

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

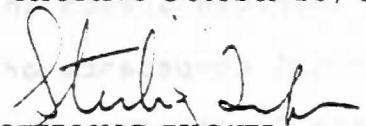
November 3, 1977

D.C. Law 2-33

"Hearing Aid Dealers and Consumers Act of 1977".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act (PL 93-198), the Act, the Council of the District of Columbia adopted Bill No. 2-39 on first and second readings July 12, 1977, and July 26, 1977, respectively. Following the signature of the Mayor on August 17, 1977, this legislation was assigned Act No. 2-79, published in the August 26, 1977, edition of the D.C. Register, and transmitted to both Houses of Congress for a 30-day review, in accordance with Section 602 (c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired and, therefore, cites the following legislation as D.C. Law 2-33, effective October 26, 1977.


STERLING TUCKER
Chairman of the Council

(Vol. 24, D.C. Register, 1799, August 26, 1977)

D.C. LAW

2-33

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 26, 1977

To establish standards and procedures to protect users of hearing aids.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA.

, That this act may be cited as the "Hearing Aid Dealers and Consumers Act of 1977".

SEC. 2. DEFINITIONS

AS used in this act, the term--

(1) "audiologist" means any person who has at least a masters degree in audiology and meets the requirements of the American Speech and Hearing Association Certificate of clinical competence or the equivalent in the determination of the Commission on Licensure to Practice the Healing Arts.

(2) "fitting and selling of hearing aids" means those practices used for the purpose of making selection, adaptation or sale of hearing aids.

(3) "hearing aid" means any wearable instrument or device designed or offered for the purpose of aiding or compensating for impaired human hearing and any parts.

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attachments or accessories of that wearable instrument,
excluding batteries, cords or earmolds.

(4) "hearing test evaluation" means a written statement, based on testing conducted by an audiologist, otolaryngologist or a medical technician directly supervised by an otolaryngologist. The statement shall include the following information:

- (A) the ear or ears to be fitted;
- (B) the type of earmold;
- (C) the gain (amplification) of the hearing aid;
- (D) the minimum and maximum power output of a hearing aid;
- (E) the frequency response of the hearing aid;
- (F) the results of pure tone and speech audiometry; and
- (G) the date of the hearing test.

This shall not prevent an audiologist or otolaryngologist from recommending a specific make and model of hearing aid.

(5) "medical clearance" means a written statement based upon a medical examination by an otolaryngologist, that concludes that the patient may benefit from a hearing aid and that there are no medical conditions to contraindicate the use of a hearing aid. The statement must include the date of the medical examination.

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(6) "Office" means the Office of Consumer Protection of the District of Columbia.

(7) "otolaryngologist" means a physician licensed in the District of Columbia who specializes in medical problems of the ear, nose and throat.

(8) "person" means any individual, partnership, association, organization or corporation.

(9) "registrant" means a hearing aid dealer who engages in the practice of fitting and selling hearing aids and who has registered pursuant to section 4 of this act.

(10) "sell" or "sale" means any transfer of title or of the right of use by sale, conditional sales contract, lease, bailment, hire-purchase or any other means, excluding wholesale transactions of dealers and distributors.

(11) "telephone option" means an option available on hearing aids which enables the wearer to hear the electrical signal on the telephone line rather than the acoustic signal produced by the telephone.

(12) "used hearing aid" means a hearing aid which has been worn for any period of time by a buyer or potential buyer.

Sec. 3. POWERS AND DUTIES OF THE OFFICE OF CONSUMER

PROTECTION.

The Office shall:

- (1) issue and renew certificates of registration to engage in the business of fitting and selling of hearing aids, as provided in section 4 of this act; and
- (2) implement and enforce the provisions of this act by utilizing the powers, procedures and sanctions of the Office, as provided for in sections 4 and 6 of the "District of Columbia Consumer Protection Procedures Act", approved July 22, 1976 (D.C. Law 1-76) and the regulations of the Office.

Sec. 4. REGISTRATION.

(a) It is unlawful for a person to engage in the practice of fitting and selling of hearing aids without having first obtained a certificate of registration from the Office under the provisions of this act.

(b) Nothing in this act shall prohibit a corporation, partnership, trust, association, or other like organization maintaining an established business address in the District of Columbia from engaging in the business of fitting and selling of, or offering for sale, hearing aids at retail without a certificate of registration: PROVIDED, That any and all such fitting and selling of hearing aids is

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conducted by individuals who are registered pursuant to section 4 of this act. Such corporations, partnerships, trusts, associations, or other like organizations shall file annually with the Office a list of all individuals holding valid certificates of registration who are directly or indirectly employed by them.

(c) Each person desiring to obtain a Certificate of Registration from the Office to engage in the practice of fitting and selling of hearing aids shall make an application to the Office. The application shall be made upon a form and in such manner as the Office shall provide. It shall set forth:

(1) the name and business address of the applicant:

(A) if an individual, the name under which he or she intends to conduct business;

(B) if a partnership, the name and business address of each member thereof and the name under which the business is to be conducted;

(C) if a corporation, the name of the corporation and the name and business address of each of the officers of the corporation.

Any applicant who intends to conduct business under a fictitious name shall file with the application a copy of the registration of that fictitious name;

(2) the place or places, including the complete address or addresses, where the business is to be conducted; and

(3) such further information as the Office may prescribe.

(d) The Office shall act upon an application for a certificate of registration within thirty (30) days after receiving the application. Each application shall be accompanied by an application fee, which shall in no event be refunded. If an application is approved by the Office, upon payment of a registration fee, the applicant shall be granted a certificate of registration to be valid for a period determined by the Mayor of the District of Columbia. The certificate shall be conspicuously posted in the place of business of the registrant. In the case of loss, mutilation, or destruction of a certificate, the Office shall issue a duplicate certificate, upon proof of facts and payment of a fee.

(e) If a registrant maintains more than one place of business within the District, he or she shall apply for and procure a duplicate certificate for each place of business.

If a registrant has a change of address or place of business, he or she shall notify the Office within fifteen (15) days of such change.

(f) Certificates expire on the date determined by the Mayor of the District of Columbia. An unexpired certificate may be renewed by applying to the Office on the form prescribed by the Office and the payment of a renewal fee. Late applications for registration or renewal shall be an additional amount. The Office shall act on an application for renewal within thirty (30) days after receiving the application.

(g) The Office shall not prevent an applicant for a certificate of registration from fitting and selling of hearing aids pending a determination of the initial application within six (6) months after the effective date of this act.

(h) No physician or audiologist may register under this act to sell hearing aids for profit.

(i) The Mayor of the District of Columbia is authorized to fix and change from time to time the period for which any certificate of registration authorized under this act may be issued. The Mayor of the District of Columbia is authorized to set and change from time to time the amount of any fees provided for in sections 4(d) and 4(f) of this act.

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Sec. 5. SPECIAL PROVISIONS.

(a) No registrant shall fit, offer for sale, or sell a hearing aid to a person unless, within the preceding three (3) months, the person has received a medical clearance after an examination by an otolaryngologist and a hearing test evaluation.

(b) No registrant shall sell a hearing aid not conforming to the hearing test evaluation required without prior consultation and written approval from the signer of the hearing test evaluation.

(c) Sections 5(a) and 5(b) of this act do not apply to—

(1) the purchase of an identical hearing aid within two (2) years of the date that the purchaser receives the original aid; and

(2) the purchase of parts, attachments or accessories of the telephone designed to aid the hearing-impaired.

(d) If a prospective hearing aid user has a bona fide religious belief which precludes him or her from having a medical examination as required in section 5(a) of this act, the prospective hearing aid user may waive the medical examination requirement: PROVIDED, That the prospective

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hearing aid user signs the following statement, printed in ten (10)-point type:

"My religious beliefs require that I waive the medical examination and the hearing aid evaluation required by the 'Hearing Aid Dealer and Consumers Act of 1977' for the purchase of a hearing aid. I voluntarily waive the medical examination, notwithstanding the fact that I have been advised by

HEARING AID DISPENSER'S NAME

that my best health interest would be served if I had a medical evaluation by a physician who is an ear specialist."

No registrant shall seek to induce a prospective hearing aid user to execute such a waiver.

(e) No otolaryngologist or audiologist making recommendations pursuant to sections 5(a) and 5(b) of this act shall have a direct or indirect membership, co-ownership, or proprietary interest in a business which is controlled by or which employs a registrant for the purpose of fitting and selling of hearing aids for profit.

(f) No hearing aid shall be sold to any person unless accompanied by a thirty (30) day money-back written

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guarantee providing that if the customer returns the hearing aid within thirty (30) days in the same condition as when purchased the customer shall be entitled to the return of the cost of the hearing aid and accessories as itemized on the bill provided pursuant to section 6(a) of this act, but in no case shall the hearing aid dealer be permitted to retain a service charge greater than five percent (5%) of the cost of the hearing aid and accessories and the cost of the earmold.

(g) No registrant or agent thereof shall visit the home or small telephone any potential buyer for the purpose of inducing a sale of a hearing aid without having obtained, prior to the visit, the express written consent of the buyer to that visit. Any consent shall clearly and conspicuously state that the buyer is aware that the seller may attempt to sell a hearing aid during the visit.

Sec. 6. MINIMAL PROCEDURES.

(a) Each hearing aid sale shall be accompanied by a receipt that includes:

- (1) the name, address, and signature of the purchaser;
- (2) the date of consummation of the sale;

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(3) the name and address of the regular place of business, the number of the certificate of registration, and the signature of the registrant;

(4) the make, model, serial number, and purchase price of the hearing aid;

(5) a statement as to whether the hearing aid is "new" or "used";

(6) the complete terms of the sale, including:

(A) an itemization of the total purchase price, including but not limited to the cost of the hearing aid, the earmold, any batteries or other accessories, and any service costs; and

(B) a clear and precise statement of the terms of the trial period and the terms of any guarantee or warranty, including disclosures made pursuant to section 7(a)(3)(H);

(7) the title and address of the Office, with a statement that complaints which arise with respect to the transaction may be submitted to the Office;

(8) the original of the written recommendation;

(9) the following statements in ten (10)-point-type or larger:

(A) "This hearing aid will not restore normal hearing nor will it prevent further hearing loss";

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(B) "No hearing aid may be sold to you without a prior medical examination";

(C) "A return visit to a physician who is an ear specialist or audiologist after the purchase of this aid will help you in best adapting to it"; and

(10) if the hearing aid sold has a telephone option, a statement that the telephone option will not work on all telephones and a statement indicating the types of telephones upon which it will work.

(b) Each registrant shall keep records for every customer to whom he or she renders services or sells a hearing aid, including:

(1) a copy of the receipt as specified in subsection (a) of this section 6;

(2) a record of services provided;

(3) any correspondence to or from the customer;

and

(4) any waiver forms, as provided under section 5(d) of this act. Such records shall be preserved for seven (7) years after the date of the transaction.

(c) Each registrant shall post conspicuously in large print at his or her place(s) of business and make available for inspection at any sale a retail price list showing all hearing aid models for sale.

Sec. 7. GROUNDS FOR REVOCATION AND SUSPENSION.

(a) In addition to those practices prohibited under section 5 of the "District of Columbia Consumer Protection Procedures Act", effective July 22, 1976 (D.C. Law 1-76), the Office may deny the application for a certificate of registration or may suspend or revoke the certificate of registration of any hearing aid dealer issued pursuant to this act or may refuse to issue a renewal if it has been determined by the Office or a court of competent jurisdiction that such registrant has:

(1) made a material false statement or concealed a material fact in connection with an application for a certificate;

(2) had a certificate of registration issued under this act revoked or suspended previously;

(3) been guilty of fraud or fraudulent practices or has practiced dishonest or misleading advertising, including but not limited to:

(A) advertising a particular model, type, or kind of hearing aid when the offer is not a bona fide effort to sell the product so offered as advertised;

(B) advertising that a hearing aid is a new invention or involves a new mechanical,

engineering, or scientific concept or principle in hearing aid capability;

(C) advertising that a hearing aid will be beneficial to persons with hearing loss, regardless of the type of hearing loss;

(D) advertising that a hearing aid will enable persons with a hearing loss to consistently distinguish and understand speech sounds in noisy situations;

(E) representing that the services or advice of a person licensed to practice medicine or of a person licensed as an audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true;

(F) using or incorporating in any title or designation the words "doctor", "clinic", "clinical audiologist", "hearing aid audiologist", or any other term, abbreviation, or symbol;

(G) wearing any costume, which would tend to give a false impression that one is being treated medically or tested by an audiologist;

(H) representing, advertising, or implying that the hearing aid or repair is guaranteed.

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without a clear and concise disclosure of the identity of the guarantor, the nature and extent of the guarantee and any condition or limitations imposed;

(I) stating or implying that the use of any hearing aid will restore hearing to a normal level, preserve hearing, prevent or retard progression of a hearing impairment, save a person from deafness, or any other false or misleading medically or audiologyically unsupportable claims regarding the efficacy or benefits of a hearing aid;

(J) representing or implying that a hearing aid is or will be "custom made", "made to order", "prescription made", or in any other sense especially fabricated for an individual person when such is not the case; and

(K) representing that a hearing aid has a telephone option, unless it is clearly and conspicuously disclosed that the telephone option will not work on all types of telephones;

(4) been grossly negligent in the fitting, selling, or repairing of any hearing aid;

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(5) failed to comply with any other provision of this act or any rules or regulations promulgated hereunder; and

(6) directly or indirectly giving, offering to give, permitting or causing to be given, money or anything of value to any person who advises another in a professional capacity, as an inducement to influence such person, to have such person influence others, to purchase or contract to purchase any product sold or offered for sale by the registrant, or to influence any person to refrain from dealing in the products of competitors.

(b) For the purposes of paragraphs (3), (4), (5), and (6) of subsection (a) of this section 7, the actions of any employee of a hearing aid dealer shall be attributed to and deemed to be actions of such hearing aid dealer.

Sec. 8. SEVERABILITY..

The provisions of this act are severable, and if any provision, sentence, clause, section or part is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such holding shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this act or its application to other persons or circumstances. It is hereby declared to be the

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legislative intent that this act would have been adopted if such illegal, invalid, inapplicable or unconstitutional provision, sentence, clause, section or part had not been included herein and if the person or circumstances to which the act or any part is inapplicable had been specifically exempted.

Sec. 9. EFFECTIVE DATE.

This act shall take effect pursuant to section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act.

RECORD OF OFFICIAL COUNCIL ACTION

Docket No: 2-39

First Reading Action: July 12, 1977

VOICE VOTE: Adopted Unanimously (2 abs.) Winter, Mason

Secretary to the Council

ROLL CALL VOTE:

COUNCIL MEMBER	AGE	HAT	N.V.	COUNCIL MEMBER	AGE	HAT	N.V.	COUNCIL MEMBER	AGE	HAT	N.V.	A.L.
TUCKER				MASON				SPALDING				
HARDY				MOORE, D.				WILSON				
BARRY				MOORE, J.				WINTER				
CLARKE				ROLARK								
DEON				SACKELETON								

Unanimous Vote 2 Absentees N. V. - Not Voting

Robert A. Williams

Secretary to the Council

Amended First Reading Action: _____

VOICE VOTE: _____

Secretary to the Council

ROLL CALL VOTE:

COUNCIL MEMBER	AGE	HAT	N.V.	COUNCIL MEMBER	AGE	HAT	N.V.	COUNCIL MEMBER	AGE	HAT	N.V.	A.L.
TUCKER				MASON				SPALDING				
HARDY				MOORE, D.				WILSON				
BARRY				MOORE, J.				WINTER				
CLARKE				ROLARK								
DEON				SACKELETON								

Unanimous Vote 2 Absentees N. V. - Not Voting

Secretary to the Council

Final Reading or Emergency Action: July 26, 1977

VOICE VOTE: Adopted Unanimously (2 abs.) Dixon, Mason

Robert A. Williams

Secretary to the Council

ROLL CALL VOTE:

COUNCIL MEMBER	AGE	HAT	N.V.	COUNCIL MEMBER	AGE	HAT	N.V.	COUNCIL MEMBER	AGE	HAT	N.V.	A.L.
TUCKER				MASON				SPALDING				
HARDY				MOORE, D.				WILSON				
BARRY				MOORE, J.				WINTER				
CLARKE				ROLARK								
DEON				SACKELETON								

Unanimous Vote 2 Absentees N. V. - Not Voting

Secretary to the Council

RECORD OF OFFICIAL COUNCIL ACTION (Page 2)

Docket No: 2-39Presented to the Mayor: AUG 5 1977

Robert C. Givens
Secretary to the Council

Action of the Mayor: 17 AUG 1977

Approved: Disapproved:
 Disapproved in part -- Reference
 Document: _____
 *Budget Actions.

 Returned Without Action

Mayor Walter Washington 17 AUG 1977
Mayor of the District of Columbia

Enacted without Mayor's Signature

Executive Secretary, D.C.

Secretary to the Council

Council Reenactment:

 VOICE VOTE: _____

Secretary to the Council

 ROLL CALL VOTE:

COUNCIL MEMBER	DATE	NAME	COUNCIL MEMBER	DATE	NAME	COUNCIL MEMBER	DATE	NAME	COUNCIL MEMBER	DATE	NAME
TUCKER		MASON				SPAULDING					
HARDY		MOORE, D.				WILSON					
BARRY		MOORE, J.				WINTER					
CLARKE		ROLARK									
DEKON		SCHREIBER									
In favor _____ Yes _____ Abstain _____ No _____ Not Voting _____											

Secretary to the Council

Presented to the President: _____

Secretary to the Council

Action of the President: _____

 Reenactment Approved Mayor's Veto Sustained

President of the U. S.

Submitted to the Congress: _____

Secretary to the Council

Senate Action: _____
Resolution Number: _____House Action: _____
Resolution Number: _____

Secretary of the Senate

Clerk of the House

Enacted Without Congressional Action:

D.C. Law No. _____ Effective Date _____

Secretary to the Council