

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2180

SPONSOR: Senator Wasserman Schultz

SUBJECT: Fitting and Dispensing of Hearing Aids

DATE: April 15, 2003

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	<u>CM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The bill creates a criminal offense for the “seller” or “person selling a hearing aid” who fails to refund all moneys that must be refunded to a purchaser of a hearing aid within 30 days after the return or attempted return of a hearing aid as required by section 484.0512, F.S. The bill defines “seller” or “person selling a hearing aid” for purposes of the offense. Such persons are liable for a first degree misdemeanor punishable by jail up to 1 year and a fine of up to \$1,000.

This bill amends section 484.0512, Florida Statutes.

## II. Present Situation:

Part I, chapter 484, F.S., provides for the regulation, by the Board of Hearing Aid Specialists, of the fitting and dispensing of hearing aids. Part I, ch. 468, F.S., provides for the regulation of speech-language pathology and audiology by the Board of Speech-Language and Pathology. As part of their practice, licensed audiologists may also fit and sell hearing aids. Both parts contain similar consumer protections for purchasers of hearing aids.

Section 484.051, F.S.,<sup>1</sup> requires any person who fits and sells hearing aids to disclose, on request by the prospective purchaser and prior to delivery of services or products to a prospective purchaser, an itemized listing of prices, which listing must include separate price estimates for each service component and each product. The provision of the required itemized listing of prices may not be predicated on the prospective purchaser’s payment of any charge or agreement to purchase any service or product.

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<sup>1</sup> See also s. 468.1245, F.S.

Section 484.051(2), F.S., requires any person who fits and sells a hearing aid, at the time of delivery, to provide the purchaser with a receipt that contains the seller's signature, the address of her or his regular place of business, and her or his license or trainee registration number, if applicable, together with the brand, model, manufacturer or manufacturer's identification code, and serial number of the hearing aid furnished and the amount charged for the hearing aid. The receipt must also specify whether the hearing aid is new, used, or rebuilt and must specify the length of time and other terms of the guarantee and by whom the hearing aid is guaranteed. If the client has requested an itemized list of prices, the receipt must also provide an itemization of the total purchase price, including, but not limited to, the cost of the aid, earmold, batteries and other accessories, and any services. Notice of the availability of this service must be displayed in a conspicuous manner in the office. The receipt must also state that any complaint concerning the hearing aid and guarantee therefor, if not reconciled with the licensee from whom the hearing aid was purchased, should be directed by the purchaser to the Department of Health. The address and telephone number of such office must be stated on the receipt.

In addition, s. 484.0512, F.S.,<sup>2</sup> provides consumer protections for persons buying a hearing aid. A person selling a hearing aid in Florida must provide the buyer with written notice of a 30-day trial period and money-back guarantee. The guarantee must permit the purchaser to cancel the purchase for a valid reason as defined by rule of the board within 30 days after receiving the hearing aid, by returning the hearing aid or mailing the written notice of cancellation to the seller. If the hearing aid must be repaired, remade, or adjusted during the 30-day trial period, the running of the 30-day trial period is suspended 1 day for each 24-hour period that the hearing aid is not in the purchaser's possession. A repaired, remade, or adjusted hearing aid must be claimed by the purchaser within 3 working days after notification of availability. The running of the 30-day trial period resumes on the day the purchaser reclaims the repaired, remade, or adjusted hearing aid or on the fourth day after notification of availability.

The Board of Hearing Aid Specialists, in consultation with the Board of Speech-Language Pathology and Audiology, must prescribe by rule the terms and conditions to be contained in the money-back guarantee and any exceptions thereto. At a minimum, the rule must provide that the charges for earmolds and service provided to fit the hearing aid may be retained by the licensee (hearing aid specialist/audiologist). The rules must also set forth any reasonable charges to be held by the licensee (hearing aid specialist/audiologist) as a cancellation fee.<sup>3</sup> If the board fails to adopt such rule, a licensee may not charge a cancellation fee which exceeds 5 percent of the total charge for a hearing aid alone. The terms and conditions of the guarantee, including the total amount available for refund, must be provided in writing to the purchaser prior to the signing of the contract. Within 30 days after the return or attempted return of the hearing aid, the seller must refund all moneys that must be refunded to a purchaser.

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<sup>2</sup> See also s. 468.1246, F.S.

<sup>3</sup> See Rule 64B6-6.001(4), Florida Administrative Code. In the event of cancellation within the 30-day trial period, the seller may retain a charge not to exceed \$150 on a monoaural fitting and \$200 on a binaural fitting for ear molds and services provided. The purchaser of a hearing aid may be charged a cancellation fee not to exceed 5 percent of the total purchase price.

### III. Effect of Proposed Changes:

The bill creates a criminal offense for the “seller” or “person selling a hearing aid” who fails to refund all moneys that must be refunded to a purchaser of a hearing aid within 30 days after the return or attempted return of a hearing aid as required by section 484.0512, F.S. For purposes of s. 484.0512, F.S., the “seller” or “person selling a hearing aid” includes:

- Any natural person licensed as a hearing aid specialist under part I, ch. 484, F.S., or any other natural person who signs a sales receipt required by s. 484.051(2) or s. 468.1245(2), F.S., or who otherwise fits, delivers, or dispenses a hearing aid;
- Any business organization, whether a sole proprietorship, partnership, corporation, professional association, joint venture, business trust, or other legal entity, which dispenses a hearing aid or enters into an agreement to dispense a hearing aid; or
- Any person who controls, manages, or operates an establishment or business that dispenses a hearing aid or enters an agreement to dispense a hearing aid.

Any person who violates the newly created offense commits a first degree misdemeanor which is punishable by up to 1 year imprisonment and a fine up to \$1,000.

The bill provides an effective date of July 1, 2003.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

#### B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

#### C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

#### D. Other Constitutional Issues:

The bill creates a criminal offense for the “seller” or “person selling a hearing aid” who fails to refund all moneys that must be refunded to a purchaser of a hearing aid within 30 days after the return or attempted return of a hearing aid as required by section 484.0512, F.S.<sup>4</sup> The bill defines “seller” or “person selling a hearing aid” for purposes of the offense.

<sup>4</sup> Pursuant to s. 484.0512, F.S., the Board of Hearing Aid Specialists has adopted Rule 64B6-6.001(4), Florida Administrative Code. In the event of cancellation within the 30-day trial period, the seller may retain a charge not to exceed \$150 on a

Such persons are liable for a first degree misdemeanor punishable by jail up to 1 year and a fine of up to \$1,000. To the extent the bill allows the Board of Hearing Aid Specialists and the Board of Speech-Language Pathology to determine what fees shall be refunded to purchasers of hearing aids for unlicensed persons not under their regulatory jurisdiction and delegates that function to the Board of Hearing Aid Specialists within the Department of Health, it raises an issue as to whether the legislative delegation to the board to by rule determine what should be refunded to prospective hearing aid purchasers constitutes a proper delegation. The delegation also raises an issue on whether such delegation allows an administrative agency to define the elements of a crime. Article I, Section 18 of the Florida Constitution provides that:

No administrative agency, except the Department of Military Affairs in an appropriately convened court-martial action as provided by law, shall impose a sentence of imprisonment, nor shall it impose any other penalty except as provided by law.

In addressing the question “how much of a role may administrative agencies take in defining the elements of a crime,” the Florida Supreme Court has declared that Article I, Section 18 of the Florida Constitution which states that no administrative agency shall impose sentence of imprisonment nor shall it impose any other penalty except as provided by law, though speaking only to quasi-adjudicatory powers of some administrative agencies, nevertheless embodies an overall constitutional policy that administrative agencies may not create criminal statute or its equivalent and prescribe the penalty. See *B.H. v. State*, 645 So.2d 987, 46 A.L.R. 5<sup>th</sup> 877 (1994), certiorari denied 115 S.Ct. 2559, 515 U.S. 1132, 132 L.Ed.2d 812.

## **V. Economic Impact and Fiscal Note:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

Purchasers of hearing aids who do not receive the appropriate refund may seek criminal prosecution of unlicensed persons involved in the fitting or selling of such hearing aids.

The Board of Hearing Aid Specialists and the Board of Speech–Language Pathology have jurisdiction over licensed practitioners who fit and dispense hearing aids and may order restitution as part of the discipline of a practitioner who has failed to make the required refunds to hearing aid purchasers.<sup>5</sup> However, the board does not have jurisdiction over unlicensed persons who fit and sell hearing aids.

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monoaural fitting and \$200 on a binaural fitting for ear molds and services provided. The purchaser of a hearing aid may be charged a cancellation fee not to exceed 5 percent of the total purchase price.

<sup>5</sup> See s. 456.072(2)(i), F.S.

Persons who are not required to be licensed and who fit and sell hearing aids who fail to refund the money to the purchaser as required by the bill will be liable for criminal penalties.

C. **Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Statutory provisions of the speech-language and audiology practice act contain similar consumer protections for purchasers of hearing aids that mirror those contained in the hearing aid specialist practice act. To the extent bill amends s. 484.0512, F.S., it does not amend a similar provision, s. 468.1246, F.S.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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