

ASSEMBLY BILL

No. 311

Introduced by Assembly Member Dymally

February 9, 2007

An act to add Section 3351.7 to the Business and Professions Code, relating to hearing aids.

LEGISLATIVE COUNSEL'S DIGEST

AB 311, as introduced, Dymally. Hearing aids: over-the-counter sales.

Under existing law, the Hearing Aid Dispensers Licensing Law, the Hearing Aid Dispensers Bureau licenses and regulates the practice of fitting and selling hearing aids. Under that law, a hearing aid is required to be dispensed by a licensed hearing aid dispenser.

Existing law, the Federal Food, Drug, and Cosmetic Act, also regulates the labeling and conditions for sale of hearing aid devices, and preempts state laws that are different from or in addition to those requirements.

This bill would authorize the sale of over-the-counter hearing aid devices by an unlicensed person if such sales are authorized under federal law. The bill would make findings and declarations in that regard.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) Senior citizens and the needy have the least amount of money
- 3 available to purchase hearing aids.

1 (b) Although hearing disorders may afflict any person, senior
2 citizens and the needy can least afford medical procedures to
3 improve their hearing.

4 (c) The ability to hear is necessary in order to function socially
5 and as a contributing member of society.

6 (d) The senior citizen who has a hearing disorder is the person
7 who is best qualified to determine whether he or she should
8 purchase an over-the-counter hearing aid.

9 (e) Hearing test units that allow senior citizens to determine
10 which over-the-counter hearing aid is best for them can be installed
11 in drugstores.

12 (f) Hearing aid manufacturers have stated, and are willing to
13 testify, that over-the-counter hearing aids are safe for the customer.

14 (g) The cost of a high-quality hearing aid obtained through an
15 audiologist typically exceeds six thousand dollars (\$6,000).

16 (h) The electronics in a high-quality home entertainment system
17 with the ability to receive and amplify audio frequencies and
18 reproduce distortion-free sound at all frequencies and levels are
19 more sophisticated than the electronics in a hearing aid, and cost
20 significantly less than a typical hearing aid that is sold through an
21 audiologist.

22 (i) The manufacturing cost of high-quality integrated circuits
23 for current hearing aids is less than twelve dollars and fifty cents
24 (\$12.50).

25 (j) A full-page newspaper advertisement in the San Jose Mercury
26 News on May 1, 2006, offered factory-direct hearing aids, known
27 as ampli-ear hearing amplifiers, at a cost of thirty-four dollars and
28 fifty cents (\$34.50) per ear, although the quality of this product
29 has not been evaluated by the State of California.

30 (k) Hearing aids of the same quality as those hearing aids that
31 sell for two thousand five hundred dollars (\$2,500) per ear can be
32 produced with replaceable batteries and offered as over-the-counter
33 products for approximately one hundred dollars (\$100) per ear.

34 SEC. 2. Section 3351.7 is added to the Business and Professions
35 Code, to read:

36 3351.7. Notwithstanding any other provision of law, this
37 chapter shall not prohibit the sale of over-the-counter hearing aid

- 1 devices as merchandise by a person who is not licensed pursuant
- 2 to this chapter if those sales are authorized under federal law.

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