

be entitled to collect from said bidder any legal expenses, including reasonable attorneys' fees occasioned thereby.

(4) In the event of an emergency when the public interest or property of the water district would suffer material injury or damage by delay, upon resolution of the board of water commissioners, or proclamation of an official designated by the board to act for the board during such emergencies, declaring the existence of such emergency and reciting the facts constituting the same, the board, or official acting for the board, may waive the requirements of this chapter with reference to any purchase or contract.

Passed the House February 4, 1983.

Passed the Senate April 11, 1983.

Approved by the Governor April 19, 1983.

Filed in Office of Secretary of State April 19, 1983.

CHAPTER 39

[Engrossed House Bill No. 198]

HEARING AIDS—DISPENSERS—LICENSING—CONSUMER REMEDIES

AN ACT Relating to hearing aids; amending section 1, chapter 106, Laws of 1973 1st ex. sess. as amended by section 38, chapter 158, Laws of 1979 and RCW 18.35.010; amending section 2, chapter 106, Laws of 1973 1st ex. sess. and RCW 18.35.020; amending section 3, chapter 106, Laws of 1973 1st ex. sess. and RCW 18.35.030; amending section 4, chapter 106, Laws of 1973 1st ex. sess. as amended by section 36, chapter 30, Laws of 1975 1st ex. sess. and RCW 18.35.040; amending section 5, chapter 106, Laws of 1973 1st ex. sess. and RCW 18.35.050; amending section 6, chapter 106, Laws of 1973 1st ex. sess. as amended by section 37, chapter 30, Laws of 1975 1st ex. sess. and RCW 18.35.060; amending section 9, chapter 106, Laws of 1973 1st ex. sess. and RCW 18.35.090; amending section 10, chapter 106, Laws of 1973 1st ex. sess. and RCW 18.35.100; amending section 11, chapter 106, Laws of 1973 1st ex. sess. and RCW 18.35.110; amending section 12, chapter 106, Laws of 1973 1st ex. sess. and RCW 18.35.120; amending section 14, chapter 106, Laws of 1973 1st ex. sess. and RCW 18.35.140; amending section 15, chapter 106, Laws of 1973 1st ex. sess. as amended by section 35, chapter 34, Laws of 1975-'76 2nd ex. sess. and RCW 18.35.150; amending section 19, chapter 106, Laws of 1973 1st ex. sess. and RCW 18.35.190; adding new sections to chapter 18.35 RCW; repealing section 13, chapter 106, Laws of 1973 1st ex. sess. and RCW 18.35.130; repealing section 16, chapter 106, Laws of 1973 1st ex. sess. and RCW 18.35.160; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 106, Laws of 1973 1st ex. sess. as amended by section 38, chapter 158, Laws of 1979 and RCW 18.35.010 are each amended to read as follows:

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

- (1) "Department" means the department of licensing.
- (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.

(5) "Director" means the director of licensing.

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

Sec. 2. Section 2, chapter 106, Laws of 1973 1st ex. sess. and RCW 18-.35.020 are each amended to read as follows:

No person shall engage in the fitting and dispensing of hearing aids or imply or represent that he or she is engaged in the fitting and dispensing of hearing aids unless he or she holds a valid license issued by the department as provided in this chapter. The owner or manager of a hearing aid establishment is responsible under this chapter for all transactions made in the establishment name or conducted on its premises by agents or employees of the establishment engaged in fitting and dispensing hearing aids. Every establishment shall have in its employ at least one licensed fitter-dispenser at all times, and shall annually submit proof that all audiometric equipment at that establishment has been properly calibrated.

Sec. 3. Section 3, chapter 106, Laws of 1973 1st ex. sess. and RCW 18-.35.030 are each amended to read as follows:

Any person who engages in the fitting and dispensing of hearing aids shall ((deliver)) provide 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)) who enters into an agreement to purchase a hearing aid a receipt at the time of the agreement containing the following information:

(1) The seller's name, signature, license number, address, and phone number of his or her regular place of business;

(2) A description of the aid furnished, including make, model, and the term "used" or "reconditioned" if applicable;

(3) A disclosure of the cost of all services including but not limited to the cost of testing and fitting, the actual cost of the hearing aid furnished, the cost of ear molds if any, and the terms of the sale. These costs, including the cost of ear molds, shall be known as the total purchase price. The receipt shall also contain a statement of the purchaser's recision rights under this chapter and an acknowledgment that the purchaser has read and understands these rights. Upon request, the purchaser shall also be supplied

with a signed and dated copy of any hearing evaluation performed by the seller.

(4) At the time of delivery of the hearing aid, the purchaser shall also be furnished with the serial number of the hearing aid supplied.

Sec. 4. Section 4, chapter 106, Laws of 1973 1st ex. sess. as amended by section 36, chapter 30, Laws of 1975 1st ex. sess. and RCW 18.35.040 are each amended to read as follows:

An applicant for license shall be at least eighteen years of age(;) and shall pay a fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended(~~(, 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))~~ the applicant:

(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 July 16, 1973; 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 July 16, 1973, are disclosed by the department; or~~

~~(3))~~ Holds a current, unsuspended, unrevoked license or certificate from a state or jurisdiction with ~~((whom))~~ which the department has entered into a reciprocal agreement, and shows evidence satisfactory to the department that the applicant is licensed in good standing in the other jurisdiction; and

(3) Provides proof satisfactory to the department that the licensee has obtained the surety bond coverage required under this chapter.

Sec. 5. Section 5, chapter 106, Laws of 1973 1st ex. sess. and RCW 18.35.050 are each amended to read as follows:

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. The examination shall be reviewed annually by the council and the department, and revised as necessary. No examination of any established association may be used as the exclusive replacement for the examination approved and developed by the council.

Sec. 6. Section 6, chapter 106, Laws of 1973 1st ex. sess. as amended by section 37, chapter 30, Laws of 1975 1st ex. sess. and RCW 18.35.060 are each amended to read as follows:

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

(a) ~~((He))~~ The applicant 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))~~ in good standing as a fitter-dispenser for at least one year unless otherwise approved by the council; and

~~((d) He))~~ (c) Has paid an application fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, to the department.

The provisions of RCW 18.35.030 and 18.35.110 through 18.35.130 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 that person shall execute an acknowledgment ((executed by such person that he is responsible)) of responsibility 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))~~ the trainee is under the ~~((direction and))~~ direct supervision of a person licensed under this chapter in a capacity other than as a trainee. Direct supervision by a licensed fitter-dispenser shall be required whenever the trainee is engaged in the fitting or dispensing of hearing aids during the trainee's first three months of full-time employment. The council shall develop and adopt guidelines on any additional supervision or training it deems necessary.

(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))~~ two trainees at any one time, ~~((unless approved in writing by the department))~~ except that the department may approve one additional trainee if none of the trainees is within the initial ninety-day period of direct supervision and the licensee demonstrates to the department's satisfaction that adequate supervision will be provided for all trainees.

Sec. 7. Section 9, chapter 106, Laws of 1973 1st ex. sess. and RCW 18.35.090 are each amended to read as follows:

Each person who engages in the fitting and dispensing of hearing aids shall annually, on ~~((or before January 1st))~~ the anniversary of his or her license, or as the department prescribes by rule, pay to the department a fee ~~((of one hundred twenty-five dollars))~~ established by the director under RCW 43.24.085 for a renewal of ~~((his))~~ the license and shall keep ~~((such))~~

the license conspicuously posted ((at his)) in the place of business ((address)) at all times. A thirty-day grace period shall be allowed after ((January 1st,)) the applicable renewal date during which licenses may be renewed on payment of a penalty 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)) established by the director under RCW 43.24.085. Any person who fails to renew his or her license prior to the expiration of the grace period must satisfy the requirements of this chapter for initial licensure, including taking a new examination. The director may by rule establish mandatory continuing education requirements and/or continued competency standards to be met by licensees as a condition for license renewal.

Sec. 8. Section 10, chapter 106, Laws of 1973 1st ex. sess. and RCW 18.35.100 are each amended to read as follows:

(1) ((~~★~~)) Every person who holds a license under this chapter shall notify the department in writing of the regular address of the place or places in the state of Washington where ((he)) the person engages or intends to engage in the fitting and dispensing of hearing aids and of any change thereof within ((thirty)) ten 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)) the person 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.

Sec. 9. Section 11, chapter 106, Laws of 1973 1st ex. sess. and RCW 18.35.110 are each amended to read as follows:

Any person licensed under this chapter may ((have his license suspended for a fixed period or be placed on probation by the department)) be subject to disciplinary action by the council 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~~)) which makes 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, sale, 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) Falsifying hearing test or evaluation results;

(f) (i) Whenever any of the following conditions are found or should have been found 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~~)) the user 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, including perforation of the eardrum;

(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) Any unilateral hearing loss ((~~of sudden or recent onset within ninety days~~));

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

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

(H) Pain or discomfort in the ear; or

(I) Any other conditions that the department may by rule establish((~~PROVIDED, That it shall be~~)). It is a violation of this subsection for any licensee or ((~~his~~)) that licensee's 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)) six months of the date of purchase((AND PROVIDED FURTHER, That)). The licensee or the licensee's employees or putative agents

shall obtain a signed statement from the hearing aid user documenting the waiver of medical clearance and the waiver shall inform the prospective user that signing the waiver is not in the user's best health interest: PROVIDED, That the licensee shall maintain a copy of either the physician's statement showing that the prospective hearing aid user has had a medical evaluation or the statement waiving medical evaluation, for a period of three years after the purchaser's receipt of a hearing aid. 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)) under the laws of this state;

(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)) an audiologist who holds at least a master's degree in audiology for ((his)) recommendations during the previous six months, without first advising such person or his or her parents or guardian in writing that he or she should first consult ((a clinical)) an audiologist who holds at least a master's degree in audiology, except in cases of hearing aids replaced within six months of their purchase;

((f)) (g) 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)) (h) Permitting another to use his or her license((-);

(i) Stating or implying that the use of any hearing aid will restore normal hearing, preserve hearing, prevent or retard progression of a hearing impairment, or any other false, misleading, or medically or audiotologically unsupportable claim regarding the efficiency of a hearing aid;

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

(k) Directly or indirectly offering, giving, permitting, or causing to be given, money or anything of value to any person who advised another in a

professional capacity as an inducement to influence that person, or to have that person influence others to purchase or contract to purchase any product sold or offered for sale by the licensee, or to influence any person to refrain from dealing in the products of competitors.

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

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

(5) ~~((For any violation))~~ Violating any of the provisions of this chapter or the rules adopted by this chapter.

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

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

Sec. 10. Section 12, chapter 106, Laws of 1973 1st ex. sess. and RCW 18.35.120 are each amended to read as follows:

A ~~((license))~~ licensee under this chapter may also be ~~((revoked for any of the grounds provided in RCW 18.35.110 when the department finds revocation is necessary to protect members of the public))~~ subject to disciplinary action if the licensee:

(1) Is found guilty in any court of any crime involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud and ten years have not elapsed since the date of the conviction; or

(2) Has a judgment entered against him or her in any civil action involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud and five years have not elapsed since the date of the entry of the final judgment in the action, but a license shall not be issued unless the judgment debt has been discharged; or

(3) Has a judgment entered against him or her under chapter 19.86 RCW and two years have not elapsed since the entry of the final judgment; but a license shall not be issued unless there has been full compliance with the terms of such judgment, if any. The judgment shall not be grounds for denial, suspension, nonrenewal, or revocation of a license unless the judgment arises out of and is based on acts of the applicant, licensee, or employee of the licensee.

Sec. 11. Section 14, chapter 106, Laws of 1973 1st ex. sess. and RCW 18.35.140 are each amended to read as follows:

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))~~ examination 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.))~~

Sec. 12. Section 15, chapter 106, Laws of 1973 1st ex. sess. as amended by section 35, chapter 34, Laws of 1975-'76 2nd ex. sess. and RCW 18.35-.150 are each amended to read as follows:

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

(2) Members of the council shall be residents of this state. ~~((Four))~~ Five 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))~~ diseases of the ear. One member shall be a ~~((clinical))~~ nondispensing audiologist. ~~((One))~~ Two members 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))~~ the governor may appoint the initial members to one or two year terms to ensure an orderly succession of members. 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))~~ at the rate of thirty-five dollars per day for each day or part

thereof spent conducting meetings, hearings, or other official business, and shall be reimbursed for their travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

NEW SECTION. Sec. 13. There is added to chapter 18.35 RCW a new section to read as follows:

The council shall have the following powers and duties:

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

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

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

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

(5) To conduct all disciplinary proceedings pursuant to this chapter. All hearings conducted and all rules adopted shall be in accordance with chapter 34.04 RCW. If, following a hearing, the council finds that an applicant or licensee has violated any section of this chapter or any of the rules promulgated under it, the council may enter an order imposing one or more of the following penalties:

(a) Denial of an initial license or renewal;

(b) Revocation or suspension of license;

(c) A fine not to exceed one thousand dollars for each separate offense;

(d) Issuance of a reprimand or letter of censure;

(e) Placement of the licensee on probation for a period of time;

(f) Restriction of the licensee's authorized scope of practice; or

(g) Requiring the licensee to make restitution to any individual injured by the violation.

Sec. 14. Section 19, chapter 106, Laws of 1973 1st ex. sess. and RCW 18.35.190 are each amended to read as follows:

(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 RCW 18.35.110 (~~and~~) or 18.35.120.

(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 punishable by a fine not to exceed five thousand dollars per violation or by imprisonment in the county jail for a period not to exceed six months, or both.

(3) In addition to any other rights and remedies ~~((he))~~ a purchaser 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, for reasonable cause, 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(;;). "Reasonable cause" shall be defined by the council but shall not include a mere change of mind on the part of the purchaser or a change of mind related to cosmetic concerns of the purchaser in wearing a hearing aid; and

~~((d))~~ (b) By sending notice of such cancellation to the licensee at ((his)) the licensee's place of business by certified mail, return receipt requested, which shall be posted not later than thirty days following the date of ((purchase)) delivery: PROVIDED, That in the event of cancellation pursuant to this subsection or as otherwise provided by law, the licensee shall, without request, refund to the purchaser postmarked within ten days after such cancellation ((of)) all deposits, including any down payment less ((ten)) fifteen percent of the total purchase price ((and less the reasonable price of ear molds, if any)) or one hundred dollars per hearing aid, whichever is less, 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:))~~

(c) Where a purchaser has taken the steps described in subsections (a) and (b) above to cancel the purchase, and the purchaser subsequently agrees with the seller to extend the trial or rescission period, the purchaser remains entitled to receive the refund described in RCW 18.35.190(3)(b) upon demand made within sixty days of the original date of delivery or such other time as agreed to in writing by both parties. Written notice of the last date for demanding a refund shall be provided to the purchaser at the time the trial or rescission period is extended.

NEW SECTION. Sec. 15. There is added to chapter 18.35 RCW a new section to read as follows:

(1) The director or the director's designee may initiate and conduct such investigations as may be reasonably necessary to establish the existence of

any alleged violations of or noncompliance with the provisions of this chapter or any rules issued hereunder. For the purpose of any investigation or proceeding under this chapter, the director or any officer the director may designate, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(2) If any individual fails to obey a subpoena or obeys a subpoena but refuses to give evidence, any court of competent jurisdiction may, upon application by the director, issue to that person an order requiring the person to appear before the court, to show cause why he or she should not be compelled to obey the subpoena, and give evidence material to the matter under investigation. The failure to obey an order of the court may be punishable as contempt.

NEW SECTION, Sec. 16. There is added to chapter 18.35 RCW a new section to read as follows:

Each licensee shall keep records of all services rendered for a period of three years. These records shall contain the names and addresses of all persons to whom services were provided, the date the warranty expires, a description of the services and the dates the services were provided, and copies of any contracts and receipts.

NEW SECTION, Sec. 17. There is added to chapter 18.35 RCW a new section to read as follows:

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

- (a) Violated any provisions of this chapter; or
- (b) Violated any lawful order, or rule of the council

an order may be issued by the council requiring the person to cease and desist from the unlawful practice. The council shall then take affirmative action as is necessary to carry out the purposes of this chapter.

(2) If the council makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, a temporary cease and desist order may be issued. Prior to issuing a temporary cease and desist order, the council, whenever possible, shall give notice by telephone or otherwise of the proposal to issue a temporary cease and desist order to the person to whom the order would be directed. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held to determine whether the order becomes permanent.

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

NEW SECTION. Sec. 18. There is added to chapter 18.35 RCW a new section to read as follows:

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

In lieu of the surety bond required by this section, the establishment may file with the department a cash deposit or other negotiable security acceptable to the department. The security deposited with the department in lieu of the surety bond shall be returned to the establishment at the expiration of four years after any disciplinary proceedings involving employees or agents of the establishment, if no legal action has been instituted against the establishment or on the security deposit at the expiration of the four-year period.

(2) A surety may file with the department notice of withdrawal of the bond of the establishment. Upon filing a new bond, or upon the expiration of sixty days after the filing of notice of withdrawal by the surety, the liability of the former surety for all future acts of the establishment terminates.

(3) The department shall immediately cancel the bond given by a surety company upon being advised that the surety company's license to transact business in this state has been revoked.

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

NEW SECTION. Sec. 19. There is added to chapter 18.35 RCW a new section to read as follows:

(1) Each licensee shall name a registered agent to accept service of process for any violation of this chapter or rule adopted under this chapter.

(2) The registered agent may be released at the expiration of four years after the license issued under this chapter has expired or been revoked if no legal action has been instituted against the licensee.

(3) Any licensee who fails to name a registered agent for service of process for violations of this chapter or rules adopted under this chapter may also be served by filing two copies of the complaint with the director. Service on the director constitutes service on the licensee in this event. The director then shall transmit one copy of the complaint to the licensee within five business days after receipt of the complaint.

NEW SECTION. Sec. 20. There is added to chapter 18.35 RCW a new section to read as follows:

(1) In addition to any other legal remedies, an action may be brought in any court of competent jurisdiction upon the bond, cash deposit, or security in lieu of a surety bond required by this chapter, by any person having a claim against a licensee for any violation of this chapter or any rule adopted under this chapter. The aggregate liability of the surety to all claimants shall in no event exceed the sum of the bond.

(2) An action upon the bond or security shall be commenced by serving and filing the complaint within one year from the date of the cancellation of the bond, or in case of a cash deposit or other security deposited in lieu of the surety bond, within one year of the date of expiration of revocation of the license. Two copies of the complaint shall be served by registered or certified mail, return receipt requested, upon the department at the time the suit is started. The service constitutes service on the surety. The director shall transmit one copy of the complaint to the surety within five business days after the copy has been received.

(3) The director shall maintain a record, available for public inspection, of all suits commenced under this chapter under surety bonds, or the cash or other security deposited in lieu of the surety bond. In the event that any final judgment impairs the liability of the surety upon a bond so furnished or the amount of the deposit so that there is not in effect a bond undertaking or deposit in the full amount prescribed in this section, the department shall suspend the license until the bond undertaking or deposit in the required amount, unimpaired by unsatisfied judgment claims, has been furnished.

(4) If a judgment is entered against the deposit or security required under this chapter, the department shall, upon receipt of a certified copy of a final judgment, pay the judgment from the amount of the deposit or security.

NEW SECTION. Sec. 21. There is added to chapter 18.35 RCW a new section to read as follows:

It is unlawful to sell a hearing aid to a resident of this state if the attempted sale or purchase is offered or made by telephone or mail order and there is no face-to-face contact to test or otherwise determine the needs of the prospective purchaser. This section does not apply to the sale of hearing aids by wholesalers to licensees under this chapter.

NEW SECTION. Sec. 22. This chapter shall not apply to federal employees, nor shall it apply to students enrolled in an accredited program who are supervised by a licensed hearing aid dispenser under the provisions of this chapter.

NEW SECTION. Sec. 23. 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 provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 24. The legislature finds that the public health, safety and welfare would best be protected by uniform regulation of hearing aid fitter-dispensers throughout the state. Therefore, the provisions of this chapter relating to the licensing of hearing aid fitter-dispensers and hearing aid establishments is exclusive. No political subdivision of the state of Washington within whose jurisdiction a hearing aid establishment is located may require any registrations, bonds, licenses, or permits of the establishment or its employees or charge any fee for the same or similar purposes: **PROVIDED, HOWEVER,** That nothing herein shall limit or abridge the authority of any political subdivision to levy and collect a general and non-discriminatory license fee levied on all businesses, or to levy a tax based upon the gross business conducted by any firm within the political subdivision.

NEW SECTION. Sec. 25. The following acts or parts of acts are each repealed:

(1) Section 13, chapter 106, Laws of 1973 1st ex. sess. and RCW 18.35.130; and

(2) Section 16, chapter 106, Laws of 1973 1st ex. sess. and RCW 18.35.160.

Passed the House February 16, 1983.

Passed the Senate April 11, 1983.

Approved by the Governor April 19, 1983.

Filed in Office of Secretary of State April 19, 1983.

CHAPTER 40

[House Bill No. 219]

COUPONS—CERTIFICATES—MANUFACTURER REDEMPTION PROCEDURES

AN ACT Relating to manufacturers' premium coupons; and amending section 3, chapter 221, Laws of 1957 as amended by section 1, chapter 104, Laws of 1972 ex. sess. and RCW 19.83.040.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 3, chapter 221, Laws of 1957 as amended by section 1, chapter 104, Laws of 1972 ex. sess. and RCW 19.83.040 are each amended to read as follows:

(1) Nothing in this chapter, or in any other statute or ordinance of this state, shall apply to:

(a) The issuance and direct redemption by a manufacturer of a premium coupon, certificate, or similar device; or prevent him from issuing and directly redeeming such premium coupon, certificate, or similar device,