

The director or other employees of the department shall dispose of wildlife taken or possessed by them under this title in the manner determined by the director to be in the best interest of the state. (~~(Skins or furs shall be sold at public auction at a time and location determined by the director.)~~) Proceeds from ~~((the))~~ sales shall be deposited in the state treasury to be credited to the state wildlife fund.

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CHAPTER 198

[Substitute House Bill No. 1250]

HEARING AID FITTERS AND DISPENSERS—LICENSING

AN ACT Relating to the fitting and dispensing of hearing aids; amending RCW 18.35.020, 18.35.040, 18.35.050, 18.35.080, 18.35.090, 18.35.105, 18.35.150, 18.35.190, 18.35.230, 18.35.240, and 18.35.250; and adding a new section to chapter 18.35 RCW.

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

Sec. 1. Section 2, chapter 106, Laws of 1973 1st ex. sess. as amended by section 2, chapter 39, Laws of 1983 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 and is an owner or employee of an establishment that is bonded as provided by RCW 18.35.240. 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. 2. Section 4, chapter 106, Laws of 1973 1st ex. sess. as last amended by section 30, chapter 7, Laws of 1985 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 43.24.086. An applicant shall not be issued a license under the provisions of this chapter unless the applicant:

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

(2) Holds a current, unsuspended, unrevoked license or certificate from a state or jurisdiction with 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. 3. Section 5, chapter 106, Laws of 1973 1st ex. sess. as amended by section 5, chapter 39, Laws of 1983 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))~~ in May and ~~((during the third full week in July))~~ November of 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. 4. Section 8, chapter 106, Laws of 1973 1st ex. sess. as last amended by section 32, chapter 7, Laws of 1985 and RCW 18.35.080 are each amended to read as follows:

The department shall license each applicant, without discrimination, who satisfactorily completes the required examination and, upon payment of a fee determined by the director as provided in RCW 43.24.086 to the department, shall issue to the applicant a license. If a person does not apply for a license within three years of the successful completion of the license examination, reexamination is required for licensure. The license shall be effective until ~~((December 31st of the year in which it is issued))~~ the licensee's next birthday at which time it is subject to renewal. Subsequent renewal dates shall coincide with the licensee's birthday.

Sec. 5. Section 9, chapter 106, Laws of 1973 1st ex. sess. as last amended by section 33, chapter 7, Laws of 1985 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 the anniversary of his or her license, or))~~ as the department prescribes by rule, pay to the department a fee established by the director under RCW 43.24.086 for a renewal of the license and shall keep the license conspicuously posted in the place of business at all times. ~~((A thirty-day grace period shall be allowed after the applicable renewal date during which licenses may be renewed on payment of a penalty fee established by the director under RCW 43.24.086.))~~ Any person who fails to renew his or her license prior to the expiration ~~((of the grace period))~~ date must pay a penalty fee in addition to the renewal fee and satisfy the requirements ((of

~~this chapter for initial licensure, including taking a new examination)) that may be set forth by rule promulgated by the director for reinstatement.~~ 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. 6. Section 16, chapter 39, Laws of 1983 and RCW 18.35.105 are each amended 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. All records, as required pursuant to this chapter or by rule, kept by licensees shall be owned by the establishment and shall remain with the establishment in the event the licensee changes employment. If a contract between the establishment and the licensee provides that the records are to remain with the licensee, copies of such records shall be provided to the establishment.

Sec. 7. Section 15, chapter 106, Laws of 1973 1st ex. sess. as last amended by section 33, chapter 287, Laws of 1984 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 nine members to be appointed by the governor.

(2) Members of the council shall be residents of this state. 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 diseases of the ear. One member shall be a nondispensing audiologist. Two members shall represent the public.

(3) ~~The term of office of a member is three years((except that the governor may appoint the initial members to one or two year terms to ensure an orderly succession of members)). No member shall be appointed to serve more than two consecutive terms. A member shall continue to serve until a successor has been appointed ((and qualifies. Before a member's term expires;)).~~ The governor shall either reappoint the member or appoint a successor to assume ((his)) the member's duties at the expiration of his or her 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 be compensated in accordance with RCW 43.03.240 and shall be reimbursed for their travel expenses in accordance with RCW 43.03.050 and 43.03.060.

Sec. 8. Section 19, chapter 106, Laws of 1973 1st ex. sess. as last amended by section 24, chapter 150, Laws of 1987 and RCW 18.35.190 are each amended to read as follows:

~~((+))~~ 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 ~~((or))~~, 18.35.120, or 18.130.160.

~~((2))~~ In addition to any other rights and remedies 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 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

(b) By sending notice of such cancellation to the licensee at 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 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 all deposits, including any down payment less fifteen percent of the total purchase price 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.

(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 subsection (2)(b) of this section 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.))

Sec. 9. Section 19, chapter 39, Laws of 1983 and RCW 18.35.230 are each amended 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))~~ one year((s)) 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))~~ Failure 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))~~ be grounds for disciplinary action.

Sec. 10. Section 18, chapter 39, Laws of 1983 and RCW 18.35.240 are each amended 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.

(2) 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))~~ All obligations and remedies relating to surety bonds shall apply to deposits and security filed in lieu of surety bonds.

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

~~((2))~~ (4) 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))~~ (5) 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.

(6) 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.

Sec. 11. Section 20, chapter 39, Laws of 1983 and RCW 18.35.250 are each amended 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, agent, or establishment 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. Claims shall be satisfied in the order of judgment rendered.

(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)).~~ An action upon a cash deposit or other security shall be commenced by serving and filing the complaint within one year from the date of notification to the department of the change in ownership of the establishment or the discontinuation of the fitting and dispensing of hearing aids by that establishment. 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. 12. A new section is added to chapter 18.35 RCW to read as follows:

(1) In addition to any other rights and remedies 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 reasonable cause, returns the hearing aid or holds it at the seller's disposal, if 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 about wearing a hearing aid; and

(b) The purchaser sends notice of the cancellation to the licensee at the licensee's place of business by certified mail, return receipt requested, and the notice is posted not later than thirty days following the date of delivery, but the purchaser and the seller may extend the deadline for posting of the notice of rescission by mutual, written agreement. In the event the hearing aid is in the possession of the seller or the seller's representative during the thirty days following the date of delivery, the deadline for posting the notice of rescission shall be extended by an equal number of days that the aid is in the possession of the seller or the seller's representative. Where the hearing aid is returned to the seller for any inspection for modification or repair, and the seller has notified the purchaser that the hearing aid is available for redelivery, and where the purchaser has not responded by either taking possession of the hearing aid or instructing the seller to forward it to the purchaser, then the deadline for giving notice of the rescission shall begin seven working days after this notice.

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

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