

ACT 88

S.B. NO. 1523

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

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

SECTION 1. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The board of acupuncture, board of public accountancy, board of barbers, board of cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of professional engineers, architects, surveyors, and landscape architects, [board of hearing aid dealers and fitters,] board of massage therapy, board of medical examiners, motor vehicle industry licensing board, motor vehicle repair industry board, board of examiners in naturopathy, board of nursing, board of examiners of nursing home administrators, board of dispensing opticians, board of examiners in optometry, board of osteopathic examiners, pest control board, board of pharmacy, board of physical therapy, board of psychology, board of private detectives and guards, real estate commission, board of veterinary examiners, board of speech pathology and audiology, and any board, commission, program, or entity created pursuant to or specified by statute in furtherance of the purpose of this section including but not limited to section 26H-4, or chapters 484, 514A, and 514E shall be placed within the department of commerce and consumer affairs for administrative purposes.”

SECTION 2. Section 451A-1, Hawaii Revised Statutes, is amended as follows:

1. By adding the definition of “director” to be appropriately inserted and to read as follows:

““Director” means the director of commerce and consumer affairs.”

2. By deleting the definition of “board”.

[““Board” means the board of hearing aid dealers and fitters.”]

3. By deleting the definition of “temporary permit”.

[““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 3. 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] a license by endorsement shall apply on a form prescribed by the [board] director and shall furnish to the [board:] director:

- (1) Satisfactory proof that the person is a high school graduate [of a high school approved and recognized by the board]; and
- (2) Satisfactory proof that the person has fulfilled all of the requirements [of the board.] for a license.

An applicant shall be required to pass a licensing examination.”

SECTION 4. Section 451A-5, Hawaii Revised Statutes, is amended to read as follows:

“§451A-5 Powers and duties of the [board.] director. In addition to any other powers and duties authorized by law, the powers and duties of the [board] director are to:

- (1) Adopt rules 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) [5] Investigate and conduct hearings regarding any violation of this chapter and any rules [of the board;] adopted by the director;
- [7] Maintain a record of its proceedings;
- (8) [6] Do all things necessary to carry out the functions, powers, and duties set forth in the chapter[;], which may include establishment of an advisory committee; and
- [9] [7] Monitor medical authorizations and waiver records[; and
- (10) Develop policies and procedures, in consultation with the state ethics commission, for handling real or potential conflicts of interest].”

SECTION 5. Section 451A-6, Hawaii Revised Statutes, is amended to read as follows:

“§451A-6 [Scope of the licensing examination. The licensing examination shall assess the applicant’s knowledge of:

- (1) Basic physics of sound;

- (2) Anatomy and physiology of the ear;
- (3) Function of hearing aids;
- (4) Pure tone audiometry, including air and bone conduction testing;
- (5) Live voice or recorded voice speech audiometry, including speech reception threshold and speech discrimination testing;
- (6) Masking when indicated;
- (7) Recording and analyzing test results to determine proper selection of hearing aids; and

(8) Taking earmold impressions.] **Examination.** (a) Every applicant, except those who qualify for a license pursuant to section 451A-10, shall pass an examination to be eligible for licensure. The director shall provide by rules the scope of the examination and the passing score. The director may examine applicants or may contract with a professional testing agency to prepare, administer, and grade the examination.

(b) Every applicant shall pay an examination fee as provided in rules adopted by the director pursuant to chapter 91. Should the director contract with a professional testing agency to prepare, administer, and grade the examination, the examination fee may be paid directly to the testing agency by the examinee.”

SECTION 6. Section 451A-7, Hawaii Revised Statutes, is amended to read as follows:

“**§451A-7 Issuance of license.** The [board] director shall [register] license each applicant [without discrimination or examination] who satisfactorily meets the experience requirements [or] and who passes an examination as provided in section 451A-2. Upon the payment of application, examination, and license fees, the [board] director 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 7. Section 451A-10, Hawaii Revised Statutes, is amended to read as follows:

“[[**§451A-10[] Certificate] License by endorsement.** Whenever the [board] director 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] director may issue [certificates of] licenses by 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] licenses by endorsement shall not be required to pass an examination as provided in section 451A-2. The holder of a [certificate of] license by 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 8. Section 451A-11, Hawaii Revised Statutes, is amended to read as follows:

“[[**§451A-11[]] Notice to [board of place of business; notice to holders of license.] director.** (a) Any person who holds a license[, certificate of endorsement, or temporary permit] shall notify the [board] director in writing of the person’s current mailing and residence address [of the place where the person engages or intends to engage in the fitting or the sale of hearing aids]. It shall be the licensee’s duty to provide written notice of any change of address within thirty days of the change.

[(b) The board shall keep a record of the place of business.]

(c) (b) Any notice required to be given by the [board] director to the person shall be mailed to [the person by certified mail at] the last known address [of the last place of business which the person has notified the board]. Failure to provide the written notice of change of address shall absolve the director from any duty to provide notice of any matter required by law to be provided to the licensee.”

SECTION 9. Section 451A-13, Hawaii Revised Statutes, is amended to read as follows:

“**§451A-13 Discipline; grounds; proceeding; hearings.** (a) In addition to any other actions authorized by law, the [board] director may deny, revoke, or suspend any license[, certificate of endorsement, or temporary permit] issued under this chapter and fine or otherwise discipline a licensee for any cause authorized by law, including but not limited to proof that 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] unlicensed 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 the person or have the person 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;
- (14) Submitted to or filed with the [board] director 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] director 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) (b) Any fine imposed by the [board] director after hearing in accordance with chapter 91 shall be no less than \$100 and no more than \$1,000 for each violation.”

SECTION 10. Section 451A-14, Hawaii Revised Statutes, is amended to read as follows:

“**§451A-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 a 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 a license[, certificate of endorsement, or temporary permit,] or in an application for renewal of a license; and
- (6) Sell hearing aids through “door-to-door sales” as defined in section 481C-1.”

SECTION 11. Section 451A-14.1, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) For the purposes of subsection (a), the hearing aid dealer and fitter may offer persons eighteen years of age or older an opportunity to waive the requirement of a medical examination if the hearing aid dealer and fitter:

- (1) Informs the prospective user that the exercise of the waiver is not in the user’s best health interest;
- (2) Does not in any way actively encourage the prospective user to waive the medical examination; and
- (3) Affords the prospective user the opportunity to sign the following statement:

“I have been advised by _____
(hearing aid dealer and fitter’s name) that the [Board of Hearing Aid Dealers and Fitters] Director of Commerce and Consumer Affairs has determined that my best health interest would be served if I had a medical examination by a physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing aid. I do not wish a medical examination before purchasing a hearing aid.”

(d) Every hearing aid dealer and fitter licensed pursuant to this chapter shall keep a suitable book or file, or a microfilm of the book or file, in which shall be preserved, for a period of not less than five years, every authorization by physicians

or otorhinolaryngologists received pursuant to this section and every statement executed in accordance with subsection (c)(3). The book, file, or microfilm of the authorizations and statements shall at all times be open to inspection by the [board of hearing aid dealers and fitters] director and other law enforcement agencies.”

SECTION 12. Section 451A-17, Hawaii Revised Statutes, is amended to read as follows:

“**[§451A-17] Injunctive relief.** The [board] director 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] the license 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 13. Section 451A-18, Hawaii Revised Statutes, is amended to read as follows:

“**[§451A-18] Persons and practices not affected.** This chapter is not intended to:

- (1) 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 accessories[.];
- (2) 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.]; and
- (3) Apply to a person who is a physician licensed to practice in Hawaii.”

SECTION 14. Section 451A-3, Hawaii Revised Statutes, is repealed.

SECTION 15. Section 451A-9, Hawaii Revised Statutes, is repealed.

SECTION 16. All rules, guidelines, and other material adopted or developed by the board of hearing aid dealers and fitters shall remain in full force and effect until amended or repealed by the department of commerce and consumer affairs pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the board of hearing aid dealers and fitters in those rules, policies, procedures,

guidelines, and other material is amended to refer to the director of commerce and consumer affairs as appropriate.

SECTION 17. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 18. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 19. This Act shall take effect upon its approval.

(Approved April 29, 1997.)

Note

1. Edited pursuant to HRS §23G-16.5.