

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 761 Fitting and Dispensing of Hearing Aids
SPONSOR(S): Justice
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2180 (i)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Standards (Sub)		Mitchell	Collins
2) Health Care			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 761 provides a criminal penalty for failure of the seller of a hearing aid to refund monies to the purchaser of a hearing aid within the 30-day trial period. It defines and expands the definition of the term "seller" to include any person who signs a sales receipt and includes the business organization.

Currently, when a hearing aid purchaser returns a hearing aid within 30 days for a valid reason, the seller is required to make a refund according to board rule. The seller may retain a charge not to exceed \$150 on a monaural fitting and \$200 on a binaural fitting for ear molds and services provided. In addition, the purchaser may be charged a cancellation fee not to exceed 5% of the total purchase price. Section 484.0512, F.S., provides the current requirements for Hearing Aid Specialists to refund monies. Section 468.1246, F.S., provides the current requirements for audiologists to refund monies.

Currently, there is no criminal penalty for failure to refund monies to the purchaser. Financially harmed consumers who have dealt with a practitioner that does not provide a refund, pursuant to s. 484.0512, F.S., or s. 468.1246, F.S., may file a complaint against the practitioner with the Department of Health if they are seeking a refund. The department and the Board of Hearing Aid Specialists and the Board of Speech-Language Pathology and Audiology have jurisdiction only over the licensed practitioner, who often is not the recipient of the money from the sale of the hearing aid. The Board of Hearing Aid Specialists currently does not have jurisdiction over the unlicensed owner, the business, and other legal entities which may dispense a hearing aid or enter into an agreement to dispense a hearing aid. Many consumers are unable to obtain a refund for returned hearing instruments.

The provisions of the bill strengthen the purchaser's ability to obtain a refund by including business organizations, persons selling the hearing aid, and any person who signs a sales receipt or who otherwise fits, delivers or dispenses a hearing aid, as responsible for refunding the consumer's money. This could lead to expanded prosecution since the attorney will be able to charge the hearing aid businesses and not just the hearing aid specialist.

The effective date of the bill is July 1, 2003.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0761.hc.doc
DATE: March 16, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

Creates a penalty whereby persons not providing a refund to consumers who return hearing aid merchandise within 30 days will be in violation of the law. Consumers will be empowered.

B. EFFECT OF PROPOSED CHANGES:

This bill provides for a criminal penalty for failure of the seller of a hearing aid to refund monies within a specified time period to the purchaser of a hearing aid. It also defines and expands the definition of the term "seller" to include any person who signs a sales receipt and any business organization.

PRESENT SITUATION

Historically, consumers have had a difficult time obtaining refunds when they are dissatisfied with hearing aids. Often this is due to the fact that the money for the hearing aid goes to the business owner and not the hearing aid specialist.

Hearing Aid Specialists and Audiologists are authorized under chapters 484 and 468, F.S., respectively, to fit and sell hearing aids in Florida.

Currently, when a hearing aid purchaser returns a hearing aid within 30 days for a valid reason, the seller is required to make a refund according to board rule. The seller may retain a charge not to exceed \$150 on a monaural fitting and \$200 on a binaural fitting for ear molds and services provided. In addition, the purchaser may be charged a cancellation fee not to exceed 5% of the total purchase price. Section 484.0512, F.S., provides the current requirements for Hearing Aid Specialists to refund monies. Section 468.1246, F.S., provides the current requirements for audiologists to refund monies.

Currently, there is no criminal penalty for failure to refund monies to the purchaser. Financially harmed consumers who have dealt with a practitioner that does not provide a refund to the purchaser, pursuant to s. 484.0512, F.S., or s. 468.1246, F.S., may file a complaint against the practitioner with the Department of Health if they are seeking a refund. The department and the Board of Hearing Aid Specialists and the Board of Speech-Language Pathology and Audiology have jurisdiction only over the licensed practitioner, who often is not the recipient of the money from the sale of the aid. The Board of Hearing Aid Specialists currently does not have jurisdiction over the unlicensed owner, the business, and other legal entities which may dispense a hearing aid or enter into an agreement to dispense a hearing aid. Many consumers are unable to obtain refund for returned hearing instruments.

EFFECT OF THE BILL

The provisions of HB 761 strengthen the purchaser's ability to obtain a refund by including business organizations, persons selling the hearing aid, and any person who signs a sales receipt or who otherwise fits, delivers or dispenses a hearing aid, as responsible for refunding the consumer's money.

The bill expands the definition of "seller" of a hearing aid to include any person who signs a sales receipt, any business organization, and any person who controls, manages or operates an establishment or business that dispenses a hearing aid or enters into an agreement to dispense a hearing aid.

According to the Board of Speech-Language Pathology and Audiology, the new language will assist the prosecutorial section of the board which will have the ability to hold the responsible party accountable for the refund if they accepted moneys from the hearing aid purchaser. The bill provides for a criminal penalty of a first degree misdemeanor, punishable by up to one year of imprisonment as provided in s. 775.082, F.S., and a fine of up to \$1,000, as provided by s. 775.083, F.S. This could lead to expanded prosecution since the attorney will be able to charge the hearing aid businesses and not just the hearing aid specialist.

C. SECTION DIRECTORY:

Section 1. Amends s. 484.0512, F.S., relating to the 30-day trial period, to broaden the responsible party, and to provide for a criminal penalty for not providing a refund under certain circumstances.

Section 2. Establishes the effective date as July 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The criminal provision in this bill is a misdemeanor and will have no impact on the need for prison beds. A misdemeanor of the first degree may be punished by a term of imprisonment not exceeding one year in a county jail, and a fine not exceeding \$1,000, or by a term of county probation. There may be some impact on the County Sheriff's department.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES