

Approved: 3-6-96  
Date

## MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chair Sandy Praeger at 10:00 a.m. on February 15, 1996 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Emalene Correll, Legislative Research Department  
Bill Wolff, Legislative Research Department  
Norman Furse, Revisor of Statutes  
Jo Ann Buntten, Committee Secretary

Conferees appearing before the committee:

Larry Froelich, Executive Secretary, Kansas Board of Pharmacy  
Sherry DePerier, Kansas Board of Hearing Aid Examiners  
M. Day Kaufmann, Executive Secretary, Kansas Hearing Aid Association, Inc.  
John A. Ferraro, Ph.D., KUMC, Intercampus Program in Communicative Disorders  
Steven E. Press, Ph.D., CCC-A

Others attending: See attached list

### **Hearing on SB 623 - Grounds for revocation of pharmacist license**

Larry Froelich, Kansas State Board of Pharmacy, testified in support of SB 623 and noted that the bill would make necessary language changes in K.S.A. 65-1627 relating to cases when a pharmacist in another state surrenders his license in that state after formal proceedings have been filed but before any final action has been taken against him or her. (Attachment 1)

There were no opponents to SB 623.

### **Action on SB 623**

Senator Langworthy made a motion the Committee recommend SB 623 favorably for passage, seconded by Senator Papay. The motion carried.

### **Hearing on SB 534 - Hearing aid examiners and revision of hearing aid act**

Sherry DuPerier, Kansas Board of Hearing Aid Examiners, testified before the Committee in support of SB 534 which would make several changes to the statutes that govern the fitting and dispensing of hearing aids. The bill would make technical changes to update the language in the statutes, increase the fees charged by the Board of Examiners in the fitting and dispensing of hearing aids for licensure and registration, and revise the licensure renewal schedule and requirements. Ms. DuPerier noted that such changes will bring the statutes up to date not only in regard to language, but will allow the Board to operate at fiscally sound levels and upgrade training and supervision along with other areas important to consumer protection. (Attachment 2) M. Day Kaufmann, Kansas Hearing Aid Association, also expressed support for SB 534. (Attachment 3) Committee discussion related to educational requirements and scope of practice for hearing aid examiners.

Speaking in opposition to SB 534 was Diane Hall, speech-language pathologist for 25 years who expressed her concern about the potential ramifications of the bill and also read testimony from James A. Wise, President of Kansas Speech-Language-Hearing Association, whose main concern, among others, was that hearing aid dealers are not qualified to include tympanometry within their scope of practice. (Attachment 4 and 5) Steven E. Press, CCC-A, also expressed concern with the bill in reference to hearing aid dealers who would include tympanometry within their scope of practice and suggested such language be stricken from the bill. (Attachment 6) John A. Ferraro, Ph.D., Hearing and Speech Department, KUMC, urged the Committee to vote against the bill for reasons presented by the Kansas Speech-Language-Hearing Association in addition to language in Section 11 that would

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE, Room 526-S  
Statehouse, at 10:00 a.m. on February 15, 1996.

prohibit state-supported university programs in Audiology from selling hearings aids or accessories. (Attachment 7) The Chair suggested the various entities work out their differences and a subcommittee would be appointed to continue discussion on **SB 534**.

**Action on SB 628 -- Assistive technology lemon law act**

Staff briefed the Committee on balloon amendments to **SB 628**. (Attachment 8) After Committee discussion, Senator Langworthy made a motion the Committee adopt the balloon amendments to **SB 628**, seconded by Senator Lee. The motion carried.

Senator Walker made a motion the Committee recommend **SB 628 as amended** favorably for passage, seconded by Senator Langworthy. The motion carried.

**Adjournment**

The meeting was adjourned at 11:00 a.m.

The next meeting is scheduled for February 16, 1996.

# SENATE PUBLIC HEALTH AND WELFARE COMMITTEE GUEST LIST

DATE: 2-15-96

NAME	REPRESENTING
Harold FLEMING	KADM
Rita Griffith	Health Midwest
Michelle Peterson	Peterson Public Affairs
Harold C. Pitts	KCOA
LARRY FROELICH	Board of Pharmacy
Bob Williams	Ks. Pharmacists Assoc.
Ron Hein	Ks Hearing Aid Association
M. Max KAHEMANN	" " " "
Melissa Wanyemank	Hein, Ebert & Weir
Rick Edgett	Ks Hearing Aid Association
Ruth Mann	Ks. Health Institute
Charley Young	Via Christi Reg. Med. Ctr.
Sue Hogan	Audiologists
Sandy Keener	Audiologist
John A. Ferraro	Ks SP-L-Hrs Assoc.
Steven E. Press	Ks Speech-L. Hearing Assn.

# Kansas State Board of Pharmacy

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STATE OF KANSAS



BILL GRAVES  
GOVERNOR

**SENATE BILL 623**  
**SENATE PUBLIC HEALTH AND WELFARE**  
**THURSDAY, FEBRUARY 15, 1995**

**MEMBERS**

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CHARLOTTE BROCK, STERLING  
KARLA KNEEBONE, NEODESHA  
GLEN MATHIS, GIRARD  
BARRY SARVIS, MANHATTAN  
MARGARET YOUNG, WICHITA

**EXECUTIVE DIRECTOR**  
LARRY C. FROELICH

**BOARD ATTORNEY**  
DANA W. KILLINGER

MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS LARRY FROELICH AND I SERVE AS THE EXECUTIVE SECRETARY TO THE BOARD OF PHARMACY. I APPEAR BEFORE YOU TODAY ON BEHALF OF THE BOARD IN **SUPPORT OF SB 623.**

THE REQUESTED CHANGE CAN BE FOUND ON PAGE 2, LINES 3 AND 4. THE ADDITIONAL LANGUAGE TO THIS STATUTE IS NEEDED IN CASES WHEN THE PHARMACIST IN ANOTHER STATE SURRENDERS THE LICENSE IN THAT STATE **AFTER** FORMAL PROCEEDINGS HAVE BEEN FILED BUT BEFORE ANY FINAL ACTION HAS BEEN TAKEN, OTHER THAN THE FILING OF A FORMAL PETITION. IN MANY CASES, THE LICENSEE WILL DO THIS TO AVOID FIGHTING THE FORMAL COMPLAINT, AND THEN MOVE TO ANOTHER STATE.

WE RESPECTFULLY REQUEST THE FAVORABLE PASSAGE OUT OF COMMITTEE OF SB 623. THANK YOU.

Senate Public Health & Welfare  
Date: 2-15-96  
Attachment No. 1

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THE STATE OF KANSAS

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**KANSAS BOARD OF HEARING AID EXAMINERS**

Box 252

Wichita, Kansas 67201-0252

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Testimony Presented Before the  
Senate Committee on Public Health & Welfare  
by Sherry DuPerier  
Co-Executive Officer  
Kansas Board of Hearing Aid Examiners  
Thursday, February 15, 1996

The Kansas Board of Hearing Aid Examiners has been in existence since 1968 and is the governmental agency responsible for licensing hearing aid dispensers in the state. The Board is responsible for issuing temporary and permanent licenses, administering examinations, revoking and suspending licenses, approving educational programs for continuing education hours, reviewing complaints regarding prohibited practices set forth by statute and reviewing and resolving all consumer complaints.

The amendments to the hearing aid law are based on changes requested by the Attorney General's office, and discussions with state budget analysts. In addition revisions consistent with national licensure bills have been incorporated along with changes addressing problems experienced by the licensing board.

The majority of the statutes have not been revised since 1968 and are in need of updating for general language and content revisions. A majority of the changes have no content change but are merely the revisors suggestions for language. The Attorney General's office also made language and content suggestions which cover such items as the ability to deny a license and reprimand a licensee, the elimination of the qualification regarding contagious disease, non-resident examination, review of reciprocal applicants qualifications and grades set forth in 74-5811, willful or repeated unethical conduct as opposed to unethical conduct and change to Class C misdemeanors rather than specific penalties and fines.

In regard to financial operations currently all licensing fees are at statutory maximums. In looking at future years and in discussions with state budget analysts it was determined that the fee structure was in need of a revision. For many years the Board was run at below minimal operating levels. However in the past several years increased Board activity has resulted in increased spending. Currently the Board's average annual revenues are exceeded by expenses. The budget discussions resulted in a projection indicating the need to revise

Senate Public Health & Welfare  
Date: 2-15-96  
Attachment No. 2

fees by FY '98. The current change in statutes does not increase fees but will restructure the licensure process. This restructuring will result in a net annual increase of approximately \$2,260.

In addition the Board plans to adjust three of the 12 proposed fee categories in FY '97. Application fees will be increased from \$50 to \$75 and temporary permit fees will be increased from \$25 to \$50 resulting in an approximate gross increase of \$1,175 annually. In addition an increase in annual renewal fees from \$50 to \$65 will result in an approximate gross increase of \$3,300. The overall fee change results in a net increase of \$3,580. When combining the restructuring with the fee changes the overall increase is \$5,840. Additional expenditures of \$1,447 will result in a \$4,343 increase to the ending balance for FY '97. If current renewal rates, applicant rates and expenditures are generally stable, these modest changes would result in a financially solid operating program.

It is worthwhile to note that approximately 45% of the additional revenues are generated from 1 time application and testing fees rather than annual renewal fees. This restructuring allows the Board to generate necessary income with only a minimal annual increase.

The major changes addressed by the Board of Examiners more completely define and regulate the profession of dispensing. The changes include a required hearing test, increased minimum education for licensure and completion of a standard training program prior to examination. While it is felt that the majority of applicants, sponsors, and licensees currently function according to the proposed changes, these changes will mandate a specific hearing assessment and training program and will allow the Board to more adequately address issues of consumer protection. Other Board changes also address consumer protection regarding to safeguards in testing and retesting, previous licensure status, and reciprocity when failure, denial, suspension or revocation is a part of recent applicant history.

In general the changes will bring the statutes up to date in regard to language, will allow the Board to operate at fiscally sound levels and will upgrade training and supervision along with other areas important in relation to consumer protection.

ANTICIPATED CHANGE IN REVENUE AND EXPENSES DUE TO RESTRUCTURING

New fees for testing	+ \$2,125	(25 full at \$85 - \$35 written + \$50 practical)
Reexamination fees	+ \$700	(6 repeat exams written & practical exam + 4 written exams)
GROSS INCREASE	<u>\$2,825</u>	
NET INCREASE (80%)	<u>\$2,260</u>	
Reexamination expense	- \$500	(additional cost to cover exam expense)
Additional secretarial expense	- \$997	(processing of applicant training program forms)
NET CHANGE	+ <u>\$763</u>	

ANTICIPATED FEE INCREASES FY'97

Application fee increase from \$50 to \$75	=	\$675
Temporary license fee from \$25 to \$50	=	\$500
Renewal fee increase from \$50 to \$65	=	\$3,300
GROSS ANNUAL FEE INCREASE		<u>\$4,475</u>
NET INCREASE (80%)		<u>\$3,580</u>

ACTUAL AND PROJECTED BALANCES

	Beginning Balance	Revenues	Expenses	Ending Balance
1994	\$22,978	\$12,813	\$15,241	\$20,550
1995	\$20,550	\$12,438	\$15,416	\$17,572
1996	\$17,572	\$13,540	\$17,810	\$13,302
1997	\$13,302	\$13,540	\$18,116	\$8,726

PROJECTED BALANCES WITH RESTRUCTURING OF APPLICATION/EXAMINATION  
PROCESS

	Beginning Balance	Revenues	Expenses	Ending Balance
1997	\$13,302	\$15,800	\$19,613	\$9,489

PROJECTED BALANCES WITH RESTRUCTURING OF APPLICATION/EXAMINATION  
PROCESS AND INCREASE IN THREE FEE CATEGORIES

	Beginning Balance	Revenues	Expenses	Ending Balance
1997	\$13,302	\$19,380	\$19,613	\$13,069



SUMMARY OF HEARING AID EXAMINERS AMENDMENTS

(Exclusive of technical language changes or changes pursuant to KOMA or KAPA)

- 74-5802 Dispensing members required to be member of Kansas Hearing Healthcare Association, not state and national hearing aid associations (page 1).
- Adds non dispensing members cannot be related to current/previous dispensers (page 1).
- 74-5803 Increases required annual meetings from 1 to 2 (page 2).
- 74-5804 Adds ability to deny a license; we can currently revoke or suspend (page 2).
- 74-5806 Eliminates requirement of annual yearbook (page 3).
- 74-5807 Adds definitions of hearing aid specialist, applicant, temporary permit, sponsor, supervised training (pages 5 and 6).
- New Section 8a Requires hearing assessment using procedures currently in use; includes provision for otologic conditions for which prepurchase medical evaluation shall be required as set forth by FDA hearing aid guidelines; requires same hearing assessment be provided for mail order purchase (pages 6 and 7).
- 74-5809 Requires maintenance of purchase records for 3 years. (page 8)
- 74-5810a Increases fee structure which has been at statutory limits for over 5 years and for which the budget department has requested increases (page 10).
- Adds new fee categories to reflect revision of temporary training program (page 10).
- 74-5811 Allows non-resident to take licensure examination which is currently limited to Kansas residents (page 10).
- Raises age requirements to be licensed from 18 to 21 (page 10).

Prohibits one who has had a license denied, suspended or revoked in another state within the past 3 years from sitting for Kansas examination; requires that any currently held hearing aid license be in good standing (pages 10 and 11).

74-5812 Requires that a photo identification be presented to allow entrance to licensure examination (page 11).

Allows persons who can establish certain previous licensure and dispensing history to be immediately eligible for examination (page 11).

Requires those who cannot establish above qualifications to apply for temporary permit (pages 11 and 12).

Requires applicants to complete specified training course as set forth by the board (pages 11 and 12).

Adjusts temporary permits, renewals, etc. to be in accordance with new training program (pages 12 and 13).

Adds provision for sponsor (trainer) to have been actively fitting and dispensing for at least three years. (page 12)

74-5814 Allows review of reciprocal applicant's examination grades and qualifications set forth in 74-5811.

Prohibits a person who has failed the Kansas examination during the preceding year from obtaining a license by reciprocity (page 15).

74-5818 Changes unethical conduct to willful or repeated unethical conduct. (page 17)

74-5821 Clarifies continuing education to 10 hours approved by the board (page 18).

74-5823 Removes specific misdemeanor penalties and fines for violations and changes to class C misdemeanor. (page 19)



M. DAY KAUFMANN  
Executive Secretary

# KANSAS HEARING AID ASSOCIATION, INC.

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## EX-OFFICIO

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Testimony Pertaining To Senate Bill 534 Given Before the Senate Public Health and Welfare Committee On February 15, 1996

Madam Chairman and Members of the Committee:

My name is Day Kaufmann and I am here to represent the Kansas Hearing Aid Association, Inc., an association of hearing aid specialists and audiologists that test for and fit hearing instruments.

The proposed Senate Bill 534 has been carefully examined and we not only support the changes that are outlined, but commend the Licensing Board for their recommendations which we feel will correct certain portions of the law to bring it into conformity with today's requirements as well as provide for better consumer protection.

We respectfully encourage this committee to act favorably on Senate Bill 534.

Thank you.

M. Day Kaufmann  
Executive Secretary

Senate Public Health and Welfare  
Date: 2-15-96  
Attachment No. 3

February 15, 1996

**Testimony to Senate Committee on Public Health and Welfare  
Senator Sandy Praeger, Chairperson**

**RE: Senate Bill #534**

Senator Praeger and Senate Committee Members,

My name is Diane Hall and I have been a speech-language pathologist for 25 years. I am currently president-elect of the Kansas Speech and Hearing Association which is an organization of over 1000 speech-language pathologists and audiologists in the state of Kansas. I am here today primarily representing the audiology members.

I am concerned about the potential ramification of Senate Bill #534. I attended a meeting on January 4, 1996 comprised of members of the Board of Hearing Aid Examiners and audiologists and felt the hearing aid dealers did not represent this bill in good faith. We were told it was a clean-up bill when it directly documents changes that could seriously affect consumers and audiologists.

I want to discuss three points:

1. Over 50% of the licensees affected by this bill are audiologists. However, audiologists were not included in the drafting of this bill. The bill does not allow for adequate representation on the Board proportionate to the percentage of audiology licensees. Yet, this Board of Hearing Aid Examiners exhibits tremendous control over anyone licensed to dispense hearing aids.
2. In the packets you received, you will find a copy delineating the disparity in the list of qualifications and academic and practicum requirements between audiologists and hearing aid dealers. This bill attempts to upgrade the hearing aid dealers' profession which is admirable but to allow anyone a temporary license for 18 months with no provisions for competency or supervision, to me, fails to address consumer protection.
3. Even though tympanometry is fairly easy to learn to administer, the interpretation takes a skilled professional who can assess subtle nuances in the test results that can potentially be life threatening if not detected. This ability takes many hours of academic and clinical preparation. Senate Bill #534 also states that if the person is difficult to test, audiometric tests may be excluded with documentation maintained for 3 years but does not require referral to physicians or audiologists. This practice concerns me a great deal. Audiologists are trained to deal with difficult to test persons from birth to the elderly. My nephew is deaf and was difficult to test at one and one half years of age but an audiologist was able to test and fit him with appropriate amplification at that age. He has been followed by competent audiologists since then and is now 24 years old, a graduate of Washburn University, employed in a good job for five years and was the first deaf person to actually serve on a jury in Shawnee County using the latest technology.

Senate Public Health and Welfare  
Date: 2-15-96  
Attachment No. 4

Senate Bill #534  
Diane Hall's Testimony  
Page 2 of 2

On behalf of the Kansas Speech and Hearing Association, I extend an offer to the Board of Hearing Aid Examiners to work together with us to address the issues that are of concern for audiologists. **Clearly Senate Bill #534 goes beyond mere clean-up and requires further study.**

Thank you for your time today and I will attempt to answer any questions.

Diane B. Hall, M.A., CCC-SP  
Speech Pathologist

**TESTIMONY OF**  
**JAMES A. WISE, PH.D., PRESIDENT**  
**KANSAS SPEECH-LANGUAGE-HEARING ASSOC.**  
**ON SENATE BILL NO. 534**

**FEBRUARY, 1996**

Good Afternoon, Senator Praeger and Committee Members:

I am Dr. James A. Wise, President of the Kansas Speech-Language-Hearing Association (KSHA) and president of Associated Audiologists, an audiology private practice in Olathe, Kansas. In addition, I am also the chairman of the Kansas Commission for the Deaf and Hard of Hearing. KSHA is the state affiliation of the American Speech-Language-Hearing Association which is the professional, scientific and accrediting association for almost 1,000 speech-language pathologists and audiologists in Kansas. Approximately half of our membership provide services in educational settings such as elementary, secondary and private schools and state-operated programs. The other half render services in health care settings including private practice and hospitals. KSHA appreciates the opportunity to testify before this committee regarding Senate Bill No. 534, an act relating to hearing aids.

Senator Praeger and members, KSHA goes on record opposing major portions of Senate Bill No. 534 for the following reasons.

1. Audiologists comprise almost 50% of the licensed members represented by the Board of Hearing Aid Examiners and have had no solicited input into these changes. The Kansas Speech-Language-Hearing Association was told that the changes in Senate Bill No. 534 were minor housekeeping changes, however, as can be seen, they go far beyond any minor technical changes.
2. The proposed changes are far reaching that include changes in scope of practice for hearing aid dealers. Audiologists, whose profession places the highest premium on educational and

clinical preparation for entry into the field, and whose qualifications necessary to practice are exhaustive, specifically oppose recommended changes that include tympanometry for which hearing aid dealers have no formal training.

3. KSHA disagrees with a restriction of board status which is discriminatory in requiring membership in a hearing health care association.
4. KSHA also disagrees with any elimination of limiting board meetings to be open for public inspection.
5. KSHA is also opposed to the significant fee increases because duplicate licensure for audiologists creates increasing costs for both audiologists and, ultimately, the consumer. The issue of duplicate licensure is in and of itself another issue.
6. KSHA opposes the provision that graduates of a two-year master's degree in audiology, who are entering their clinical fellowship year, must take a training program that is not specifically spelled out prior to taking the written and practical examination for hearing aid dispensing. This is a ridiculous requirement for graduates who have completed a rigorous educational and practical program.
7. Finally, KSHA has major opposition to the proposed changes outlined in Section VIII, Paragraph C. This provision would virtually allow any hearing instrument specialist the ability to fit an individual with a mental or physical condition or



disability who cannot respond appropriately to conventional testing. Audiologists are the trained specialist in hearing assessment, testing, counseling and rehabilitation. We are trained to assess the difficult to test patient. Allowing this provision is simply a disservice to consumers and poor hearing health care. I, personally, have a son who has Down Syndrome who could not be tested by conventional means. As a parent, I expect state-of-the-art assessment, in addition to proper rehabilitation.

Senator Praeger, the field of audiology has seen tremendous growth due to significant changes in technology, research, and education. It is paramount that we keep up with the times to be consistent with contemporary practice that ensures full protection of consumers. Further study of this bill, along with recommended input from the majority of dispensing audiologists across the state would certainly be appropriate.

TESTIMONY TO SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE  
RE: SENATE BILL 534

Steven E. Press, Ph.D., CCC-A

February 15, 1996

Senator Sandy Praeger and Committee Members

1. **Having it both ways.** In arguing their opposition to House Bill 2689, hearing aid dealers take the position that our two professions are so different that someone like me with a Ph.D. and 25 years' experience in various aspects of audiology must have a license from them to practice one aspect of audiology, namely hearing aid dispensing. In this Senate Bill, they take the position that they are enough like us in training and experience that they can include things like tympanometry within their scope of practice. I do recognize why they would want to widen their scope of practice, but changing the law has no magical power to confer training or expertise. After all, there is some risk, albeit small, in performing tympanometry, and greater risk in misinterpreting tympanometric results.

2. **Training.** From what I can observe, there is no training and certainly no method of evaluation of capabilities in various areas of audiology including tympanometry. As a matter of fact, several months ago, I received a survey from a Community College in the Kansas City, Missouri, Metropolitan system attempting to determine if sufficient need existed in the community to establish a Junior College program to train hearing instrument specialists. This survey also solicited people willing to participate in teaching any courses that may be established. They sent me a follow up thanking me for my offer to teach, but said that there was insufficient interest generated at this time to justify starting such a program. One wonders if the promise to upgrade education is sincere, or if it is just a quick response to the current environment.

3. **Consumer interests.** Hearing aid specialists have been successful entrepreneurs in this country since at least the end of World War II when improved technology in electronics made miniature amplifiers widely available. They should know that the marketplace rules.

Thirty years ago, almost no hearing aids were dispensed by people with graduate degrees. An ever increasing proportion of hearing aids dispensed in the United States is dispensed by graduate audiologists. If hearing aid dispensers are concerned about losing market share, they should respond to the demands of the market and give the consumers what they are getting from audiologists. This means a greatly increased level of service. Changing laws will not do that. Only rigorous training and education targeted specifically at the desired skills will do that. There are no quick fixes here.

Senate Public Health & Welfare

Date: 2-15-96

Attachment No. 6

4. **Conclusions.** Let's not be naive. A good number of hearing aid specialists are very skilled at what they do. But, audiologists and hearing aid dealers are members of two distinct professions with different roots, education, training, and expertise.

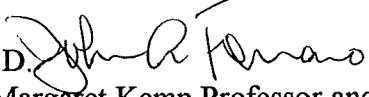
If a client is not able to understand or cooperate with a hearing aid dealer's standard tests, a hearing aid should not be fit. A referral should be made. There are procedures available to accommodate the situation.

If a client with a unilateral or asymmetric hearing loss returns to repurchase a hearing aid after medical clearance has been obtained for a previous purchase, a referral should be made even if there has been no change in thresholds. A change in speech discrimination ability might indicate the presence of an acoustic tumor. I have seen it happen.

Only an audiologist is qualified to identify and deal with the audiometric intricacies of these circumstances. Thank you.

February 15, 1996

**TO:** Committee on Public Health and Welfare

**FROM:** John A. Ferraro, Ph.D.   
Carolyn Doughty - Margaret Kemp Professor and Chairman  
Hearing and Speech Department, University of Kansas Medical Center  
Co-Director  
University of Kansas Intercampus Program in Communicative Disorders

**RE:** Senate Bill No. 534

This is to urge you to vote **against** Senate Bill No. 534 for the reasons presented by the Kansas Speech-Language-Hearing Association. In addition, I call your attention to **Section 11.K.S.A. 74-5810** of the Bill, which would prohibit our state-supported, university programs in Audiology from selling hearing aids or accessories.

The fitting and dispensing of hearing aids is an important aspect of the profession of Audiology and certainly within the scope of practice of certified/licensed audiologists. As such, it is incumbent upon our academic programs to provide instructional and practical experiences to our students in this area - using a "real-world" model. We would be unable to do this if Senate Bill No. 534 were passed.

In addition, the aforementioned Section presents a blatant restriction of trade for our University clinics. In these days of financial restraint, our state-supported institutions are increasingly being called upon to be more self-supportive. The sale of hearing aids in our clinics allows us to do this by providing needed revenue for the development and maintenance of our clinical training programs. This revenue cannot be replaced from our current state budgets, nor is likely to be available from future budgets.

Thank you very much for your attention to the above concerns.

Senate Public Health & Welfare  
Date: 2-15-96  
Attachment No. 7

## SENATE BILL No. 628

By Committee on Public Health and Welfare

2-6

9 AN ACT concerning assistive devices used for major life activities; war-  
10 ranties for such devices; rights of consumer to return such devices;  
11 refunds and allowances; providing for arbitration of disputes in certain  
12 circumstances.

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. As used in this act:

16 (a) "Assistive device" means any device, including a demonstrator,  
17 that a consumer purchases or accepts transfer of in this state which is  
18 used for a major life activity which includes, but is not limited to, manual  
19 wheelchairs, motorized wheelchairs, motorized scooters and other aides  
20 that enhance the mobility of an individual; hearing aide, telephone com-  
21 munication devices for the deaf (TTY), assistive listening devices and  
22 other aides that enhance an individual's ability to hear; voice synthesized  
23 computer modules, optical scanners, talking software, braille printers and  
24 other devices that enhance a sight impaired individual's ability to com-  
25 municate; and any other assistive device that enables a person with a  
26 disability to communicate, see, hear or maneuver.

27 (b) "Assistive device dealer" means a person who is in the business  
28 of selling assistive devices.

29 (c) "Assistive device lessor" means a person who leases an assistive  
30 device to a consumer, or who holds the lessor's rights, under a written  
31 lease.

32 (d) "Collateral costs" means expenses incurred by a consumer in con-  
33 nection with the repair of a nonconformity, including the costs of obtain-  
34 ing an alternative assistive device.

35 (e) "Consumer" means any of the following:

36 (1) The purchaser of an assistive device, if the assistive device was  
37 purchased from an assistive device dealer or manufacturer for purposes  
38 other than resale;

39 (2) a person to whom the assistive device is transferred for purposes  
40 other than resale, if the transfer occurs before the expiration of an express  
41 warranty applicable to the assistive device;

42 (3) a person who may enforce the warranty;

43 (4) a person who leases an assistive device from an assistive device

Senate Public Health and Welfare  
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lessor under a written lease.

2 (f) "Demonstrator" means an assistive device used primarily for the  
3 purpose of demonstration to the public.

4 (g) "Early termination cost" means any expense or obligation that an  
5 assistive device lessor incurs as a result of both the termination of a writ-  
6 ten lease before the termination date set forth in that lease and the return  
7 of an assistive device to a manufacturer pursuant to this section. Early  
8 termination cost includes a penalty for prepayment under a finance ar-  
9 rangement.

10 (h) "Early termination saving" means any expense or obligation that  
11 an assistive device lessor avoids as a result of both the termination of a  
12 written lease before that termination date set forth in that lease and the  
13 return of an assistive device to a manufacturer pursuant to this section.  
14 Early termination saving includes an interest charge that the assistive  
15 device lessor would have paid to finance the assistive device or, if the  
16 assistive device lessor does not finance the assistive device, the difference  
17 between the total amount for which the lease obligates the consumer  
18 during the period of the lease term remaining after the early termination  
19 and the present value of that amount at the date of the early termination.

20 (i) "Manufacturer" means a person who manufactures or assembles  
21 assistive devices and agents of that person, including an importer, a dis-  
22 tributor, factory branch, distributor branch and any warrantors of the  
23 manufacturer's assistive device, but does not include an assistive device  
24 dealer.

25 (j) "Nonconformity" means a condition or defect that substantially  
26 impairs the use, value or safety of an assistive device, and that is covered  
27 by an express warranty applicable to the assistive device or to a component  
28 of the assistive device, but does not include a condition or defect that is  
29 the result of abuse, neglect or unauthorized modification or [alteration]

alteration

30 of the assistive device by a consumer.  
31 (k) "Reasonable attempt to repair" means within the terms of an ex-  
32 press warranty applicable to a new assistive device:

33 (1) Any nonconformity within the warranty that is either subject to  
34 repair by the manufacturer, assistive device lessor or any of the manu-  
35 facturer's authorized assistive device dealers, for at least four times and  
36 a nonconformity continues;

37 (2) the assistive device is out of service for an aggregate of at least 30  
38 cumulative days because of warranty nonconformity.

39 Sec. 2. (a) A manufacturer who sells an assistive device to a con-  
40 sumer, either directly or through an assistive device dealer, shall furnish  
the consumer with an express warranty for the assistive device. The du-  
41 ration of the express warranty shall be not less than one year after first  
42 delivery of the assistive device to the consumer. In the absence of an  
43

express warranty from the manufacturer, the manufacturer shall be deemed to have expressly warranted to the consumer of an assistive device that, for a period of one year from the date of first delivery to the consumer, the assistive device will be free from any condition or defect which substantially impairs the [value] of the assistive device to the consumer.

use or the value, or both,

(b) If a new assistive device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the assistive device lessor or any of the manufacturer's authorized assistive device dealers and makes the assistive device available for repair before one year after return delivery of the assistive device to a consumer, the nonconformity shall be repaired at no charge to the consumer.

(c) If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out the requirement set forth under subsection (d).

(d) If, after a reasonable attempt to repair, the nonconformity is not repaired, then at the direction of a consumer described under paragraph (1), (2), or (3) of subsection (e) of section 1 and amendments thereto, the manufacturer shall do one of the following:

(1) Accept return of the assistive device and replace the assistive device with a comparable new assistive device and refund any collateral costs;

(2) accept return of the assistive device and refund to the consumer and to any holder of a perfected security interest in the consumer's assistive device, as their interest may appear, the full purchase price plus any finance charge amount paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use. A reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the assistive device by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the assistive device was used before the consumer first reported the nonconformity to the assistive device dealer;

(3) with respect to a consumer described under paragraph (4) of subsection (e) of section 1 and amendments thereto, accept return of the assistive device, refund to the assistive device lessor and to any holder of a perfected security interest in the assistive device, as their interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use.

(e) The current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the assistive dealer's early termination costs and the value of the assistive device at the lease expiration

device

8-4

1 date if the lease sets forth that value, less the assistive device lessor's early  
2 termination savings.

3 (f) A reasonable allowance for use may not exceed the amount ob-  
4 tained by multiplying the total amount for which the written lease obli-  
5 gates the consumer by a fraction, the denominator of which is 1,825 and  
6 the numerator of which is a number of days that the consumer used the  
7 assistive device before first reporting the nonconformity to the manufac-  
8 turer, assistive device lessor or assistive device dealer.

9 Sec. 3. (a) To receive a comparable new assistive device or a refund  
10 due under subsection (d) of section 2 and amendments thereto, a con-  
11 sumer shall offer to the manufacturer of the assistive device having the  
12 nonconformity to transfer possession of that assistive device to that man-  
13 ufacturer. No later than 30 days after that offer, the manufacturer shall  
14 provide the consumer with the comparable assistive device or refund.  
15 When the manufacturer provides the new assistive device or refund, the  
16 consumer shall return the assistive device having the nonconformity to  
17 the manufacturer, along with any endorsements necessary to transfer real  
18 possession to the manufacturer.

19 (b) To receive a refund due under paragraph (3) of subsection (d) of  
20 section 2 and amendments thereto, a consumer described under para-  
21 graph (4) of subsection (e) of section 1 and amendments thereto shall  
22 offer to return the assistive device having the nonconformity to its man-  
23 ufacturer. No later than 30 days after that offer, the manufacturer shall  
24 provide the refund to the consumer. When the manufacturer provides  
25 the refund, the consumer shall return to the manufacturer the assistive  
26 device having the nonconformity.

27 (c) To receive a refund due under paragraph (3) of subsection (d) of  
28 section 2 and amendments thereto, an assistive device lessor shall offer  
29 to transfer possession of the assistive device having the nonconformity to  
30 its manufacturer. No later than 30 days after that offer, the manufacturer  
31 shall provide the refund to the assistive device lessor. When the manu-  
32 facturer provides the refund, the assistive device lessor shall provide to  
33 the manufacturer any endorsements necessary to transfer legal possession  
34 to the manufacturer.

35 Sec. 4. (a) No person shall enforce the lease against the consumer  
36 after the consumer receives a refund due under paragraph (3) of subsec-  
37 tion (d) of section 2 and amendments thereto.

38 (b) No assistive device returned by a consumer or assistive device  
39 lessor in this state, or by a consumer or assistive device lessor in another  
state under a similar law of that state, may be sold or leased again in this  
state unless full disclosure of the reasons for return is made to any pro-  
40 spective buyer of lessee.

41 Sec. 5. (a) Each consumer shall have the option of submitting any

written

or



1 dispute arising under this act to arbitration. Upon application of the con-  
2 sumer all manufactures shall submit to such arbitration.

3 (b) Such arbitration shall be conducted in accordance with the pro-  
4 visions of the uniform arbitration act (K.S.A. 5-401 *et seq.* and amend-  
5 ments thereto). Any agreement to arbitrate entered into under this sec-  
6 tion shall ensure the personal objectivity of the arbitrators and the right  
7 of each party to present its case, to be in attendance during any presen-  
8 tation made by the other party and to rebut or refute such presentation.

9 Sec. 6. (a) This act shall not be construed to limit rights or remedies  
10 available to a consumer under any other law.

11 (b) Any waiver by a consumer of rights under this act is void.

12 (c) In addition to pursuing any other remedy, a consumer may bring  
13 an action to recover for any damages caused by a violation of this act. The  
14 court shall award a consumer who prevails in such an action twice the  
15 amount of any pecuniary loss, together with cost, disbursements and rea-  
16 sonable attorney fees and any equitable relief that the court determines  
17 is appropriate.

18 Sec. 7. This act shall take effect and be in force from and after its  
19 publication in the statute book.

Sec. 7. (a) This act shall be part of  
and supplemental to the Kansas consumer  
protection act.

(b) Any failure to comply with the  
provisions or requirements, or both, of this  
act is a deceptive act or practice within the  
meaning of K.S.A. 50-626 and amendments  
thereto or an unconscionable act or practice  
within the meaning of K.S.A. 50-627 and  
amendments thereto.

(c) The attorney general shall have  
jurisdiction to enforce this section in the  
event the consumer elects not to pursue  
violations of this act through arbitration or  
private action.

(d) Nothing in this act shall in any way  
limit or affect the rights or remedies which  
are otherwise available to a consumer under  
the uniform consumer credit code, or to any  
person under the uniform commercial code or  
to any person under this or any other law,  
statutory or otherwise.