

SENATE BILL NO. 53
INTRODUCED BY D. LEWIS

A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE TRIAL PERIOD FOR HEARING AIDS AND RELATED DEVICES PURCHASED FROM TRAVELING VENDORS; AND AMENDING SECTIONS 37-16-102, 37-16-303, AND 37-16-304, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-16-102, MCA, is amended to read:

"37-16-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Board" means the board of hearing aid dispensers provided for in 2-15-1740.
- (2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
- (3) "Hearing aid" means an instrument or device designed for or represented as aiding or improving defective human hearing and parts, attachments, or accessories of the instrument or device.
- (4) "License" means a regular or trainee license.
- (5) "Permanent place of business" means the primary site in this state at which a person licensed under this chapter conducts testing and fitting of hearing aids and related devices and that is open to the public at least 5 days a week.
- (6) "Place of practice" means either a permanent place of business or a location on record with the department at which a person licensed under this chapter makes occasional visits. A place of practice must be affiliated with a permanent place of business.

~~(5)~~(7) "Practice of selling, dispensing, and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, adaption, sale, dispensing, or fitting of hearing aids intended to compensate for hearing loss, including eyeglass hearing aids and their fittings, and the making of an impression of the ear and the subsequent selection of a proper ear mold, but does not include batteries, cords, or accessories."

Section 2. Section 37-16-303, MCA, is amended to read:

"37-16-303. Bill of sale -- medical evaluation requirements -- waiver. (1) Any person who practices the selling, fitting, or dispensing of hearing aids and related devices shall, upon the sale of a hearing aid or related device, deliver to the customer a bill of sale that must contain:

(a) the seller's signature and license number, ~~and the name and address of the seller's permanent place of business, and if different from the permanent place of business, the address of the place of practice at which the sale was concluded;~~

(b) a description of the make and type of the hearing aid or related device furnished and the amount charged;

(c) any warranty or guaranty and the right to cancel, ~~and as well as~~ the terms of the warranty or guaranty and the right to cancel;

(d) the condition of the hearing aid or related device and whether it is new, used, or reconditioned;

(e) a provision that maintenance service for the hearing aid or related device is available; and

(f) the following statement, in boldface, 12-point type: "If you have any questions regarding your consumer rights with respect to hearing aids and related devices, contact the state Board of Hearing Aid Dispensers." The statement must also list the current telephone number and address of the board's office.

(2) (a) Except as provided in subsection (2)(b), a hearing aid dispenser may not sell a hearing aid to a person unless the person has presented to the hearing aid dispenser a written statement signed by a licensed physician within the previous 6 months that states that the person's hearing loss has been medically evaluated and that there are no medical factors or conditions that render hearing aid use inadvisable as a treatment or remedy for hearing loss.

(b) If the prospective hearing aid purchaser is 18 years of age or older, the hearing aid dispenser may give that person the opportunity to waive the requirements of subsection (2)(a) in accordance with the disclosure, waiver form, and instructional brochure requirements of the U.S. food and drug administration regulations found at ~~42 CFR 801.420 and 42 CFR 801.421~~ 21 CFR 801.420 and 21 CFR 801.421."

Section 3. Section 37-16-304, MCA, is amended to read:

"37-16-304. Right to cancel -- return of hearing aid or related device -- notice -- refund -- dispensing fee rules. (1) ~~(a) Except as provided in subsection (1)(b), a purchaser of a hearing aid or related device may, for any reason, cancel the sale within 30 days of the date of delivery at a permanent place of business of the hearing aid or related device by providing written notice to the establishment that employed the licensed hearing aid dispenser at the time the hearing aid was purchased indicating the purchaser's intention not~~

to be bound by the sale contract.

(b) (i) If a licensed hearing aid dispenser has provided a hearing test or a fitting consultation to a purchaser at a place of practice other than the dispenser's permanent place of business prior to or at the time the purchaser takes delivery of a hearing aid or related device, the purchaser may, for any reason, cancel the sale within 30 days from the date of the first postdelivery followup consultation conducted in person at the place of practice.

(ii) A purchaser subject to the provisions of subsection (1)(b)(i) may waive the extended trial period if, at the date of delivery, the purchaser was offered and declined in writing the followup consultation, in which case the 30-day period in subsection (1)(a) applies.

(c) The trial period in subsection (1)(a) or (1)(b) applies notwithstanding the provisions of Title 30, chapter 14, part 5.

(2) (a) A purchaser canceling a sale under subsection (1) shall provide written notice indicating the purchaser's intention not to be bound by the sales contract. The notice must be sent to the address of the licensed hearing aid dispenser's permanent place of business at the time the hearing aid was purchased.

(b) The purchaser shall return or hold for the licensed hearing aid dispenser's disposal the hearing aid or related device in substantially the same condition as it was received by the purchaser.

~~(2)(3)~~ (a) For the purpose of determining whether cancellation has occurred within 30 days of the date of delivery the time specified in subsection (1), written notice:

~~(a)~~(i) given by mail is considered given on the date mailed; and

~~(b)~~(ii) delivered in person is considered given when delivered to the hearing aid dispenser's permanent place of business or place of practice.

(b) If the purchaser and the licensed hearing aid dispenser dispute the timing of a cancellation under the terms of subsection (1)(b), the dispenser shall provide documentation to the board that the dispenser provided written notice of the purchaser's entitlement to a postdelivery followup consultation at the place of practice and that the consultation either occurred or was waived by the purchaser in writing.

~~(3)~~(4) A licensed hearing aid dispenser shall refund to the purchaser the amount paid for a hearing aid or related device minus any authorized dispensing fee within 10 days of receipt of written notice of cancellation.

(5) If the board decides to authorize a dispensing fee, the form and manner of calculating a dispensing fee must be established by the board by rule. Dispensing fee rules adopted by the board may include but are not limited to consideration of business overhead and costs associated with initial hearing evaluations, consultations, fittings, and followup visits.

~~(4)~~(6) A licensed hearing aid dispenser may not sell a hearing aid in this state unless the ~~seller~~ dispenser provides the ~~buyer~~ purchaser with written notice of the ~~30-day~~ trial period, as provided in subsection (1), and a money-back guarantee.

~~(5)~~(7) If the hearing aid must be repaired, remade, or adjusted during the ~~30-day~~ trial period, the running of the ~~30-day~~ trial period must be suspended for each day that the hearing aid is not in the purchaser's possession. The provisions of this subsection may not be waived."

- END -