends like reciprocity and holds equivalent or higher requirements for the fitting and sale of hearing aids, may be issued a certificate of endorsement if he holds a current valid certificate, or license from such state, provided that he pays the same fee as for an initial registration certificate under this act.

(b) In the event that a holder of an apprentice or temporary certificate under the reciprocity agreement fails to pass the initial qualifying examination, the secretary shall issue not more than two renewals of the temporary certificate, each for a period ending 30 days after the subsequent examinations are given.

Section 308 Persons Excluded from Registration

(a) This act does not apply to persons not engaged directly or indirectly in the sale of hearing aids who engage in fitting hearing aids for a governmental agency, private clinic, or accredited institute of higher education as part of its curriculum.

(b) This act does not apply to any licensed physician or surgeon, or audiologist or person supervised by such audiologist who does not directly or indirectly engage in the sale of hearing aids.

Section 309 Fictitious Names

Every person or corporation who desires to have a certificate issued under a fictitious name must file with his application certified copies of the entry made in the register pursuant to the Act of May 24, 1945 (P.L. 380, No. 163) or to the Act of July 11, 1957 (P.L. 783, No. 347), whichever is applicable

Section 310 Expiration Date

Certificates of registration under this act expire at midnight on January 15 of each year after issuance unless renewed prior to that date with the appropriate renewal fee.

Section 311 Renewal of Registration Certificate

With proper application and payment of current renewal fees an expired registration certificate may be renewed within 5 years after expiration, provided that a delinquency fee is paid if renewal occurs more than 30 days after expiration.

Section 312 No Registration Required Until Examinations Administered

Registration certificates are not required under this act until the department has administered the required examination on three separate occasions separated by at least a six-month period.

Section 313 Expiration of Suspended Registration Certificates

A suspended registration certificate must be renewed subject to this act if such certificate is to be valid when reinstated. A revoked certificate is subject to expiration but cannot be renewed prior to reinstatement which shall not occur until the required fees have been paid.

Section 314 Failure to Renew

A registration certificate which is not renewed within 5 years of its expiration may not be renewed.

Section 135 Fees and Penalties

Fees are fixed by the following schedule:

- (1) The initial registration fees is \$100, of which \$75 may be refunded if the applicant is ineligible to take the required examination.
- (2) The initial fee of \$25 will be required for apprentice certificates followed by a fee of \$75 upon passing of the qualifying examination.
- (3) A fee for applicants who have failed a previous examination is \$25 for each additional examination.
- (4) A \$50 renewal fee shall be charged for each renewal.
- (5) If the initial registration certificate is issued on or before July 15, the fee shall be \$50
- (6) The delinquency fee is \$25.
- (7) Valid duplicate registration fees are \$5.

Section 401 Address of Registrant

Prior to engaging in the fitting and sale of hearing aids each registrant shall notify the department of the address where he intends to engage in such business. Notices required by the department to be given to the registrant shall be given by prepaid mail to such address.

Section 402 Display of Certificate

Certificates of registration shall be conspicuously posted in each registrants place of business.

Section 403 Branch Offices; Duplicate Certificates

Duplicate certificates with the appropriate address are required for each branch office maintained by registrants.

Section 404 Receipt to Purchasers

Each purchaser of a hearing aid shall be given a written receipt, signed by or on behalf of the registrant and shall contain the following:

- (1) The date of consummation of the sale.
- (2) Specifications as to the make, serial number, and model, name or number of the hearing aid.
- (3) The address of the principal place of business of the registrant.
- (4) A statement that the aids are used or reconditioned if that is the fact.
- (5) The number of the registrant's certificate.
- (6) The terms of any guarantee or warranty.
- (7) Such receipt shall have attached to it in no smaller than ten point type the following:

"The purchaser has been advised at the outset of his relationship with the hearing aid dealer that any examination or representation made by a registered hearing aid dealer and fitter in connection with the practice of fitting and selling of this hearing aid, is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this State or by a certified audiologist and therefore, must not be regarded as medical opinion or professional advice".

Section 405 Referral to Physician

Upon finding the existence of any of the following conditions, the registrant shall provide the individual with a written referral to a licensed hearing specialist or physician:

- (1) Visible deformity of the ear.
- (2) History of or active drainage from the ear in the last 90 days.
- (3) History of sudden or progressive hearing loss in the last 90 days.
- (4) Acute or chronic dizziness.
- (5) Visible evidence of wax accumulation or a foreign body in the ear canal.
- (6) Discrimination impairment exceeding criteria recommended by the Department.

Section 406 Sale to Minors

No hearing aid shall be sold to individuals under 16 years of age unless the aid has been recommended by both a physician specializing in hearing and by an audiologist within the previous 6 months.

Section 407 Records

A registrant shall keep records of each sale for a period of 7 years in his place of business. These records shall include the following:

- (1) Results of test techniques pertaining to the fitting of the hearing aid.
- (2) A copy of the written receipt and of the written recommendation when applicable.

Section 501 Causes for Denial, Suspension or Revocation of Certificate

Certificates may be denied, suspended or revoked, or have conditions of probation placed upon them for any of the following causes:

- (1) Gross incompetency which shall include the improper or unnecessary fitting of a hearing aid.
- (2) Conviction of a felony or misdemeanor involving moral turpitude.
- (3) Obtaining a registration certificate by fraud or deceit.
- (4) Unless authorized by law use of the term "doctor" or "physician" or "clinic" or "audiologist" as part of the firm name.
- (5) Fraud in the repair, fitting or selling of hearing aids.
- (6) The employment of persons not validly registered under this act for the purpose of fitting and selling of hearing aids.
- (7) Habitual intemperance.
- (8) Gross immorality
- (9) Permitting another to use his or her registration certificate.
- (10) Violation of this act or of its rules and regulations.
- (11) Any cause which would be grounds for denial of an application.



- (12) Violation of the "Unfair Trade Practices and Consumer Protection Law" or on a final order by the FTC, the Pennsylvania Department of Health or the FDA concerning the sale of unsafe or worthless hearing devices or for engaging in misleading or deceptive conduct.

#### Section 502 Notice of Denial

The applicant shall receive written notification of a denial of application for registration certificate stating:

- (1) The reason for denial.
- (2) The applicant has the right to a hearing upon written request to the Department within 60 days of notice of denial.

#### Section 503 Investigations and Proceedings

The Secretary of Health or the Attorney General shall initiate investigations for violation of this act, and the Secretary of Health shall be responsible for disciplinary action for violation of this act.

#### Section 504 Additional Examination

The Secretary may require a registrant under disciplinary action to pass the regular examination before his reinstatement.

#### Section 505 Unlawful Acts

It is unlawful:

- (1) To sell or barter a registration certificate.
- (2) To purchase a registration certificate with the intent to use such a certificate for fraudulent purposes.
- (3) To alter with fraudulent intent any registration certificate.
- (4) To use any registration certificate which has been purchased, fraudulently issued, counterfeited, or materially altered as a valid certificate.
- (5) To practice the fitting or selling of hearing aids under a false or assumed name except as provided in Section 309.

- (6) To make any false statement in applying for examination for a registration certificate.
- (7) To engage in the fitting or selling of hearing aids without having a valid registration certificate.
- (8) To advertise oneself to be a person engaged in the fitting and sale of hearing aids without having a valid registration certificate.

Section 506 Penalty

A violation of this act is a misdemeanor of the third degree and is punishable by not more than one year imprisonment or a fine of not more than \$2,500 or both.

Section 507 Injunctions

The court of common pleas or the Commonwealth Court may issue an injunction or other such restraining order against offenses of this act on application to the Department, the Attorney General, or the district attorney of the county.

Section 601 Date of Application

Persons subject to this act shall have a period of two years from the effective date in which to comply with this act.

Section 602 Effective Date

The provisions of this act shall take effect immediately.

## FISCAL NOTE

House Bill 164, Printer's No. 169

This bill, known as the "Pennsylvania Hearing Aid Sales Registration Law," seeks to require the registration and regulation of hearing aid dispensers.

The bill requires the Department of Health to conduct examinations of applicants for a hearing aid dispensers certificate and gives the Department of Health the right to make inspections or investigations pursuant to the provisions of this act.

The fees and penalties prescribed by this act are as follows:

- First time applicants	\$100 (after July 15 of any year - \$50)
- Apprentice applicants	\$ 25
- Second application after failing exam	\$ 25
- Renewal of registration	\$ 50
- Delinquency fee	\$ 25
- Duplicate registration certificate	\$ 5

### COST:

The Drug, Device and Cosmetic Compliance Section (DDCCS) of the Department of Health presently licenses hearing aid wholesalers and manufacturers and inspects their operations. Since House Bill 164 is directed primarily at the registration, examination and inspection of hearing aid retailers, the additional registration, examination and inspection duties could be carried out by the existing organization. Doing this, according to DDCCS would require adding to the existing organization three field inspectors, one test administrator and the cost of contracting for development of an appropriate examination.

The following is a five-year cost projection for this bill:

3 Field Inspectors \$12,000 @ per year	\$36,000
1 Test Administrator \$8,000 per year	8,000
Field Inspector Expenses	6,000
Examination Development Contract	5,000
TOTAL	<u>\$55,000</u>

<u>FISCAL YEAR</u>	<u>ESTIMATED COST</u>
1975-76 (assuming 1/2 fiscal year cost)	\$ 27,500
1976-77	\$ 60,200
1977-78	\$ 73,400
1978-79	\$ 89,000
1979-80	\$108,000

REVENUE:

The DDCCS estimates that 1,000 first-time applicants will be certified during the first year of operation (at \$100 per certification). Assuming all 1,000 renew their certification annually, the following five-year revenue projection for this bill results:

<u>FISCAL YEAR</u>	<u>ESTIMATED REVENUE</u>
1975-76 (assuming 1/2 fiscal year revenue)	\$50,000
1976-77	\$50,000
1977-78	\$50,000
1978-79	\$50,000
1979-80	\$50,000

These revenue estimates do not include first-time applications that will be made each year. If such a figure could be estimated, the revenue figures would be higher.

All revenues generated by this bill will be deposited in the General Fund.

Prepared by:  
Steven Roskopf  
House Appropriations Committee  
September 25, 1975

*This is a summary report as requested by Rep John C. Ranning.*  
~~Appointed by the Chairman of the Consumer Protection Committee, the Select Hearing~~  
*A special sub-committee was appointed. Public hearings were held*  
~~Aid Sub-Committee met informally several times before a request was made to hold public~~  
*March 26 & 27, 1974. By a tie vote H.B. 1827 died in Committee last session*  
~~hearings. The Consumer Protection Committee agreed to public hearings held on March 26 and 27~~

~~by the sub-committee.~~ House Bill 1827 served as the legislative vehicle for the sub-committee to address the hearing aid problem. This bill, required that all hearing aid dealers in Pennsylvania who register with the Attorney General must abide by the provisions of this bill. The legislation calls<sup>ed</sup> for a perscription to be written by a medical doctor or an audiologist before the prospective customer could purchase a hearing aid from the dealer. The registration and perscription requirements caused a need for public hearings to determine the feasibility of this type of legislation.

~~Public hearings took place on Tuesday morning, March 26 and Wednesday morning March 27.~~  
Sixteen witnesses, representing hearing aid dealers, the medical profession and the public, presented testimony concerning hearing aid practices and the provisions set forth in House Bill 1827.

#### FINDINGS OF THE PUBLIC HEARINGS

The following section represents the summary of facts presented to the sub-committee by the witnesses. This section is divided into three areas: Current practices in hearing aid sales and services; the medical aspect; and recommendations for reform in treating the hearing handicapped.

#### CURRENT PRACTICES IN TREATING HEARING DEFECTS

The Pennsylvania Hearing Aid Dealers represent about 350 dealerships in Pennsylvania which employ approximately 1200 people. These dealers serve 130,000 persons with hearing defects in the state. The Association came out strongly opposed to House Bill 1827. They contended that the bill was contrary to the best interest of the hard of hearing, the elderly and the free enterprise system. They suggested that the perscription requirement alone would add \$50.00 to the overall purchase of a hearing aid. In addition they contended that the bill

would put most dealers out of business even though examinations and fittings have been done successfully for years by the hearing aid audiologists.\*

Pennsylvania remains only one of twelve states in the country that has imposed no requirements on the hearing aid industry. The Better Business Bureau of Western Pennsylvania in the calendar year of 1973 received and processed 96 consumer complaints on hearing aid dealers in Western Pennsylvania, and 128 complaints in 1972. Of 200 law suits brought by the Bureau of Consumer Protection, four have been filed against hearing aid dealers. Dr. Leo Doefler of the Pittsburgh Eye and Ear Hospital testified that his hospital received such a large volume of complaints about hearing aid service that they considered dispensing hearing aids directly, rather than returning the patient to a dealer. Elma Greisel, representing the Retired Professional Action Group, said that nursing home proprietors should not allow hearing aid salesmen to go room to room selling aids because of past abuses.

Currently, regarding the hearing aid industry, a laissez-faire attitude has been adopted by the Commonwealth. With ~~only~~ general laws to enforce in the state, such as the Unfair Trade and Consumer Protection Act at the state level and general trade regulations promulgated by the Federal Trade Commission, the hearing aid industry is left to self-regulation.

\*Most hearing aid dealers call themselves specialist or audiologist, who have no more than factory training in fitting and salesmanship of hearing aids. For example, 85% of all hearing aids are sold in the home. They are not to be confused with the audiologist who has a Masters Degree in hearing or an Othalmologist, a medical doctor specializing in ear, nose and throat diseases.

The hearing aid dealer provides service for basically five functions: administering electronic hearing tests, other aspects of the hearing aid fitting, selecting and adapting the proper hearing instrument, preparing earmold impressions, and after-fitting services. Nowhere in the hearing aid testing process does the patient necessarily receive a medical diagnosis of the hearing doctor.

Only at the judgement of a hearing aid dealer or salesman, who at best receives a ten week training course on the sales and service of a hearing aid, can the patient be re-

quested to seek medical advise.

Dealers obtain accreditation through the National Hearing Aid Society and its affiliated state association. It is mandatory for each applicant to complete successfully the N.H.A.S., basic course and pass the final examination. The applicant then receives the approval of the National Board of Certification. The application requires several endorsements, including at least one by a physician and proof of actual experience with supervision in the fitting of hearing aids for a period of not less than two years.

The sale of a properly fitted hearing aid demands more than good salesmanship. The patients must have their remaining hearing measured audiometrically, speech evaluated for discrimination, tolerance of loud sounds determined and model preference desired. Now it is the factory trained hearing aid dealer or salesman who performs these functions.

The price of a hearing aid includes the overall costs involved in the delivery system. Because of the high overhead, such as hiring salesman, purchasing equipment, making ear molds, and maintenance, the average retail price to the customer is two and one half to three times the wholesale price charged to the dealers.

#### THE MEDICAL ASPECT

Hearing loss is not a disease. It maybe the symptom of a disease, or the result of some condition such as the genetic make-up of one's parents, ~~or~~ an injury at birth, <sup>or</sup> an accident.

Dr. Doeffler continued, "It seems desirable to have medical and audiologic evaluation initially before consideration is given to the purchaser of a prosthetic device such as a hearing aid."

In all other health fields, except hearing, where a prosthetic device--an artificial device to aid a malfunctioning part of the body--is bought, a professional evaluation takes place. For instance, a patient visits an orthopedist ~~or a psychiatrist~~ before he is fitted with an artificial limb, and a visually impaired person goes to an ophthalmologist or optometrist before he purchases eyeglasses.

House Bill 1827 call<sup>s</sup> for a medical perscription to be filled out before a hearing aid can be fitted. The perscription can be filled by either a medical doctor or an audiologist.

There are currently 160 audiologists in Pennsylvania with over 100 audiology students in training in the state schools. There are currently 19,000 physicians licensed to practice in Pennsylvania and about 350 are otolaryngologists.

The requirement of a professional examination in order to purchase a hearing aid is not new. When the federal government allots money for hearing aids, such as the Veterans Administration, the Childrens Bureau, the Department of Health, Education and Welfare and so forth, a hearing examination by an otolaryngologist <sup>or an</sup> ~~an~~ audiologic evaluation is needed. In Pennsylvania for all hearing aids purchased by the Department of Health and the Bureau of Vocational Rehabilitation, a medical examination is required. Finally, the state of Minnesota requires that all persons under 18 and over 65 need a medical perscription to purchase a hearing aid.

Opposition to the perscription requirement centered around the lack of audiologist in the state and the limited training in hearing defects that the medical doctors receive in medical school. Dr. Lovrinic of Temple University said that audiologist are for the most part confined to metropolitan areas. Dr. David Cope believed that House Bill 1827 was too restrictive. He supports a proposal which requires eight categories of mandatory referral characteristics first before the patient is referred to a doctor, such as visible congenial or traumatic deformity of the ear; history of, or active drainage from the ear within the previous 60 days; history of sudden or rapidly progressive hearing loss within the previous 90 days; acute or chronic dizziness; unilateral hearing loss of sudden or recent onset within the previous 90 days; and significant air-bone gap. Under this proposal, the dealer would be trained to recognize these symptoms of hearing defects.

The Hearing Aid dealers <sup>were</sup> ~~are~~ almost unanimous in opposition to the registration and perscription requirements of House Bill 1827. The dealer's support Senate Bill 792 which would license and grandfather in all current hearing aid dealers. The dealers contend that any one can purchase a registration to fit a hearing aid and that sufficient audiologists and medical doctors willing to write a perscription are not available to perscribe an aid.

The need to define the word "perscription" arose during the hearing. For instance,



the perscription could just require that a hearing loss exists; or that an exact measurement of hearing loss exists with the aid fitted to a certain ear with high frequency emphasis, for example; or the patient should be fitted with a certain brand, model, setting and ear type.

The present system to dispense hearing aids does not result in the best service to the hearing handicapped. ~~The~~ <sup>according to some who testified.</sup> salesman plays too great a role in the hearing aid industry. Dealers, with salesman on commission are motivated by profit in the need to sell hearing aids. Evidence exists that two aids have been sold when only one was needed; or a more expensive model was purchased at the insistance of a salesman; or a new aid had to be bought because replacement parts for the old model did not exist. ~~Without any recourse, except the hearing aid association sanctions, the public is left to the goodwill and ethics of the dealer in the market place.~~

Senate Bill 792 proposes to license hearing aid dealers. However, the licensing boards under the Bureau of Professional and Occupational Affairs provide little protection for the public. The board positions are filled by the same industry it supposed to license. Also the grandfather clause would include all hearing aid dealers now practicing, in addition to the widow or widows or a personal representative of a deceased dealer for three years.

Those who have opposed the perscription provision of House Bill 1827 cite increases in cost and the lack of trained audiologists. However, Barry Dorfman a hearing aid specialist and President of the Hearing Dealers Association of Greater Pittsburgh wrote to the subcommittee that a prospective hearing aid purchaser should be referred by the hearing aid specialist to a physician or audiological testing center before the aid is purchased. Mr. Dorfman is prepared to underwrite the cost of this service as part of the sale of an aid.

The perscription requirement will serve to reduce costs to the hearing handicapped. <sup>others argue.</sup> By insuring that the hearing loss is not medical and that a certain type of aid is needed, the hearing handicapped will not be at the mercy of sales techniques but sound medical judgement.

The lack of audiologist around the state could cause a problem but House Bill 1827 <sup>did</sup> allow a medical doctor to write a perscription. The medical doctor can give medical clearance

to insure that no medical symptoms caused the hearing defect. The distribution of health professionals is a national problem as well as a Pennsylvania problem. ~~Hearing loss should be treated as a health problem, and not left to hearing aid salesmen.~~

~~House Bill 1827 proposes to give the public safeguards to insure an adequate hearing aid delivery system for the Commonwealth.~~

#### RECOMMENDATION:

~~House Bill 1827 has been reintroduced this session by Representative C.L. Schmitt minus the controversial prescription requirement.~~

#### Summary of House Bill 164, Printer's Number 169, 1975/76 Session

House Bill 164 requires registration in order to sell hearing aids in Pennsylvania.

The proposed <sup>bill</sup> ~~out~~ is to be administered by the Department of Health.

The Department of Health may require a course of instruction to prove that the applicant is fit to sell hearing aids.

The examination by an applicant to obtain a hearing aid application shall contain questions in the following areas:

- 1) The anatomy and physiology of the ear
- 2) The function of hearing aids
- 3) Knowledge for grounds to suspend registration
- 4) Knowledge of criminal offenses
- 5) Procedures to fit and sell hearing aids
- 6) Taking earmold impressions
- 7) Evidence of knowledge regarding medical and rehabilitation facilities
- 8) Knowledge of criteria for medical referral which include (7) areas

Exempts persons from registering if they fit hearing aids for government agencies; private medical clinics; academic curriculum, a program conducted by a public or non-profit organization; physician, surgeon or audiologist when not directly or indirectly selling a hearing aid.

Registration certificates are to be renewed annually and can be renewed for a period of five years after the date of expiration.

Each registrant shall give to the purchaser of an aid a written receipt which contains the following data:

- 1) Date of sale;
- 2) Make, serial number and model of the aid;
- 3) Address of registrant;
- 4) Statement on a used or reconditioned aid;
- 5) Number of the registrant's certificate;
- 6) Forms of warranty;
- 7) Statement to the effect that the registrant is not a medical doctor

The following are reasons for suspensions by Secretary of Health:

- 1) Gross incompetency
- 2) Conviction of a misdemeanor of first or second degree in past two years
- 3) Obtaining registration by fraud
- 4) Illegal use of the terms "doctor", "physician", "clinic" or "audiologist".
- 5) Fraud in repair, fitting, or sale of hearing aid
- 6) Selling a hearing aid while under suspension
- 7) Gross immorality
- 8) Habitual intemperance
- 9) Permitting some one else to use registrants certificate
- 10) Violating any rules or regulations promulgated in this act
- 11) Any cause which would be grounds for denial of application
- 12) Violating the "Unfair Trade and Deceptive Practices Act"

The bill calls for a fine of not more than \$2,500 or imprisonment of one year for a misdemeanor of the third degree.

Hearing aid dispensers have 2 years from the effective date to meet standards before disciplinary action can take place.

The bill takes effect immediately upon the Governor's signature.



HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

MEMO

June 10, 1975

**SUBJECT:** Comparison of HB-164 (PN 169) with HB-513 (PN 567)

**TO:** Honorable C. L. Schmitt  
Chairman, Consumer Protection Committee

**FROM:** Jacob Myers, Legal Counsel, Consumer Protection Committee

HB-164 (PN 169)

HB-513 (PN 567)

**TITLE:** Pennsylvania Hearing Aid Sales Registration Law

Pennsylvania Hearing Aid Sales and Registration Law

Section 103 requires registration unless he employs only persons registered under the act. If he employs registered aid dealers and fitters, he must submit a list of all those so employed.

Section 103 does not require registration for nor prohibit the testing of hearing, however, when tests are conducted by persons registered under this act in connection with the fitting and selling of hearing aids, the Act shall apply.

Section 104 definitions.

Section 104 definitions.

"Advertise" same in both bills.

Audiologist - person holding the Certificate of Clinical Competence in audiology awarded by the American Speech and Hearing Association or one who completes equivalent academic training and clinical experience.

Audiologist - A person holding a master's degree or higher degree in audiology from an accredited college or university and who has clinical experience in the field of audiology.

"Conviction" same in both bills.

Department means the Department of Health

Department not defined.

Hearing Aid - any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing.

Hearing Aid - Same as HB-164.

Person - not defined

Person - Under partnership, corporation or combination.

Practice of fitting and selling hearing aids - Practices used solely for the purpose of making selections, adaptations and sale of hearing aids.

Practice of fitting and selling hearing aids - Practices used solely for the purpose of making selections, adaptations and sale of hearing aids directly or indirectly, whether in person or by employing hearing aid salesmen, of hearing aids.

Registrant - A person holding a certificate of registration.

Registrant - Person duly registered pursuant to this act and holds a certificate of registration.

Secretary - Secretary of the Department of Health.

Secretary - not defined.

Registration Requirements

HB-164 - Section 103 (p1); - Section 301 (p5). Section 103 (p1) makes it unlawful to sell or fit hearing aids unless he shall have first registered with the Department of Health.

HB-513 - Section 201 (p3; Section 501 (p15)). Section 501 makes it unlawful for an individual to engage in the practice of fitting and selling hearing aids without having obtained a certificate of registration from the Attorney General.

Requirements

Those exempt from Registration Requirements (Section 308 p9) Same as HB-513 except--there is no exemption in HB-164 for mail order sales as there is in HB-513.

Requirements

Those Exempt From Requirements (Sections 203, 204, 205) Section 203 - All persons engaged in the practice of fitting hearing aids if his practice is for a governmental agency, a private medical clinic, for part of the academic curriculum of an accredited institution of higher education, or for part of a program conducted by a public or charitable institution or other nonprofit organization, and who does not engage, directly or indirectly, in the sale or offering for sale of hearing aids.

Same as HB-513 - See Section 308b.

Requirements - Cont'd

Section 204 doesn't apply to doctors or surgeons or audiologists who does not directly or indirectly engage in the sale of hearing aids.

No provision in HB-164.

Section 205 doesn't apply to sale of hearing aids by catalog or direct mail, so long as there is no fitting, selection, or adaptation of the instrument nor advice given with respect to the taking of an ear impression for an ear mold. if the instruments are sold to remedy a hearing deficiency after a prescription for a hearing aid by either a physician or an audiologist

HB-164 - For those not exempt from the registration requirement and who have passed the exam as explained below, a registration certificate could be issued.

A temporary registration certificate could be issued to an applicant who has established that he was in the business for two years or more within the last five years in another state or jurisdiction. The temporary registration would be valid for 30 days after the conclusion of a qualifying examination if that exam is given more than 90 days after the issuance of the temporary registration and not more than a year after issuance of the temporary registration.

A temporary certificate could be given to a trainee of a holder of a valid registration which would entitle the trainee to fit and sell hearing aids under strict supervision for (1) a period of 6 months or (2) for a period ending 30 days after the conclusion of a qualifying exam if that exam is not given earlier than 150 days after issuance of the temporary registration--whichever is later.

Temporary Registration - No provisions in HB-513.

Reciprocal Registration - Sec. 307A. An applicant could receive a certificate of registration without taking the exam if

No provision in HB-513.

HB-164 Reciprocal Registration -  
Cont'd

that state had equal or more severe requirements. This reciprocity wouldn't pertain unless that state likewise granted it.

HB-513 - No provision.

307(b) - An applicant could fail a qualifying exam once and be issued another temporary certificate good until 30 days after the next qualifying exam.

HB-513 - No provision.

Examination of RegistrationsSection 310 (p9)

The registration certificates are renewable annually on the 15th of January of each year.

If a licensee lets his registration lapse, he could renew it up to 5 years after its expiration (Sec. 311).

Section 207 (p4)

Same as House Bill 164 except the Attorney General rather than the Health Department would supply the proper form.

Sec. 314 (p11) - prohibits renewal, restoration, re-issue or re-instatement if not done within 5 years.

Section 210 same as HB-164.

Section 315 - The fee for an employee-applicant for an apprentice registration is \$25.00. The additional fee for such employee-applicant upon taking the qualifying examination would be \$75.00.

No provisions.

Applicants who have failed a previous examination is \$15.00 for each succeeding examination.

No provisions.

Renewal fees for registration is \$50.00

Initial registration is \$100.00 but if the certificate is issued after July 15 of the year, the fee would be \$50.00

Renewal fees for registration is \$100.00.

Initial registration is \$125.00 but if the certificate is issued after July 15 of the year the fee would be \$65.00.

Applicant Oualifications

HB-164

Section 302

The bill allows the Secretary of Health to require proof concerning the honesty, truthfulness and good reputation of the applicant, and requires him to administer an examination to test the competency of the applicant in the following areas:

- (1) Anatomy and physiology of ear.
- (2) Function of hearing aids.
- (3) Knowledge and understanding of this Act and its requirement.
- (4) Procedures and use of equipment established by the department for the fitting and selling of hearing aids.
- (5) Taking of ear impressions.
- (6) A knowledge of criteria for medical referral when found to exist either from observation or on the basis of information furnished by the applicant to include specific symptoms itemized in the bill.

The Department would be required to give an examination twice a year and if an applicant fails the exam he would have to take a re-exam in only the area he failed.

HB-513

No provision.

No provision.

No provision.

Duties and/or Requirements of Registrants

HB-164

(1) Registrant required to furnish address or addresses of places of business to Dept. of Health (Sec.401 p12).

(2) Certificate must be displayed conspicuously (Sec 402 p12).

HB-513

(1) Must furnish address to Attorney General (Sec. 301 p6).

(2) Same as HB-164 (Sec. 302 p6).



HB-164 - Duties and/or Requirements - Cont'd

(3) Duplicate registration certificates are required for branch offices or other places of business (Sec. 403) p12.

HB-513 - Duties and/or Requirements - Cont'd

(3) Same as HB-164 (Sec. 303 p6).

(4) Receipt to Purchasers (Sec. 404 p13). A receipt is required to be given to the purchaser containing the following:

- (a) Date of sale
- (b) specifications as to the make, serial number, and model name or number of the hearing aid sold.
- (c) Address of the principal place of business of the registrant.
- (d) If the hearing aids are used, a statement of that fact.
- (e) The number of the registrant's registration certificate.
- (f) Terms of any guarantee or express warranty.
- (g) A statement to the effect that any examination or representation made by a registered dealer is not to be regarded as medical opinion or professional advice.

(4) This provision is the same as HB-164 with the significant exception that HB-513 states that "No hearing aid can be sold in Pennsylvania without a written prescription for a hearing aid by an audiologist or physician-- (Section 304, p6, 7).

Section 405, p13.

(5) If the following conditions occur, the dealer would be required to advise the customer to consult a physician:

- (a) Visible congenital or traumatic deformity of the ear.
- (b) History of or active drainage from the ear within the previous 90 days.
- (c) History of sudden or rapidly progressive hearing loss within the previous 90 days.
- (d) Acute or chronic dizziness.

(e) Unilateral hearing loss of sudden or recent onset within the previous 90 days.

Section 306 p9, 10.

(5) HB-513 does not have this provision but in its place requires a written prescription from a licensed physician or audiologist within 6 months before the sale of the hearing aid (Sec. 306 p9).

Failure to comply with the above would nullify the sales transactions and give the consumer the right to recover all expenses.

HB-164 - Duties and/or Requirements - Cont'd

HB-513 - Duties and/or Requirements - Cont'd

(f) Visible evidence of cerumen accumulation or a foreign body in the ear canal.

(g) Discrimination impairment exceeding criteria when such criteria are recommended by the department.

(6) Records required  
(Sec. 407 pl4).

Dealers are required to keep a record for 7 years including a copy of the written recommendation required by Section 405.

(6) Records required  
(Sec. 307 pl0)

Same as HB-164, but also including the written prescription required by Section 306.

(7) Sale to Minors

Prohibited to those 16 or younger, unless within preceeding 6 months a recommendation has been made by both a physician specializing in otolryngology and by an audiologist. Mere replacement of an identical hearing aid within 6 months is an exception to the requirement.

(7) No provision.

Causes for Removal, Denial, Suspension or Revocation of Certificate

HB-164 - Section 501 (pl5)

HB-513 - Section 401 (pl0)

Causes for removal, denial, etc.:

Causes for removal, denial, etc. (by Attorney General):

- (1) Gross incompetency to include improper or unnecessary fitting of a hearing aid.
- (2) Conviction of any felony or misdemeanor including moral turpitude.
- (3) Securing a certificate by fraud or deceit.
- (4) Use of term doctor, physician, clinic or audiologist under firm name unless authorized by law.
- (5) Fraud or misrepresentation in
- (6) Employment of person to perform under this act anybody not qualified.

- (1) Same as HB-164.
- (2) Conviction of any felony or misdemeanor of the 1st or 2nd degree within past 2 years.
- (3) Same
- (4) Same
- (5) Same
- (6) Same

## HB-164 (Sec. 501) - Cont'd

- (7) Habitual intemperance
- (8) Gross immorality
- (9) Permitting use of registration by one not authorized.
- (10) Violation of any provision of the act or rules promulgated.
- (11) Any cause which would be grounds for denial of an application for a registration certificate.
- (12) Be enjoined from violating any provision of the "Unfair Trade Practices Act," subject to an FTC order, Pa. Dept. of Health, etc. concerning the sale or of worthless hearing devices.
- (13) No provision
- (14) No provision (but see Section 12.
- (15) No provision
- (16) No provision
- (17) No provision
- (18) No provision

## HB-513 (Sec. 401) - Cont'd

- (7) Same
- (8) No provision
- (9) Same
- (10) Same
- (11) Same
- (12) Same (subsection 14)
- (13) Violating "Pa. Human Relations Act."
- (14) Engaging in unfair methods of competition or unfair or deceptive acts as defined in Unfair Trade Practices Act.
- (15) Failure to comply with Federal Truth in Lending.
- (16) Engaging in bait and switch advertising.
- (17) Engaging in unsolicited door-to-door sales.
- (18) Failure to provide service in compliance with warranties.

Unlawful ActsSection 505 (p17)

- (1) Sell a registration certificate.
- (2) Purchase a registration certificate.
- (3) Alter with fraudulent intent any registration certificate.
- (4) Use a false registration.
- (5) Sell hearing aids under a false or assumed name.
- (6) Falsify applications
- (7) Sell or fit or advertise hearing aids without a valid registration.
- (8) Same as HB-513
- (9) No provision

Section 501 (p15)

- (1) Same as HB-164.
- (2) Same
- (3) Same
- (4) Same
- (5) Same
- (6) Same
- (7) Same
- (8) Advertise the sale or fitting of hearing aids without having a valid certificate.
- (9) To sell, etc. without having an established business address.

Penalties and Remedies

HB-164

Misdemeanor of the 3rd degree,  
1 year imprisonment or a fine of not  
more than \$2500 or both.

Empower Dept. of Health to  
promulgate regulations and the  
Attorney General the power to  
prosecute and investigate  
(Sec. 206 p4).

No comparable provision.

No comparable provision

HB-513

Summary offense for 1st violation,  
imprisonment for not less than 10 days  
nor more than 1 year, or to pay a fine  
of not less than \$100 nor more than  
\$1,000, or both.

2nd Violation

Misdemeanor of 2nd degree--imprison-  
ment for not less than 100 days nor  
more than 2 years; or a fine of not  
less than \$500 nor more than \$5,000,  
or both.

Attorney General's power. Attorney  
General would have the power to  
promulgate regulations, may issue  
injunctions and have the power to  
investigate and subpoena records.

Section 305 (p7) - Right to Rescind

Customers for aids would have the right  
to rescind the transaction for a  
hearing aid until midnight of the 3rd  
business day following the date of  
consummation of the transaction by  
notifying the seller by mail, telegram  
or other writing.

Notice of Right to Rescind

The registered dealer would be required  
notify all purchasers of his right to  
rescind. The form of the notice is  
contained in the bill on page 8.

Whenever a customer exercises his right  
to rescind, he would not be liable for  
any finance charge and any security  
retained by the seller would have to  
be returned within 10 days--(Sec.305,d).

A customer would not be allowed to  
waive his right under this section.

Evective Date of Act

HB-164

Immediately on passage.

HB-513

90 days from passage.