

ACT 25

H.B. NO. 2053-86

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

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

SECTION 1. Chapter 451A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§451A- Remedies or penalties cumulative. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.”

SECTION 2. Section 451A-2, Hawaii Revised Statutes, is amended to read as follows:

“§451A-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 the person 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)](1) Satisfactory proof that the person is a graduate of a high school approved and recognized by the board[.]; and

[(b)](2) Satisfactory proof that the person 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 July 1, 1970, an applicant shall be issued a license without examination; provided that the applicant 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 July 1, 1970.]”

SECTION 3. Section 451A-3, Hawaii Revised Statutes, is amended to read as follows:

“[[]§451A-3[[]] Appointment, qualifications, term. There is hereby established a board within the department of commerce and consumer affairs 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 451A-2.

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

SECTION 4. Section 451A-13, Hawaii Revised Statutes, is amended to read as follows:

“§451A-13 [Grounds for disciplinary action.] Discipline; grounds; proceeding; hearings. (a) The board may deny, revoke, or suspend any license, certificate of endorsement, or temporary permit issued under this chapter and fine or otherwise discipline a licensee upon proof that [a] the person has:

- (1) Obtained a license, certificate of endorsement or temporary permit by fraud or deceit;
- (2) Obtained a fee or the making of a sale by fraud or misrepresentation;
- (3) Employed with knowledge, directly or indirectly, any suspended or unregistered person to perform any work covered by this chapter;

- (4) 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;
- (5) 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;
- (6) 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;
- (7) Permitted the use of a license by another;
- (8) Advertised a product or used a manufacturer's name or trademark which implies a relationship which in fact does not exist;
- (9) 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;
- (10) Engaged in the fitting and selling of hearing aids under a false name or alias with fraudulent intent;
- (11) Sold a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids;
- (12) Committed gross incompetence or negligence in fitting and selling hearing aids;
- (13) Violated any provisions of this chapter and any rules [and regulations.];
- (14) Submitted to or filed with the board any notice, statement, or other document required under this chapter, which is false or untrue or contains any material misstatement of fact; or
- (15) Failed to report to the board any disciplinary action taken against the licensee in another jurisdiction within thirty days after the disciplinary action becomes final.

(b) Any person who wishes to make a complaint against a person who has a license, certificate of endorsement, or temporary permit shall file a complaint in writing with the board within one year from the date of the action upon which the complaint is based.

(c) In any proceedings to impose disciplinary sanctions against a licensee, the board shall give the person concerned notice and an opportunity for hearing in conformity with chapter 91. Appeals from the final order of the board shall be made pursuant to chapter 91.

(d) Any revocation or suspension of a license imposed by the board shall be in accordance with section 92-17(c).

(e) Any fine imposed by the board after a hearing in accordance with chapter 91 shall be no less than \$100 and no more than \$1,000 for each violation."

SECTION 5. Section 451A-15, Hawaii Revised Statutes, is repealed.

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SECTION 6. Section 451A-16, Hawaii Revised Statutes, is repealed.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 8. This Act shall take effect upon its approval.

(Approved April 14, 1986.)

Note

1. Edited pursuant to HRS §23G-16.5.