

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.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: SB 372

INTRODUCER: Senators Peaden and Fasano

SUBJECT: Hearing Aid Specialists/Consumer Disclosures

DATE: March 3, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HE</u>	<u>Favorable</u>
2.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
3.	_____	_____	<u>BI</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill deletes a requirement that hearing aid specialists make certain disclosures to consumers when advertising services free, reduced fee, or discounted fee.

This bill amends section 456.062, Florida Statutes.

II. Present Situation:

Hearing Aid Specialists

Part II, ch. 484, F.S., governs the regulation of hearing aid specialists by the Board of Hearing Aid Specialists within the Department of Health. Hearing aid specialists conduct and interpret hearing tests to select appropriate hearing aids, fit the devices to the patient, and provide counseling on the use of the devices.

Itemization of Prices, Delivery of Hearing Aid, Receipt, Packaging, Disclaimer, Guarantee

Prior to delivery of services or products to a prospective purchaser, any person who fits and sells hearing aids must disclose, upon request by the prospective purchaser, an itemized listing of prices, which listing must include separate price estimates for each service component and each product.¹ Provision of such 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.

¹ See s. 484.051, F.S.

Any person who fits and sells a hearing aid must, at the time of delivery, provide the purchaser with a receipt containing 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 also must 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.

When 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 also must 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.

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.² Such rule must provide, at a minimum, that the licensee may retain the charges for earmolds and service provided to fit the hearing aid. The rules must also set forth any reasonable charges to be held by the licensee as a cancellation fee.

A hearing aid may not be sold to any person unless both the packaging containing the hearing aid and the required itemized receipt carry the following disclaimer in 10-point or larger type: "A hearing aid will not restore normal hearing, nor will it prevent further hearing loss."

Thirty-day Trial Period, Purchaser's Right to Cancel, Notice, Refund, Cancellation Fee

Under s. 484.0512, F.S., 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 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 one day for each 24-hour period that the hearing aid is not in the purchaser's possession. The purchaser must claim a repaired, remade, or adjusted hearing aid within three 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.³

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 pursuant to s. 484.0512, F.S. A violation of this criminal offense is a misdemeanor of the first degree, punishable by the imposition of jail time of up to one year and a fine of up to \$1,000. A Florida-licensed hearing aid specialist who violates

² See Rule 64 B6-6.001, Florida Administrative Code.

³ See Rule 64 B6-6.001(3), F.A.C. If a cancellation occurs within the 30-day trial period, the seller may retain a charge no greater than \$150 on a monaural fitting, and \$200 on a binaural fitting for earmolds and services provided to fit the hearing aid. The purchaser may additionally be charged a cancellation fee no greater than 5 percent of the total purchase price.

the requirements for the 30-day trial period under s. 484.0512, F.S., is liable for discipline and the Board of Hearing Aid Specialists may impose a penalty, which ranges from a fine of \$100 and/or a letter of concern to a maximum fine of \$7,500 and/or revocation of the license. For a second offense, the licensed hearing specialist may be liable for a disciplinary penalty, which ranges from a fine of \$1,000 and/or two years of probation to a maximum fine of \$10,000 and/or revocation of the license.

Advertisement by a Health Care Practitioner of Free or Discounted Services

Section 456.062, F.S., requires a Florida-licensed medical physician, osteopathic physician, physician assistant, podiatric physician, chiropractic physician, naturopathic physician, optometrist, nurse, pharmacist, dentist, dental hygienist, midwife, electrologist, medical physicist, clinical laboratory personnel, optician, hearing aid specialist, physical therapist, psychologist, school psychologist, clinical social worker, marriage and family therapist, and mental health counselor to provide a disclosure in any advertisement for a free, discounted fee, or reduced fee service, examination, or treatment. The disclosure must include a statement that the patient and any person responsible for payment has a right to refuse to pay, cancel payment, or be reimbursed for *any other service, examination, or treatment* performed as a result of and within 72 hours of responding to the advertisement for the free, discounted fee, or reduced fee *service, examination or treatment*. The disclosure must appear in capital letters clearly distinguishable from the rest of the text of the advertisement.

Florida-licensed audiologists regulated under pt I, ch. 468, F.S., are not required to comply with this disclosure requirement under s. 456.062, F.S., for advertised free, reduced, or discounted services. Audiologists examine, test, and evaluate individuals suffering from disorders or conditions that may affect hearing and may also fit and dispense hearing aids.

III. Effect of Proposed Changes:

The bill amends s. 456.062, F.S., to delete a requirement that hearing aid specialists make certain disclosures to consumers when advertising services free, reduced fee, or discounted fee.

The bill provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Although there are numerous consumer protections under pt. II, ch. 484, F.S., including a requirement for hearing aid specialists to itemize prices, offer 30-day trial periods along with the purchaser's right to cancel and a money back guarantee on hearing aids, none of the protections are equivalent to the requirement for a licensed health care practitioner to make certain disclosures to consumers when advertising *services* for a free, reduced fee, or discounted fee. The consumer protections focus on consumer remedies relating to the sale of a *product* (a hearing aid) rather than the advertisement of the *services* of the Florida-licensed hearing aid specialist. Additionally, the money back guarantee on the hearing aid is conditioned on the purchaser's payment of the sales price of the goods rather than the services advertised.

VIII. Summary of Amendments:

None.

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