

CHAPTER 105  
 [House Bill No. 476]  
 CERTIFICATED SCHOOL EMPLOYEES--  
 DEFINITION

AN ACT Relating to education; adding a new section to chapter 223, Laws of 1969 ex. sess. and to chapter 28A.01 RCW.

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

NEW SECTION. Section 1. There is added to chapter 223, Laws of 1969 ex. sess. and to chapter 28A.01 RCW a new section to read as follows:

The term "certificated employee" as used in RCW 28A.58.450 through 28A.58.515, 28A.58.445, 28A.67.065, 28A.67.070, and 28A.67.074, each as now or hereafter amended, shall include those persons who hold certificates as authorized by rule or regulation of the state board of education or the superintendent of public instruction.

Passed the House April 13, 1973.

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Approved by the Governor April 23, 1973.

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CHAPTER 106  
 [Substitute House Bill No. 674]  
 HEARING AID DISPENSERS--LICENSING--  
 COUNCIL ON HEARING AIDS

AN ACT Relating to hearing aids; providing for the licensing of persons who fit and dispense hearing aids; creating a new chapter in Title 18 RCW; and providing penalties.

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

NEW SECTION. Section 1. As used in this chapter, unless the context requires otherwise:

- (1) "Department" means the department of motor vehicles.
- (2) "Council" means the council on hearing aids.
- (3) "Hearing aid" means any wearable prosthetic instrument or device designed for or represented as aiding, improving, compensating for, or correcting defective human hearing and any parts, attachments, or accessories of such an instrument or device, excluding batteries and cords and ear molds.
- (4) "Fitting and dispensing of hearing aids" means the sale, lease, or rental or attempted sale, lease, or rental of hearing aids together with the selection and adaptation of hearing aids and the

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

NEW SECTION. Sec. 2. No person shall engage in the fitting and dispensing of hearing aids unless he holds a valid license issued by the department as provided in this chapter.

NEW SECTION. Sec. 3. Any person who engages in the fitting and dispensing of hearing aids shall deliver to each person supplied with or sold a hearing aid a receipt which shall contain his signature and show the address of his regular place of business and the number of his license, together with a description of the hearing aid furnished, including the term "used" or "reconditioned" if applicable, amount charged therefor, and terms of sale.

NEW SECTION. Sec. 4. An applicant for license shall be at least eighteen years of age, shall pay a fee of sixty dollars, and shall show to the satisfaction of the department that he is free of any infectious or contagious disease which would involve undue risk to the public. An applicant shall not be issued a license under the provisions of this chapter unless he:

(1) Satisfactorily completes the examination required by this chapter; or

(2) Has been engaged in the fitting and dispensing of hearing aids in the state of Washington for a period of six months immediately prior to the effective date of this act: PROVIDED, That any person receiving a license under this section shall be required to complete and pass the examination by the date on which the names of those persons who have passed the third examination subsequent to the effective date of this act are disclosed by the department; or

(3) Holds a current, unsuspended, unrevoked license or certificate from a state or jurisdiction with whom the department has entered into a reciprocal agreement.

NEW SECTION. Sec. 5. Except as otherwise provided in this chapter an applicant for license shall appear at a time and place and before such persons as the department may designate to be examined by written and practical tests. The department shall give an examination during the second full week in January and during the third full week in July each year.

NEW SECTION. Sec. 6. (1) The department shall issue a trainee license to any applicant who has shown to the satisfaction of the department that:

(a) He is at least eighteen years of age;

(b) He is free of any infectious or contagious disease;

(c) If issued a trainee license, he would be employed and directly supervised in the fitting and dispensing of hearing aids by a person licensed under this chapter in a capacity other than

trainee; and

(d) He has paid an application fee of twenty-five dollars to the department.

The provisions of sections 3 and 11 through 13 of this act shall apply to any person issued a trainee license. Pursuant to the provisions of this section, a person issued a trainee license may engage in the fitting and dispensing of hearing aids without having first passed the examination provided under this chapter.

(2) The trainee license shall contain the name of the person licensed under this chapter who is employing and supervising the trainee and an acknowledgment executed by such person that he is responsible for all acts of the trainee in connection with the fitting and dispensing of hearing aids.

(3) A trainee may fit and dispense hearing aids, but only if he is under the direction and supervision of a person licensed under this chapter in a capacity other than trainee.

(4) The trainee license shall expire one year from the date of its issuance except that at the discretion of the department on recommendation of the council the license may be reissued for one additional year only.

(5) No person licensed under this chapter may assume the responsibility for more than three trainees at any one time, unless approved in writing by the department.

NEW SECTION. Sec. 7. The examination provided in section 5 of this act shall consist of:

(1) Tests of knowledge in the following areas as they pertain to the fitting of hearing aids:

(a) Basic physics of sound;

(b) The human hearing mechanism, including the science of hearing and the causes and rehabilitation of abnormal hearing and hearing disorders; and

(c) Structure and function of hearing aids.

(2) Tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:

(a) Pure tone audiometry, including air conduction testing and bone conduction testing;

(b) Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;

(c) Effective masking;

(d) Recording and evaluation of audiograms and speech audiometry to determine hearing aid candidacy;

(e) Selection and adaptation of hearing aids and testing of hearing aids; and

(f) Taking ear mold impressions.

(3) Evidence of knowledge regarding the medical and

rehabilitation facilities for children and adults that are available in the area served.

(4) Evidence of knowledge of grounds for revocation or suspension of license under the provisions of this chapter.

(5) Any other tests as the department may by rule establish.

NEW SECTION. Sec. 8. The department shall license each applicant, without discrimination, who satisfactorily completes the required examination and, upon payment of one hundred twenty-five dollars to the department, shall issue to the applicant a license. The license shall be effective until December 31st of the year in which it is issued.

NEW SECTION. Sec. 9. Each person who engages in the fitting and dispensing of hearing aids shall annually, on or before January 1st, pay to the department a fee of one hundred twenty-five dollars for a renewal of his license and shall keep such license conspicuously posted at his business address at all times. A thirty-day grace period shall be allowed after January 1st, during which licenses may be renewed on payment of a fee of one hundred fifty dollars to the department. The department may suspend the license of any person who fails to renew his license before the expiration of the thirty-day grace period.

NEW SECTION. Sec. 10. (1) A person who holds a license shall notify the department in writing of the regular address of the place or places in the state of Washington where he engages or intends to engage in the fitting and dispensing of hearing aids and of any change thereof within thirty days of such change. Failure to notify the department in writing shall be grounds for suspension or revocation of license.

(2) The department shall keep a record of the places of business of persons who hold licenses.

(3) Any notice required to be given by the department to a person who holds a license may be given by mailing it to him at the address of the last place of business of which he has notified the department, except that notice to a licensee of proceedings to deny, suspend, or revoke the license shall be by certified or registered mail or by means authorized for service of process.

NEW SECTION. Sec. 11. Any person licensed under this chapter may have his license suspended for a fixed period or be placed on probation by the department for any of the following causes:

(1) The licensee, in the application for the license, or in any written or oral communication to the department concerning the issuance or retention of the license, has made any material misstatement of fact, or has omitted to disclose any material fact necessary to make that which is stated not misleading.

(2) For unethical conduct, or for gross incompetence in

dealing in hearing aids. Unethical conduct shall include, but not be limited to:

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

(b) Employing directly or indirectly any suspended or unlicensed person to perform any work covered by this chapter;

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

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

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

(A) Visible congenital or traumatic deformity of the ear;

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

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

(D) Acute or chronic dizziness;

(E) Unilateral hearing loss of sudden or recent onset within ninety days;

(F) Significant air-bone gap (when generally acceptable standards have been established);

(G) Any other conditions that the department may by rule establish: PROVIDED, That it shall be a violation of this subsection for any licensee or his employees and putative agents upon making such required referral for medical opinion to in any manner whatsoever disparage or discourage a prospective hearing aid user from seeking such medical opinion prior to the fitting and dispensing of a hearing aid: AND PROVIDED FURTHER, That no such referral for medical opinion need be made by any licensee in the instance of

replacement only of a hearing aid which has been lost or damaged beyond repair within one year of the date of purchase: AND PROVIDED FURTHER, That nothing in this section required to be performed by a licensee shall mean that the licensee is engaged in the diagnosis of illness or the practice of medicine or any other activity prohibited by the provisions of this code;

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

(iii) Fitting and dispensing a hearing aid to any person under eighteen years of age who has not been examined by a clinical audiologist for his recommendations during the previous six months, without first advising such person or his parents or guardian in writing that he should first consult a clinical audiologist;

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

(g) Permitting another to use his license.

(3) Engaging in the fitting or dispensing of hearing aids while suffering from a contagious or infectious disease involving undue risk to the public.

(4) Dealing in hearing aids under a false, misleading, or deceptive name.

(5) For any violation of the provisions of this chapter.

(6) Failure to properly and reasonably accept responsibility for the actions of his employees.

(7) Engaging in any unfair or deceptive practice or unfair method of competition in trade within the meaning of RCW 19.86.020 as now or hereafter amended.

NEW SECTION. Sec. 12. A license may also be revoked for any of the grounds provided in section 11 of this act when the department finds revocation is necessary to protect members of the public.

NEW SECTION. Sec. 13. (1) Where the department proposes to

refuse to issue or renew a license, or proposes to revoke or suspend a license, opportunity for hearing shall be accorded pursuant to the Administrative Procedure Act, chapter 34.04 RCW.

NEW SECTION. Sec. 14. The powers and duties of the department, in addition to the powers and duties provided under other sections of this chapter, are as follows:

(1) To purchase and maintain or rent audiometric equipment and facilities necessary to carry out the examination of applicants for license.

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

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

(4) To establish by rule such minimum standards of equipment and procedures in the fitting and dispensing of hearing aids as deemed appropriate and in the public interest.

(5) To adopt in accordance with the procedures set forth in the Administrative Procedure Act, chapter 34.04 RCW, such rules and regulations not inconsistent with the laws of this state and the provisions of this chapter which are necessary to carry out the provisions of this chapter including but not limited to interpretation of the provisions of this chapter.

NEW SECTION. Sec. 15. (1) There is created hereby the council on hearing aids. The council shall consist of seven members to be appointed by the governor.

(2) Members of the council shall be residents of this state. Four members shall be persons experienced in the fitting of hearing aids who shall hold valid licenses under this chapter. One member shall be a medical doctor specializing in otolaryngology. One member shall be a clinical audiologist. One member shall represent the public.

(3) The term of office of a member is three years, except that on the first council three members shall serve for two years and four members shall serve for three years. A member shall continue to serve until a successor has been appointed and qualifies. Before a member's term expires, the governor shall appoint a successor to assume his duties at the expiration of his predecessor's term. A vacancy in the office of a member shall be filled by appointment for the unexpired term.

(4) The chairman of the council shall be elected from the membership of the council at the beginning of each year.

(5) The council shall meet at least once each year, at a place, day and hour determined by the council, unless otherwise

directed by a majority of council members. The council shall also meet at such other times and places as are requested by the department or by three members of the council.

(6) Members of the council shall not be compensated for their services, but shall be reimbursed for their traveling expenses and receive a per diem in the manner provided for state employees under chapter 43.03 RCW.

NEW SECTION. Sec. 16. (1) The council shall have the responsibility and duty of advising the department in matters relating to this chapter, subject to approval by the department shall prepare the examination required by this chapter, and shall assist the department in carrying out the provisions of this chapter.

(2) The department shall consider and be guided by the recommendations of the council pursuant to this section and in all matters of policy relating to this chapter.

(3) The council whenever possible shall recommend that the department enter into reciprocity of licensure agreements with those states having licensure requirements equivalent to or higher than those provided herein.

(4) The council shall have the responsibility and duty of advising the department and preparing specific recommendations concerning the minimum standards of equipment and procedures in the fitting and dispensing of hearing aids.

NEW SECTION. Sec. 17. A member of the council on hearing aids shall not be permitted to take the examination provided under this chapter unless he has first satisfied the department that adequate precautions have been taken to assure that he does not and will not have any knowledge, not available to the members of the public at large, as to the contents of the examination.

NEW SECTION. Sec. 18. Acts and practices in the course of trade in the promoting, advertising, selling, fitting and dispensing of hearing aids shall be subject to the provisions of chapter 19.86 RCW (Consumer Protection Act) and RCW 9.04.050 (False Advertising Act) and any violation of the provisions of this chapter shall constitute violation of RCW 19.86.020.

NEW SECTION. Sec. 19. (1) In addition to remedies otherwise provided by law, in any action brought by or on behalf of a person required to be licensed hereunder, or by any assignee or transferee thereof, arising out of the business of fitting and dispensing of hearing aids, it shall be necessary to allege and prove that the licensee at the time of the transaction held a valid license as required by this chapter, and that such license has not been suspended or revoked pursuant to sections 11 and 12 of this act.

(2) Any person who shall engage in the fitting and dispensing of hearing aids without having obtained a license or who shall



wilfully and intentionally violate any of the provisions of this chapter shall be guilty of a gross misdemeanor.

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

(a) The purchaser for whatever reason consults a licensed physician subsequent to purchasing the hearing aid, and

(b) Such licensed physician advises such purchaser against purchasing or using a hearing aid and in writing specifies the medical reasons for such advice; and

(c) The purchaser returns the hearing aid or holds it at the seller's disposal: PROVIDED, That the hearing aid is in its original condition less normal wear and tear;

(d) By sending notice of such cancellation to the licensee at his place of business by certified mail, return receipt requested, which shall be posted not later than thirty days following the date of purchase: PROVIDED, That in the event of cancellation pursuant to this subsection the licensee shall, without request, refund to the purchaser within ten days after such cancellation of all deposits, including any down payment less ten percent of the total purchase price and less the reasonable price of ear molds, if any, and shall return all goods traded in to the licensee on account or in contemplation of the sale less any reasonable costs actually incurred in making ready for sale, goods so traded in: AND PROVIDED FURTHER, That the buyer shall incur no additional liability for such cancellation.

(4) Nothing in this chapter shall be construed to pertain in any manner to the testing of human hearing for the purpose of determining the nature, loss, cause or function of hearing and not for the purpose of fitting and dispensing hearing aids.

NEW SECTION. Sec. 20. The provisions of this chapter shall not exclude the application of any other law to persons or circumstances covered under this chapter.

NEW SECTION. Sec. 21. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provisions to other persons or circumstances is not affected.

NEW SECTION. Sec. 22. Sections 1 through 20 of this act shall constitute a new chapter in Title 18 RCW.

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