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HOUSE BILL 1500

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State of Washington                      53rd Legislature                      1993 Regular Session

By Representatives R. Johnson, Dyer, L. Johnson and Mastin

Read first time 01/29/93. Referred to Committee on Health Care.

1            AN ACT Relating to hearing aids; amending RCW 18.35.010, 18.35.050,  
2 18.35.060, 18.35.110, 18.35.140, 18.35.150, 18.35.161, 18.35.170,  
3 18.35.185, 18.35.220, and 18.35.240; and adding a new section to  
4 chapter 18.35 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            **Sec. 1.** RCW 18.35.010 and 1991 c 3 s 80 are each amended to read  
7 as follows:

8            As used in this chapter, unless the context requires otherwise:

9            (1) "Department" means the department of health.

10           (2) "~~((Council))~~ Board" means the ~~((council))~~ board on fitting and  
11 dispensing of hearing aids.

12           (3) "Hearing aid" means any wearable prosthetic instrument or  
13 device designed for or represented as aiding, improving, compensating  
14 for, or correcting defective human hearing and any parts, attachments,  
15 or accessories of such an instrument or device, excluding batteries and  
16 cords and ear molds.

17           (4) "Fitting and dispensing of hearing aids" means the sale, lease,  
18 or rental or attempted sale, lease, or rental of hearing aids together  
19 with the selection and adaptation of hearing aids and the use of those

1 tests and procedures essential to the performance of these functions.  
2 It includes the taking of impressions for ear molds for these purposes.

3 (5) "Secretary" means the secretary of health.

4 (6) "Establishment" means any facility engaged in the fitting and  
5 dispensing of hearing aids.

6 **Sec. 2.** RCW 18.35.050 and 1989 c 198 s 3 are each amended to read  
7 as follows:

8 Except as otherwise provided in this chapter an applicant for  
9 license shall appear at a time and place and before such persons as the  
10 department may designate to be examined by written and practical tests.  
11 The department shall give an examination in May and November of each  
12 year. The examination shall be reviewed annually by the ~~((council))~~  
13 board and the department, and revised as necessary. No examination of  
14 any established association may be used as the exclusive replacement  
15 for the examination unless approved ~~((and—developed))~~ by the  
16 ~~((council))~~ board.

17 **Sec. 3.** RCW 18.35.060 and 1991 c 3 s 82 are each amended to read  
18 as follows:

19 (1) The department shall issue a trainee license to any applicant  
20 who has shown to the satisfaction of the department that:

21 (a) The applicant is at least eighteen years of age;

22 (b) If issued a trainee license, would be employed and directly  
23 supervised in the fitting and dispensing of hearing aids by a person  
24 licensed in good standing as a fitter-dispenser for at least one year  
25 unless otherwise approved by the ~~((council))~~ board; and

26 (c) Has paid an application fee determined by the secretary as  
27 provided in RCW 43.70.250, to the department.

28 The provisions of RCW 18.35.030, 18.35.110, and 18.35.120 shall  
29 apply to any person issued a trainee license. Pursuant to the  
30 provisions of this section, a person issued a trainee license may  
31 engage in the fitting and dispensing of hearing aids without having  
32 first passed the examination provided under this chapter.

33 (2) The trainee license shall contain the name of the person  
34 licensed under this chapter who is employing and supervising the  
35 trainee and that person shall execute an acknowledgment of  
36 responsibility for all acts of the trainee in connection with the  
37 fitting and dispensing of hearing aids.

1 (3) A trainee may fit and dispense hearing aids, but only if the  
2 trainee is under the direct supervision of a person licensed under this  
3 chapter in a capacity other than as a trainee. Direct supervision by  
4 a licensed fitter-dispenser shall be required whenever the trainee is  
5 engaged in the fitting or dispensing of hearing aids during the  
6 trainee's first three months of full-time employment. The ((~~council~~))  
7 board shall develop and adopt guidelines on any additional supervision  
8 or training it deems necessary.

9 (4) The trainee license shall expire one year from the date of its  
10 issuance except that on recommendation of the ((~~council~~)) board the  
11 license may be reissued for one additional year only.

12 (5) No person licensed under this chapter may assume the  
13 responsibility for more than two trainees at any one time, except that  
14 the department may approve one additional trainee if none of the  
15 trainees is within the initial ninety-day period of direct supervision  
16 and the licensee demonstrates to the department's satisfaction that  
17 adequate supervision will be provided for all trainees.

18 **Sec. 4.** RCW 18.35.110 and 1987 c 150 s 22 are each amended to read  
19 as follows:

20 In addition to causes specified under RCW 18.130.170 and  
21 18.130.180, any person licensed under this chapter may be subject to  
22 disciplinary action by the ((~~council~~)) board for any of the following  
23 causes:

24 (1) For unethical conduct in dealing in hearing aids. Unethical  
25 conduct shall include, but not be limited to:

26 (a) Using or causing or promoting the use of, in any advertising  
27 matter, promotional literature, testimonial, guarantee, warranty,  
28 label, brand, insignia, or any other representation, however  
29 disseminated or published, which is false, misleading or deceptive;

30 (b) Failing or refusing to honor or to perform as represented any  
31 representation, promise, agreement, or warranty in connection with the  
32 promotion, sale, dispensing, or fitting of the hearing aid;

33 (c) Advertising a particular model, type, or kind of hearing aid  
34 for sale which purchasers or prospective purchasers responding to the  
35 advertisement cannot purchase or are dissuaded from purchasing and  
36 where it is established that the purpose of the advertisement is to  
37 obtain prospects for the sale of a different model, type, or kind than  
38 that advertised;

1 (d) Falsifying hearing test or evaluation results;

2 (e)(i) Whenever any of the following conditions are found or should  
3 have been found to exist either from observations by the licensee or on  
4 the basis of information furnished by the prospective hearing aid user  
5 prior to fitting and dispensing a hearing aid to any such prospective  
6 hearing aid user, failing to advise that prospective hearing aid user  
7 in writing that the user should first consult a licensed physician  
8 specializing in diseases of the ear or if no such licensed physician is  
9 available in the community then to any duly licensed physician:

10 (A) Visible congenital or traumatic deformity of the ear, including  
11 perforation of the eardrum;

12 (B) History of, or active drainage from the ear within the previous  
13 ninety days;

14 (C) History of sudden or rapidly progressive hearing loss within  
15 the previous ninety days;

16 (D) Acute or chronic dizziness;

17 (E) Any unilateral hearing loss;

18 (F) Significant air-bone gap when generally acceptable standards  
19 have been established as defined by the food and drug administration;

20 (G) Visible evidence of significant cerumen accumulation or a  
21 foreign body in the ear canal;

22 (H) Pain or discomfort in the ear; or

23 (I) Any other conditions that the ((department)) board may by rule  
24 establish. It is a violation of this subsection for any licensee or  
25 that licensee's employees and putative agents upon making such required  
26 referral for medical opinion to in any manner whatsoever disparage or  
27 discourage a prospective hearing aid user from seeking such medical  
28 opinion prior to the fitting and dispensing of a hearing aid. No such  
29 referral for medical opinion need be made by any licensee in the  
30 instance of replacement only of a hearing aid which has been lost or  
31 damaged beyond repair within six months of the date of purchase. The  
32 licensee or the licensee's employees or putative agents shall obtain a  
33 signed statement from the hearing aid user documenting the waiver of  
34 medical clearance and the waiver shall inform the prospective user that  
35 signing the waiver is not in the user's best health interest:  
36 PROVIDED, That the licensee shall maintain a copy of either the  
37 physician's statement showing that the prospective hearing aid user has  
38 had a medical evaluation or the statement waiving medical evaluation,  
39 for a period of three years after the purchaser's receipt of a hearing

1 aid. Nothing in this section required to be performed by a licensee  
2 shall mean that the licensee is engaged in the diagnosis of illness or  
3 the practice of medicine or any other activity prohibited under the  
4 laws of this state;

5 (ii) Fitting and dispensing a hearing aid to any person under  
6 eighteen years of age who has not been examined and cleared for hearing  
7 aid use within the previous six months by a physician specializing in  
8 otolaryngology except in the case of replacement instruments or except  
9 in the case of the parents or guardian of such person refusing, for  
10 good cause, to seek medical opinion: PROVIDED, That should the parents  
11 or guardian of such person refuse, for good cause, to seek medical  
12 opinion, the licensee shall obtain from such parents or guardian a  
13 certificate to that effect in a form as prescribed by the department;

14 (iii) Fitting and dispensing a hearing aid to any person under  
15 eighteen years of age who has not been examined by an audiologist who  
16 holds at least a master's degree in audiology for recommendations  
17 during the previous six months, without first advising such person or  
18 his or her parents or guardian in writing that he or she should first  
19 consult an audiologist who holds at least a master's degree in  
20 audiology, except in cases of hearing aids replaced within six months  
21 of their purchase;

22 (f) Representing that the services or advice of a person licensed  
23 to practice medicine and surgery under chapter 18.71 RCW or osteopathy  
24 and surgery under chapter 18.57 RCW or of a clinical audiologist will  
25 be used or made available in the selection, fitting, adjustment,  
26 maintenance, or repair of hearing aids when that is not true, or using  
27 the word "doctor," "clinic," or other like words, abbreviations, or  
28 symbols which tend to connote a medical or osteopathic profession when  
29 such use is not accurate;

30 (g) Permitting another to use his or her license;

31 (h) Stating or implying that the use of any hearing aid will  
32 restore normal hearing, preserve hearing, prevent or retard progression  
33 of a hearing impairment, or any other false, misleading, or medically  
34 or audiological unsupportable claim regarding the efficiency of a  
35 hearing aid;

36 (i) Representing or implying that a hearing aid is or will be  
37 "custom-made," "made to order," "prescription made," or in any other  
38 sense specially fabricated for an individual when that is not the case;  
39 or

1 (j) Directly or indirectly offering, giving, permitting, or causing  
2 to be given, money or anything of value to any person who advised  
3 another in a professional capacity as an inducement to influence that  
4 person, or to have that person influence others to purchase or contract  
5 to purchase any product sold or offered for sale by the licensee, or to  
6 influence any person to refrain from dealing in the products of  
7 competitors.

8 (2) Engaging in any unfair or deceptive practice or unfair method  
9 of competition in trade within the meaning of RCW 19.86.020 (~~as now or~~  
10 ~~hereafter amended~~)).

11 (3) Aiding or abetting any violation of the rebating laws as stated  
12 in chapter 19.68 RCW.

13 **Sec. 5.** RCW 18.35.140 and 1983 c 39 s 11 are each amended to read  
14 as follows:

15 The powers and duties of the department, in addition to the powers  
16 and duties provided under other sections of this chapter, are as  
17 follows:

18 (1) (~~To purchase and maintain or rent audiometric equipment and~~  
19 ~~facilities necessary to carry out the examination of applicants for~~  
20 ~~license.)) To provide facilities necessary to carry out the examination  
21 of applicants for license.~~

22 (2) To authorize all disbursements necessary to carry out the  
23 provisions of this chapter.

24 (~~(3) To require the periodic examination of the audiometric~~  
25 ~~testing equipment and to carry out the periodic inspection of~~  
26 ~~facilities of persons who deal in hearing aids, as reasonably required~~  
27 ~~within the discretion of the department.))~~

28 **Sec. 6.** RCW 18.35.150 and 1989 c 198 s 7 are each amended to read  
29 as follows:

30 (1) There is created hereby the (~~council~~) board on hearing aids.  
31 The (~~council~~) board shall consist of (~~nine~~) six members to be  
32 appointed by the governor.

33 (2) Members of the (~~council~~) board shall be residents of this  
34 state. (~~Five~~) Two members shall represent the public. Two members  
35 shall be persons experienced in the fitting of hearing aids who shall  
36 hold valid licenses under this chapter and who do not have a masters  
37 level college degree in audiology. (~~One member shall be a medical~~

1 ~~doctor specializing in diseases of the ear. One member shall be a~~  
2 ~~nondispensing audiologist. Two members shall represent the public.))~~  
3 Two members must be experienced in the fitting of hearing aids, must be  
4 licensed under this chapter, and shall have received at a minimum a  
5 masters level college degree in audiology.

6 (3) The term of office of a member is three years. No member shall  
7 be appointed to serve more than two consecutive terms. A member shall  
8 continue to serve until a successor has been appointed. The governor  
9 shall either reappoint the member or appoint a successor to assume the  
10 member's duties at the expiration of his or her predecessor's term. A  
11 vacancy in the office of a member shall be filled by appointment for  
12 the unexpired term.

13 (4) The ~~((chairman))~~ chair of the ~~((council))~~ board shall be  
14 elected from the membership of the ~~((council))~~ board at the beginning  
15 of each year.

16 (5) The ~~((council))~~ board shall meet at least once each year, at a  
17 place, day and hour determined by the ~~((council))~~ board, unless  
18 otherwise directed by a majority of ~~((council))~~ board members. The  
19 ~~((council))~~ board shall also meet at such other times and places as are  
20 requested by the department or by three members of the ~~((council))~~  
21 board.

22 (6) Members of the ~~((council))~~ board shall be compensated in  
23 accordance with RCW 43.03.240 and shall be reimbursed for their travel  
24 expenses in accordance with RCW 43.03.050 and 43.03.060.

25 **Sec. 7.** RCW 18.35.161 and 1987 c 150 s 23 are each amended to read  
26 as follows:

27 The ~~((council))~~ board shall have the following powers and duties:

28 (1) To establish by rule such minimum standards and procedures in  
29 the fitting and dispensing of hearing aids as deemed appropriate and in  
30 the public interest;

31 (2) To develop guidelines on the training and supervision of  
32 trainees;

33 (3) To adopt any other rules ~~((or regulations))~~ necessary to  
34 implement this chapter and which are not inconsistent with it;

35 (4) To develop, approve, and administer all licensing examinations  
36 required by this chapter; and

37 (5) To require a licensee to make restitution to any individual  
38 injured by a violation of this chapter or chapter 18.130 RCW, the

1 uniform disciplinary act. The authority to require restitution does  
2 not limit the ((council's)) board's authority to take other action  
3 deemed appropriate and provided for in this chapter or chapter 18.130  
4 RCW.

5 **Sec. 8.** RCW 18.35.170 and 1973 1st ex.s. c 106 s 17 are each  
6 amended to read as follows:

7 A member of the ((council)) board on hearing aids shall not be  
8 permitted to take the examination provided under this chapter unless he  
9 or she has first satisfied the department that adequate precautions  
10 have been taken to assure that he or she does not and will not have any  
11 knowledge, not available to the members of the public at large, as to  
12 the contents of the examination.

13 **Sec. 9.** RCW 18.35.185 and 1989 c 198 s 12 are each amended to read  
14 as follows:

15 (1) In addition to any other rights and remedies a purchaser may  
16 have, the purchaser of a hearing aid shall have the right to rescind  
17 the transaction for other than the ((seller's)) licensee's breach if:

18 (a) The purchaser, for reasonable cause, returns the hearing aid or  
19 holds it at the ((seller's)) licensee's disposal, if the hearing aid is  
20 in its original condition less normal wear and tear. "Reasonable  
21 cause" shall be defined by the ((council)) board but shall not include  
22 a mere change of mind on the part of the purchaser or a change of mind  
23 related to cosmetic concerns of the purchaser about wearing a hearing  
24 aid; and

25 (b) The purchaser sends notice of the cancellation ((to the  
26 licensee at the licensee's place of business)) by certified mail,  
27 return receipt requested, to the establishment employing the licensee  
28 at the time the hearing aid was originally purchased, and the notice is  
29 posted not later than thirty days following the date of delivery, but  
30 the purchaser and the ((seller)) licensee may extend the deadline for  
31 posting of the notice of rescission by mutual, written agreement. In  
32 the event the hearing aid is in the possession of the ((seller))  
33 licensee or the ((seller's)) licensee's representative during the  
34 thirty days following the date of delivery, the deadline for posting  
35 the notice of rescission shall be extended by an equal number of days  
36 that the aid is in the possession of the ((seller)) licensee or the  
37 ((seller's)) licensee's representative. Where the hearing aid is



1 returned to the ((seller)) licensee for any inspection for modification  
2 or repair, and the ((seller)) licensee has notified the purchaser that  
3 the hearing aid is available for redelivery, and where the purchaser  
4 has not responded by either taking possession of the hearing aid or  
5 instructing the ((seller)) licensee to forward it to the purchaser,  
6 then the deadline for giving notice of the rescission shall begin seven  
7 working days after this notice.

8 (2) If the transaction is rescinded under this section or as  
9 otherwise provided by law and the hearing aid is returned to the  
10 licensee, the licensee shall refund to the purchaser any payments or  
11 deposits for that hearing aid. However, the licensee may retain, for  
12 each hearing aid, fifteen percent of the total purchase price or one  
13 hundred dollars, whichever is less. The licensee shall also return any  
14 goods traded in contemplation of the sale, less any costs incurred by  
15 the licensee in making those goods ready for resale. The refund shall  
16 be made within ten days after the rescission. The buyer shall incur no  
17 additional liability for such rescission.

18 (3) For the purposes of this section, the purchaser shall have  
19 recourse against the bond held by the establishment entering into a  
20 purchase agreement with the buyer, as provided by RCW 18.35.240.

21 **Sec. 10.** RCW 18.35.220 and 1987 c 150 s 25 are each amended to  
22 read as follows:

23 (1) If the ((council)) board determines following notice and  
24 hearing, or following notice if no hearing was timely requested, that  
25 a person has:

26 (a) Violated any provisions of this chapter or chapter 18.130 RCW;  
27 or

28 (b) Violated any lawful order, or rule of the ((council)) board  
29 an order may be issued by the ((council)) board requiring the person to  
30 cease and desist from the unlawful practice. The ((council)) board  
31 shall then take affirmative action as is necessary to carry out the  
32 purposes of this chapter.

33 (2) If the ((council)) board makes a written finding of fact that  
34 the public interest will be irreparably harmed by delay in issuing an  
35 order, a temporary cease and desist order may be issued. Prior to  
36 issuing a temporary cease and desist order, the ((council)) board,  
37 whenever possible, shall give notice by telephone or otherwise of the  
38 proposal to issue a temporary cease and desist order to the person to

1 whom the order would be directed. Every temporary cease and desist  
2 order shall include in its terms a provision that upon request a  
3 hearing will be held to determine whether the order becomes permanent.

4 (3) The department, with or without prior administrative  
5 proceedings, may bring an action in the superior court to enjoin the  
6 acts or practices and to enforce compliance with this chapter, or rule  
7 or order under this chapter. Upon proper showing, injunctive relief or  
8 temporary restraining orders shall be granted and a receiver or  
9 conservator may be appointed. The department shall not be required to  
10 post a bond in any court proceedings.

11 **Sec. 11.** RCW 18.35.240 and 1991 c 3 s 85 are each amended to read  
12 as follows:

13 (1) Every establishment engaged in the fitting and dispensing of  
14 hearing aids shall ~~((file with the department))~~ have in effect a surety  
15 bond in the sum of ten thousand dollars ~~((, running to the state of  
16 Washington,))~~ for the benefit of any person injured or damaged as a  
17 result of any violation by the establishment's employees or agents of  
18 any of the provisions of this chapter or rules adopted by the  
19 secretary.

20 (2) In lieu of the surety bond required by this section, the  
21 establishment may file ~~((with the department))~~ a cash deposit or other  
22 negotiable security with a third party acceptable to the department.  
23 All obligations and remedies relating to surety bonds shall apply to  
24 deposits and security filed in lieu of surety bonds.

25 (3) ~~((If a cash deposit is filed, the department shall deposit the  
26 funds with the state treasurer. The cash or other negotiable security  
27 deposited with the department shall be returned to the depositor one  
28 year after the establishment has discontinued the fitting and  
29 dispensing of hearing aids if no legal action has been instituted  
30 against the establishment, its agents or employees, or the cash deposit  
31 or other security. The establishment owners shall notify the  
32 department if the establishment is sold or has discontinued the fitting  
33 and dispensing of hearing aids in order that the cash deposit or other  
34 security may be released at the end of one year from that date.~~

35 (4) A surety may file with the department notice of withdrawal of  
36 the bond of the establishment. Upon filing a new bond, or upon the  
37 expiration of sixty days after the filing of notice of withdrawal by

1 the surety, the liability of the former surety for all future acts of  
2 the establishment terminates.

3 (5) Upon the filing with the department notice by a surety of  
4 withdrawal of the surety on the bond of an establishment or upon the  
5 cancellation by the department of the bond of a surety under this  
6 section, the department shall immediately give notice to the  
7 establishment by certified or registered mail with return receipt  
8 requested addressed to the establishment's last place of business as  
9 filed with the department.

10 (6) The department shall immediately cancel the bond given by a  
11 surety company upon being advised that the surety company's license to  
12 transact business in this state has been revoked.)) Each invoice for  
13 the purchase of a hearing aid provided to a customer by an  
14 establishment subject to this chapter shall contain the following  
15 statement in ten-point, bold-face type or larger:

16 RCW 18.35.240 requires that any establishment engaged in the  
17 fitting and dispensing of hearing aids shall have a surety  
18 bond, or a cash deposit, or other negotiable security  
19 acceptable to the department of health. (ESTABLISHMENT) has a  
20 surety bond number (NUMBER) with (BONDING COMPANY) located at  
21 (ADDRESS OF BONDING COMPANY). In the alternative,  
22 (ESTABLISHMENT) has a cash security or other negotiable  
23 security filed with (ENTITY) at the following  
24 address: . . . . .

25 NEW SECTION. Sec. 12. A new section is added to chapter 18.35 RCW  
26 to read as follows:

27 (1) A person licensed under this chapter and not actively fitting  
28 and dispensing hearing aids may be placed on inactive status by the  
29 department at the written request of the licensee. The board shall  
30 define by rule the conditions for inactive status licensure. In  
31 addition to the requirements of RCW 43.24.086, the licensing fee for a  
32 licensee on inactive status shall be directly related to the costs of  
33 administering an inactive license by the department. A person on  
34 inactive status may be voluntarily placed on active status by notifying  
35 the department in writing, paying the remainder of the licensing fee  
36 for the licensing year, and complying with subsection (2) of this  
37 section.

1           (2) Inactive licensees applying for active licensure shall comply  
2 with the following: A licensee who has not fitted or dispensed hearing  
3 aids for more than five years from the expiration of the licensee's  
4 full fee license shall retake the practical examinations required under  
5 this chapter and shall have completed continuing education requirements  
6 within the previous twelve-month period. Persons who have been on  
7 inactive status from two to five years must have within the previous  
8 twelve months completed continuing education requirements. Persons who  
9 have been on inactive status for one year or less shall upon  
10 application be reinstated as active licensees. Persons who have  
11 inactive status in this state but who are actively licensed and in good  
12 standing in any other state shall not be required to meet continuing  
13 education requirements or to take the practical examinations, but must  
14 submit an affidavit attesting to their knowledge of the current  
15 Washington Administrative Code rules and Revised Code of Washington  
16 statutes pertaining to the fitting and dispensing of hearing aids.

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