

AMENDED IN ASSEMBLY APRIL 20, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1535**

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**Introduced by Assembly Member Jones**

February 27, 2009

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An act to amend Sections 2530.2 and 3351.3 of, *and to add Article 9 (commencing with Section 2539.2) to Chapter 5.3 of Division 2 of*, the Business and Professions Code, relating to audiologists.

LEGISLATIVE COUNSEL'S DIGEST

AB 1535, as amended, Jones. Audiologists: hearing aids.

Existing law, the Speech-Language Pathologists and Audiologists Licensure Act, provides for the licensure and regulation of audiologists ~~and~~, defines the practice of audiology, *and makes a violation of that act a crime*. Existing law also provides for the licensure and regulation of hearing aid dispensers, who fit or sell hearing aids, by the Hearing Aid Dispensers Bureau. Existing law exempts audiologists and individuals supervised by audiologists from the hearing aid dispenser licensure requirement if those persons do not directly or indirectly engage in the sale or offering for sale of hearing aids.

This bill would define the practice of audiology to include the selling of hearing aids and would also exempt audiologists ~~and individuals supervised by audiologists~~ from the hearing aid dispenser licensure requirements. *However, the bill would make various provisions relating to the sale of hearing aids applicable to audiologists, such as, but not limited to, requiring hearing aids sold by catalog or direct mail to meet certain requirements, requiring a specified written receipt to be provided to a purchaser upon the sale of a hearing aid, and requiring specified*

*records pertaining to the sale of a hearing aid to be maintained for 7 years.*

*By making licensed audiologists subject to specified requirements relating to the sale of hearing aids, the violation of which would be a crime, the bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

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

- 1 SECTION 1. Section 2530.2 of the Business and Professions
- 2 Code is amended to read:
- 3 2530.2. As used in this chapter, unless the context otherwise
- 4 requires:
- 5 (a) “Board” means the Speech-Language Pathology and
- 6 Audiology Board or any successor.
- 7 (b) “Person” means any individual, partnership, corporation,
- 8 limited liability company, or other organization or combination
- 9 thereof, except that only individuals can be licensed under this
- 10 chapter.
- 11 (c) A “speech-language pathologist” is a person who practices
- 12 speech-language pathology.
- 13 (d) The practice of speech-language pathology means all of the
- 14 following:
- 15 (1) The application of principles, methods, instrumental
- 16 procedures, and noninstrumental procedures for measurement,
- 17 testing, screening, evaluation, identification, prediction, and
- 18 counseling related to the development and disorders of speech,
- 19 voice, language, or swallowing.
- 20 (2) The application of principles and methods for preventing,
- 21 planning, directing, conducting, and supervising programs for
- 22 habilitating, rehabilitating, ameliorating, managing, or modifying
- 23 disorders of speech, voice, language, or swallowing in individuals
- 24 or groups of individuals.

1 (3) Conducting hearing screenings.

2 (4) Performing suctioning in connection with the scope of  
3 practice described in paragraphs (1) and (2), after compliance with  
4 a medical facility's training protocols on suctioning procedures.

5 (e) (1) Instrumental procedures referred to in subdivision (d)  
6 are the use of rigid and flexible endoscopes to observe the  
7 pharyngeal and laryngeal areas of the throat in order to observe,  
8 collect data, and measure the parameters of communication and  
9 swallowing as well as to guide communication and swallowing  
10 assessment and therapy.

11 (2) Nothing in this subdivision shall be construed as a diagnosis.  
12 Any observation of an abnormality shall be referred to a physician  
13 and surgeon.

14 (f) A licensed speech-language pathologist shall not perform a  
15 flexible fiberoptic nasendoscopic procedure unless he or she has  
16 received written verification from an otolaryngologist certified by  
17 the American Board of Otolaryngology that the speech-language  
18 pathologist has performed a minimum of 25 flexible fiberoptic  
19 nasendoscopic procedures and is competent to perform these  
20 procedures. The speech-language pathologist shall have this written  
21 verification on file and readily available for inspection upon request  
22 by the board. A speech-language pathologist shall pass a flexible  
23 fiberoptic nasendoscopic instrument only under the direct  
24 authorization of an otolaryngologist certified by the American  
25 Board of Otolaryngology and the supervision of a physician and  
26 surgeon.

27 (g) A licensed speech-language pathologist shall only perform  
28 flexible endoscopic procedures described in subdivision (e) in a  
29 setting that requires the facility to have protocols for emergency  
30 medical backup procedures, including a physician and surgeon or  
31 other appropriate medical professionals being readily available.

32 (h) "Speech-language pathology aide" means any person  
33 meeting the minimum requirements established by the board, who  
34 works directly under the supervision of a speech-language  
35 pathologist.

36 (i) (1) "Speech-language pathology assistant" means a person  
37 who meets the academic and supervised training requirements set  
38 forth by the board and who is approved by the board to assist in  
39 the provision of speech-language pathology under the direction  
40 and supervision of a speech-language pathologist who shall be

1 responsible for the extent, kind, and quality of the services provided  
2 by the speech-language pathology assistant.

3 (2) The supervising speech-language pathologist employed or  
4 contracted for by a public school may hold a valid and current  
5 license issued by the board, a valid, current, and professional clear  
6 clinical or rehabilitative services credential in language, speech,  
7 and hearing issued by the Commission on Teacher Credentialing,  
8 or other credential authorizing service in language, speech, and  
9 hearing issued by the Commission on Teacher Credentialing that  
10 is not issued on the basis of an emergency permit or waiver of  
11 requirements. For purposes of this paragraph, a “clear” credential  
12 is a credential that is not issued pursuant to a waiver or emergency  
13 permit and is as otherwise defined by the Commission on Teacher  
14 Credentialing. Nothing in this section referring to credentialed  
15 supervising speech-language pathologists expands existing  
16 exemptions from licensing pursuant to Section 2530.5.

17 (j) An “audiologist” is one who practices audiology.

18 (k) “The practice of audiology” means the application of  
19 principles, methods, and procedures of measurement, testing,  
20 appraisal, prediction, consultation, counseling, and instruction  
21 related to auditory, vestibular, and related functions and the  
22 modification of communicative disorders involving speech,  
23 language, auditory behavior or other aberrant behavior resulting  
24 from auditory dysfunction; and the planning, directing, conducting,  
25 supervising, or participating in programs of identification of  
26 auditory disorders, hearing conservation, cerumen removal, aural  
27 habilitation, and rehabilitation, including, hearing aid  
28 recommendation and evaluation procedures including, but not  
29 limited to, specifying amplification requirements and evaluation  
30 of the results thereof, auditory training, speech reading, and the  
31 selling of hearing aids.

32 (l) “Audiology aide” means any person, meeting the minimum  
33 requirements established by the board, who works directly under  
34 the supervision of an audiologist.

35 (m) “Medical board” means the Medical Board of California.

36 (n) A “hearing screening” performed by a speech-language  
37 pathologist means a binary puretone screening at a preset intensity  
38 level for the purpose of determining if the screened individuals  
39 are in need of further medical or audiological evaluation.

1 (o) “Cerumen removal” means the nonroutine removal of  
2 cerumen within the cartilaginous ear canal necessary for access in  
3 performance of audiological procedures that shall occur under  
4 physician and surgeon supervision. Cerumen removal, as provided  
5 by this section, shall only be performed by a licensed audiologist.  
6 Physician and surgeon supervision shall not be construed to require  
7 the physical presence of the physician, but shall include all of the  
8 following:

9 (1) Collaboration on the development of written standardized  
10 protocols. The protocols shall include a requirement that the  
11 supervised audiologist immediately refer to an appropriate  
12 physician any trauma, including skin tears, bleeding, or other  
13 pathology of the ear discovered in the process of cerumen removal  
14 as defined in this subdivision.

15 (2) Approval by the supervising physician of the written  
16 standardized protocol.

17 (3) The supervising physician shall be within the general  
18 vicinity, as provided by the physician-audiologist protocol, of the  
19 supervised audiologist and available by telephone contact at the  
20 time of cerumen removal.

21 (4) A licensed physician and surgeon may not simultaneously  
22 supervise more than two audiologists for purposes of cerumen  
23 removal.

24 *SEC. 2. Article 9 (commencing with Section 2539.2) is added*  
25 *to Chapter 5.3 of Division 2 of the Business and Professions Code,*  
26 *to read:*

27  
28 *Article 9. Hearing Aids*

29  
30 *2539.2. (a) Hearing aids may be sold by catalog or direct mail*  
31 *provided that:*

32 *(1) The seller is licensed as an audiologist in this state.*

33 *(2) There is no fitting, selection, or adaptation of the instrument*  
34 *and no advice is given with respect to fitting, selection, or*  
35 *adaptation of the instrument and no advice is given with respect*  
36 *to the taking of an ear impression for an earmold by the seller.*

37 *(3) The seller has received a statement which is signed by a*  
38 *physician and surgeon, audiologist, or a hearing aid dispenser,*  
39 *licensed by the State of California which verifies that Section*  
40 *2539.6 has been complied with.*

1 (b) A copy of the statement referred to in paragraph (3) of  
2 subdivision (a) shall be retained by the seller for the period  
3 provided for in Section 2539.10.

4 2539.4. A licensed audiologist shall, upon the consummation  
5 of a sale of a hearing aid, deliver to the purchaser a written receipt,  
6 signed by or on behalf of the licensed audiologist, containing all  
7 of the following:

8 (a) The date of consummation of the sale.

9 (b) Specifications as to the make, serial number, and model  
10 number of the hearing aid or aids sold.

11 (c) The address of the principal place of business of the licensed  
12 audiologist, and the address and office hours at which the licensed  
13 audiologist shall be available for fitting or postfitting adjustments  
14 and servicing of the hearing aid or aids sold.

15 (d) A statement to the effect that the aid or aids delivered to the  
16 purchaser are used or reconditioned, as the case may be, if that  
17 is the fact.

18 (e) The number of the licensed audiologist's license and the  
19 name and license number of any other hearing aid dispenser,  
20 temporary licensee, or audiologist who provided any  
21 recommendation or consultation regarding the purchase of the  
22 hearing aid.

23 (f) The terms of any guarantee or written warranty, required  
24 by Section 1793.02 of the Civil Code, made to the purchaser with  
25 respect to the hearing aid or hearing aids.

26 2539.6. Whenever any of the following conditions are found  
27 to exist either from observations by the licensed audiologist or on  
28 the basis of information furnished by the prospective hearing aid  
29 user, a licensed audiologist shall, prior to fitting or selling a  
30 hearing aid to any individual, suggest to that individual in writing  
31 that his or her best interests would be served if he or she would  
32 consult a licensed physician specializing in diseases of the ear or  
33 if no licensed physician is available in the community then to a  
34 duly licensed physician:

35 (1) Visible congenital or traumatic deformity of the ear.

36 (2) History of, or active, drainage from the ear within the  
37 previous 90 days.

38 (3) History of sudden or rapidly progressive hearing loss within  
39 the previous 90 days.

40 (4) Acute or chronic dizziness.

1 (5) *Unilateral hearing loss of sudden or recent onset within the*  
2 *previous 90 days.*

3 (6) *Significant air-bone gap (when generally acceptable*  
4 *standards have been established).*

5 *No referral for medical opinion need be made by any licensed*  
6 *audiologist in the instance of replacement only of a hearing aid*  
7 *that has been lost or damaged beyond repair within one year of*  
8 *the date of purchase. A copy of the written recommendation shall*  
9 *be retained by the licensed audiologist for the period provided for*  
10 *in Section 2539.10. A person receiving the written recommendation*  
11 *who elects to purchase a hearing aid shall sign a receipt for the*  
12 *same, and the receipt shall be kept with the other papers retained*  
13 *by the licensed audiologist for the period provided for in Section*  
14 *2539.10. Nothing in this section required to be performed by a*  
15 *licensed audiologist shall mean that the licensed audiologist is*  
16 *engaged in the diagnosis of illness or the practice of medicine or*  
17 *any other activity prohibited by the provisions of this code.*

18 2539.8. *No hearing aid shall be sold by an individual licensed*  
19 *as an audiologist under this chapter to a person 16 years of age*  
20 *or younger, unless within the preceding six months a*  
21 *recommendation for a hearing aid has been made by both a*  
22 *board-certified, or a board-eligible physician specializing in*  
23 *otolaryngology, and by a state licensed audiologist. A replacement*  
24 *of an identical hearing aid within one year shall be an exception*  
25 *to this requirement.*

26 2539.10. *A licensed audiologist shall, upon the consummation*  
27 *of a sale of a hearing aid, keep and maintain records in his or her*  
28 *office or place of business at all times and each such record shall*  
29 *be kept and maintained for a seven-year period. These records*  
30 *shall include:*

31 (a) *Results of test techniques as they pertain to fitting of the*  
32 *hearing aid.*

33 (b) *A copy of the written receipt required by Section 2539.4 and*  
34 *the written recommendation and receipt required by Section*  
35 *2539.6, when applicable.*

36 2539.12. *An licensed audiologist who is the owner, manager,*  
37 *or franchisee at a location where hearing aids are fit or sold, shall*  
38 *be responsible for the adequacy of the fitting or selling of any*  
39 *hearing aid fit and sold by any licensee or licensees at that*  
40 *location.*

1     ~~SEC. 2.~~

2     SEC. 3. Section 3351.3 of the Business and Professions Code  
3 is amended to read:

4     3351.3. This chapter does not apply to nor affect any physician  
5 and surgeon licensed under Chapter 5 (commencing with Section  
6 2000) of Division 2 who does not directly or indirectly engage in  
7 the sale or offering for sale of hearing aids, nor to any audiologist  
8 licensed under Chapter 5.3 (commencing with Section 2530), ~~or~~  
9 ~~to an individual supervised by such audiologist.~~

10     SEC. 4. *No reimbursement is required by this act pursuant to*  
11 *Section 6 of Article XIII B of the California Constitution because*  
12 *the only costs that may be incurred by a local agency or school*  
13 *district will be incurred because this act creates a new crime or*  
14 *infraction, eliminates a crime or infraction, or changes the penalty*  
15 *for a crime or infraction, within the meaning of Section 17556 of*  
16 *the Government Code, or changes the definition of a crime within*  
17 *the meaning of Section 6 of Article XIII B of the California*  
18 *Constitution.*