

A Bill for an Act Relating to the Regulation of Hearing Aid Dealers and Fitters.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
HEARING AID DEALERS AND FITTERS**

Section -1. Definitions. As used in this chapter, unless the context otherwise requires:

- (a) ‘Board’ means the board of hearing aid dealers and fitters.
- (b) ‘Department’ means the department of regulatory agencies.
- (c) ‘Hearing aid’ means any wearable instrument or device and any parts, attachments, or accessories, including earmold, but excluding batteries and cords, designed or offered for the purpose of aiding or compensating impaired human hearing.
- (d) ‘License’ means a license issued under this chapter.
- (e) ‘Practice of dealing and fitting of hearing aids’ means the measurement of human hearing by an audiometer or by any other means solely for the purpose of making selections, adaptations, or sales of hearing aids or the manufacture of impressions for earmolds, and, at the request of a physician or a member of a profession related to the practice of medicine and surgery, the administration of audiograms for use in consultation with the hard-of-hearing.
- (f) ‘Sale’ means any transfer of title, interest, or possession except transactions with distributors or dealers.
- (g) ‘Temporary permit’ means the permit issued while an applicant for a license is in training to become a licensed hearing aid dealer and fitter.

Section -2. License required. It shall be unlawful for any person not licensed under this chapter to engage in the sale or practice of dealing and fitting of hearing aids or to use any sign, card, or device to indicate that he is licensed and registered.

Any person wishing to obtain a license, or a permit or certificate of endorsement shall make application to the board and shall furnish to the board:

(a) Satisfactory evidence of good moral character.

(b) Satisfactory proof that he is a graduate of a high school approved and recognized by the board.

(c) Satisfactory proof that he has fulfilled all of the requirements of the board.

An applicant shall be required to pass a written and practical examination.

For a period of six months after the effective date of this Act, an applicant shall be issued a license without examination; provided that he has been principally engaged in the State as a hearing aid dealer and fitter for a total period of not less than two years within a period of five years immediately prior to the effective date of this chapter.

Section -3. Appointment, qualifications, term. There is hereby established a board within the department of regulatory agencies which shall consist of seven members who shall be appointed by the governor in a manner prescribed in section 26-34: of the seven members, there shall be at least one hearing aid dealer and fitter, one otolaryngologist, and one audiologist. Each hearing aid dealer and fitter on the board shall have at least five years of experience and shall hold a valid license as a hearing aid dealer and fitter; provided that in the membership of the first board, the hearing aid dealers and fitters shall have, to qualify for appointment, at least five years of experience and possess all the qualifications provided in section -2.

All members of the board shall be residents of the State. The board shall elect a chairman, and secretary-treasurer from the members of the board.

Section -4. Meetings of the board. The board shall meet not less than once each year at a time and place as determined by the board. The board shall also meet at such other times and places as may be necessary or requested by the department.

Section -5. Powers and duties of the board. The powers and duties of the board are to:

(1) Adopt rules and regulations in accordance with chapter 91 to carry out the purposes of this chapter.

(2) Develop standards for licensure.

(3) Prepare and administer examinations.

(4) Issue, renew, suspend, and revoke licenses.

(5) Register applicants and holders of a license, permit and certificate of endorsement.

(6) Investigate and conduct hearings regarding any violation of this chapter and any rules and regulations of the board.

(7) Maintain a record of its proceedings.

(8) Do all things necessary to carry out the functions, powers and duties set forth in the chapter.

Section -6. Scope of examination. The examination shall include:

(a) Written tests of knowledge in the following subjects:

(1) Basic Physics of sound;

- (2) Anatomy and physiology of the ear; and
- (3) Function of hearing aids.
- (b) Practical tests of proficiency in the following techniques:
 - (1) Pure tone audiometry, including air and bone conduction testing;
 - (2) Live voice or recorded voice speech audiometry, including speech reception threshold and speech discrimination testing;
 - (3) Masking when indicated;
 - (4) Recording and evaluation of audiometry to determine proper selection and adaptation of a hearing aid; and
 - (5) Taking earmold impressions.

Section -7. Issuance of license. The board shall register each applicant without discrimination or examination who satisfactorily meets the experience requirements or who passes an examination as provided in section -2. Upon the payment of \$5, the board shall issue to the applicant a license. The license shall be valid until January 30 of the year following the year in which the license is issued.

Section -8. Annual renewal of license; fees; effect of failure to renew. Each person who engages in the fitting and sale of hearing aids shall on or before January 30, pay to the department an annual fee of \$5, for renewal of his license and shall keep the certificate conspicuously posted in his office or place of business at all times. Where more than one office is operated by the licensee, duplicate certificates shall be issued by the department for posting at each location. A thirty-day grace period shall be allowed after January 30, during which time licenses may be renewed upon payment of \$10 to the department. After expiration of the grace period, the department may renew such certificates upon payment of \$15 to the department. No person who applies for renewal, whose license has expired, shall be required to submit to any examination as a condition to renewal; provided that the renewal application is made within two years from the date of expiration.

Section -9. Temporary permit. (a) Upon receiving an application for a temporary permit a payment of \$5, the board may issue a temporary permit which shall entitle the applicant to engage in the fitting and sale of hearing aids for a period of one year. A waiting period is not required. A person issued a temporary permit shall be under the direct supervision and training of a person duly licensed under this chapter.

(b) If a person who holds a temporary permit under this section has not passed the examination within one year from the date of issuance, the temporary permit may be renewed or reissued once upon payment of a \$5 fee.

Section -10. Certificate by endorsement. Whenever the board determines that another state or jurisdiction has a program with requirements equivalent to or higher than those in effect under this chapter to fit and sell hearing aids, the board may issue certificates of endorsement to applicants who hold current, unsuspended, and unrevoked certificates or licenses to fit and sell hearing aids in another state or jurisdiction. Applicants for certificate of endorsement shall not be required to pass an examination as provided in section

-2. The holder of a certificate of endorsement shall be subject to the same provisions applying to a licensee regarding registration, fees, and grounds for renewal, suspension and revocation of a license.

Section -11. Notice to board of place of business; notice to holders of license. (a) Any person who holds a license, certificate of endorsement, or temporary permit shall notify the board in writing of the address of the place where he engages or intends to engage in the fitting or the sale of hearing aids.

(b) The board shall keep a record of the place of business:

(c) Any notice required to be given by the board to the person shall be mailed to him by certified mail at the address of the last place of business which he has notified the board.

Section -12. Receipt required to be furnished to a person supplied with hearing aid. (a) Any person who practices the fitting and sale of hearing aids shall deliver to each purchaser a receipt containing the licensee's signature, his business address, and the number of his certificate, together with specifications as to the make and model of the hearing aid furnished and the terms of the sale. If hearing aid which is not new is sold, the receipt and the container thereof shall be clearly marked as 'used' or 'reconditioned', with the terms of guarantee, if any.

(b) The receipt shall bear, a type no smaller than the largest that is used in the body copy portion, the following: the purchaser has been advised at the outset of his relationship with the hearing aid dealer and fitter that any examination or representation made by a hearing aid dealer and fitter in connection with the fitting and selling of this hearing aid is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this State and shall not be considered as medical opinion or advice.

(c) Any person engaged in the fitting and selling of hearing aids shall when dealing with a child ten years of age or under, ascertain whether the child has been examined by an otolaryngologist within ninety days prior to the fitting and the recommendation shall be noted on the receipt.

Section -13. Grounds for disciplinary action. The board may deny, revoke, or suspend any license, certificate of endorsement, or temporary permit issued under this chapter or otherwise discipline upon proof that a person has:

(1) Been convicted of a felony, or a misdemeanor involving moral turpitude;

(2) Obtained a license, certificate of endorsement or temporary permit by fraud or deceit;

(3) Obtained a fee or the making of a sale by fraud or misrepresentation;

(4) Employed with knowledge, directly or indirectly, any suspended or unregistered person to perform any work covered by this chapter;

(5) Applied, caused or promoted for advertising, the use of any matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation which is misleading, deceptive or untruthful;

(6) Advertised a particular model or type of hearing aid for sale which in fact is not immediately available and where it is established that the purpose

was to obtain prospects for the sale of a different model or type;

(7) Represented that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true, or used the words 'doctor', 'clinic' or similar words, abbreviations or symbols related to the medical profession when it is not accurate;

(8) Permitted the use of a license by another;

(9) Advertised a product or used a manufacturer's name or trademark which implies a relationship which in fact does not exist;

(10) Given or offered to give, directly or indirectly, money or anything of value to any person who advises another in a professional capacity as an inducement to influence him or have him influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dealer or fitter, or influencing persons to refrain from dealing in the products of competitors;

(11) Engaged in the fitting and selling of hearing aids under a false name or alias with fraudulent intent;

(12) Sold a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids;

(13) Committed gross incompetence or negligence in fitting and selling hearing aids;

(14) Violated any provisions of this chapter and any rules and regulations.

Section -14. Prohibited acts and practices. No person shall:

(1) Sell, barter, offer to sell, barter or transfer or assign a license, certificate of endorsement, or temporary permit;

(2) Purchase or procure by barter a license, certificate of endorsement, or temporary permit with intent to use it as evidence of qualification to practice the fitting and selling of hearing aids;

(3) Alter a license, certificate of endorsement, or temporary permit with fraudulent intent;

(4) Use or attempt to use license, certificate of endorsement, or temporary permit which is invalid because it was purchased, fraudulently obtained, forged or materially altered;

(5) Make a false statement in an application for license, certificate of endorsement, temporary permit, or application for renewal of license.

Section -15. Complaints; disciplinary proceedings. Any person who wishes to make a complaint against a person who has a license, certificate of endorsement, or temporary permit shall file his complaint in writing with the board within one year from the date of the action upon which the complaint is based. If the board determines that the charges made in the complaint are sufficient to warrant a hearing to determine whether the license, certificate of endorsement or temporary permit shall be suspended or revoked, it shall make an order fixing a time and place for a hearing and require the respondent to appear and defend against the complaint. The order shall have annexed

thereto a copy of the complaint. The order and copy of the complaint shall be served upon the respondent at least twenty days before the date set for hearing, either personally or by registered or certified mail sent to the respondent's last known address. Continuances of the hearing date shall be made for good cause. At the hearing the respondent may be represented by counsel. The respondent and the board shall have the right to take depositions in advance of hearing and after service of the complaint, either may compel the attendance of witnesses by subpoenas issued by the board. Either party taking depositions shall give at least five days' written notice to the other party of the time and place of such depositions, and the other party and counsel shall have the right to attend and cross-examine. Appeals from suspension or revocation shall be made pursuant to chapter 91.

Section -16. Subpoenas. The board may issue subpoenas to compel the attendance of witnesses and the production of documentary evidence or the production of any books, papers, or records. If any person subpoenaed as a witness fails or refuses to respond thereto, or refuses to answer questions propounded by a member material to the matter pending before the board, any circuit judge, upon application of the board or any member thereof, may enforce by proper proceeding the attendance and testimony of the witnesses. If any person wilfully testifies falsely under oath before the board or wilfully makes false affidavit in any proceeding before the board, the person shall be charged for perjury and be subject to its penalties.

Section -17. Injunctive relief. The board may apply for an injunction in any court of competent jurisdiction to enjoin any person who has not been issued a license, permit, or certificate of endorsement or whose license, permit, or certificate of endorsement has been suspended or revoked or has expired from practicing in the dealing and fitting of hearing aids; and, upon the filing of a verified petition in the court, the court or any judge thereof, if satisfied by affidavit or otherwise, may issue a temporary injunction, without notice or bond, enjoining the defendant from further practicing in the dealing and fitting of hearing aids. A copy of the verified complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in other civil cases. If it is established that the defendant has been or is practicing dealing and fitting of hearing aids without having been issued a license, permit or certificate of endorsement or after it has been suspended or revoked or has expired, the court or any judge thereof may enter a decree enjoining the defendant from further practicing in the dealing and fitting of hearing aids. In case of violation of any injunction issued under this section, the court may summarily try and punish the offender for contempt of court. The injunction proceeding shall be in addition to, and not in lieu of all penalties and other remedies provided in this chapter.

Section -18. Persons and practices not affected. This chapter is not intended to: (a) Prohibit any person from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids; provided the person or the organization employing the person does not sell hearing aids or ac-

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cessories.

(b) Prohibit a person in maintaining an established business address from engaging in the business of selling or offering for sale hearing aids at retail without a license, provided that it employs persons licensed under this chapter responsible for the fitting and direct sale of such products; provided also that there shall be filed annually with the board a list of all licensed hearing aid dealers and fitters directly or indirectly employed.

(c) Apply to a person who is a physician licensed to practice in Hawaii.

Section -19. Severability. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are severable.

Section -20. Penalties. Any person who violates this chapter shall be fined not more than \$500 or imprisoned not more than ninety days, or both."

SECTION 2. This Act shall take effect on July 1, 1970.

(Approved July 14, 1969.)