

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE DRH10126-LUF-113 (4/10)

Short Title: Amend Hearing Aid Dealers/Fitters Laws/Fees.

(Public)

Sponsors: Representative England.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS RELATING TO HEARING AID DEALERS AND
FITTERS AND TO AUTHORIZE THE NORTH CAROLINA STATE HEARING
AID DEALERS AND FITTERS BOARD TO INCREASE CERTAIN FEES.

The General Assembly of North Carolina enacts:

SECTION 1. The title of Chapter 93D of the General Statutes and
G.S. 93D-1 read as rewritten:

"Chapter 93D.

"North Carolina State Hearing Aid Dealers and Fitters Licensing Board.

"§ 93D-1. Definitions.

For the purposes of this Chapter:

- (1) "Board" shall mean the North Carolina State Hearing Aid ~~Dealers and Fitters~~ Licensing Board.
- (2) "Fitting and selling hearing aids" shall mean the evaluation or measurement of the powers or range of human hearing by means of an audiometer or by other means and the consequent selection or adaptation or sale or rental of hearing aids intended to compensate for hearing loss including the making of an impression of the ear.
- (3) "Hearing aid" shall mean any instrument or device designed for or represented as aiding, improving or compensating for defective human hearing and any parts, attachments or accessories of such an instrument or device."

SECTION 2. G.S. 93D-2 reads as rewritten:

"§ 93D-2. Fitting and selling without license unlawful.

It shall be unlawful for any person to fit or sell hearing aids unless ~~he~~ the person has first obtained a license from the North Carolina State Hearing Aid ~~Dealers and~~

1 ~~Fitters~~Licensing Board or is an apprentice who has passed an entry-level competency
2 exam and is working under the supervision of a ~~board~~ Board licensee."

3 **SECTION 3.** Chapter 93D of the General Statutes is amended by adding a
4 new section to read:

5 **"§ 93D-2.1. Hearing aid sales.**

6 A person may offer hearing aids for sale, lease, or rental to persons in this State by
7 catalog, direct mail, television, radio, the Internet, or any other mass media source if the
8 following criteria are met:

- 9 (1) The seller is licensed as a hearing aid dispenser under this Chapter.
- 10 (2) There is no fitting, selection, or adaptation of the hearing aid
11 instrument.
- 12 (3) No advice is given with respect to the fitting, selection, or adaptation
13 of the hearing aid instrument.
- 14 (4) No advice is given with respect to the taking of ear impressions for the
15 ear mold by the seller.
- 16 (5) The seller has received a statement that is signed by a physician
17 licensed under Article 1 of Chapter 90 of the General Statutes
18 verifying the medical clearance of the person seeking to purchase the
19 hearing aid. The seller shall retain a copy of the statement for a period
20 of time as required by federal law, the provisions of this Chapter, or
21 rules adopted by the Board, whichever is longer.
- 22 (6) The seller has abided by all federal regulations and State rules
23 regarding the hearing aid device."

24 **SECTION 4.** G.S. 93D-3 reads as rewritten:

25 **"§ 93D-3. North Carolina State Hearing Aid Dealers and ~~Fitters~~Licensing Board;**
26 **composition, organization, duties and compensation.**

27 (a) There is hereby created a board whose duty it shall be to carry out the
28 purposes and enforce the provisions of this Chapter, and which shall be known as the
29 "North Carolina State Hearing Aid ~~Dealers and Fitters~~Licensing Board." The Board
30 shall be composed of seven members. Four members who have been actively engaged
31 in the fitting and selling of hearing aids for three years shall be appointed by the
32 Governor. These initial appointments are for the following terms: one for one year, one
33 for two years, one for three years and one for four years. All appointments made on or
34 after July 1, 1981, shall be for terms of three years.

35 One member shall be appointed by the Governor who shall be a physician practicing
36 in North Carolina, preferably specializing in the field of otolaryngology. All
37 appointments shall be for terms of three years.

38 One member shall be appointed by the Governor from a list of two audiologists
39 residing in North Carolina, which list shall be compiled by the North Carolina Speech
40 and Hearing Association. This initial appointment shall be for a term of three years. All
41 appointments made on or after July 1, 1981, shall be for a term of three years.

42 One member shall be appointed by the Governor to represent the interest of the
43 public at large. This member shall have no ties to the hearing aid business nor shall he

1 be an audiologist. The Governor shall appoint the public member not later than July 1,
2 1981, to serve a term of three years.

3 All Board members serving on June 30, 1981, shall be eligible to complete their
4 respective terms. No member appointed to a term on or after July 1, 1981, shall serve
5 more than two complete consecutive terms.

6 Vacancies on the Board shall be filled by appointment of the Governor. Appointees
7 shall serve the unexpired term of their predecessor in office and must be appointed from
8 the same category as their predecessor in office. The members of the Board, before
9 entering their duties, shall respectively take all oaths taken and prescribed for other
10 State officers, in the manner provided by law, which oaths shall be filed in the office of
11 the Secretary of State, and the Board shall have a common seal.

12 (b) The Board shall choose, at the first regular meeting and annually thereafter,
13 one of its members to serve as president and one as secretary and treasurer. A majority
14 of the Board shall constitute a quorum. The Board shall meet at least once a year, the
15 time and place of the annual meeting and any special meetings to be designated by the
16 president. The secretary and treasurer of the Board shall keep a full record of its
17 proceedings, including a current list of all licensees, which shall at all reasonable times
18 be open to public inspection. The Board is authorized to employ an executive secretary
19 and to provide such assistance as may be required to enable said Board to properly
20 perform its duties.

21 (c) The Board shall:

- 22 (1) Authorize all disbursements necessary to carry out the provisions of
23 this Chapter;
- 24 (2) Supervise and administer qualifying examinations to test and
25 determine the knowledge and proficiency of applicants for
26 ~~licenses;~~licensure and applicants for apprenticeships;
- 27 (3) Issue licenses to qualified persons who apply to the Board;
- 28 (4) Obtain audiometric equipment and facilities necessary to carry out the
29 examination of applicants for licenses;
- 30 (5) Suspend or revoke licenses pursuant to this Chapter;
- 31 (6) Make and publish rules, including a code of ethics, that are necessary
32 and proper to regulate the fitting and selling of hearing aids and to
33 carry out the provisions of this Chapter;
- 34 (7) Exercise jurisdiction over the hearing of complaints, charges of
35 malpractice including corrupt or unprofessional conduct, and
36 allegations of violations of the Board's rules that are made against any
37 fitter and seller of hearing aids in North Carolina;
- 38 (8) Require the periodic inspection and calibration of audiometric testing
39 equipment of persons who are fitting and selling hearing aids;
- 40 (9) In connection with any matter within the jurisdiction of the Board,
41 summon and subpoena and examine witnesses under oath and to
42 compel their attendance and the production of books, papers, or other
43 documents or writings deemed by the Board to be necessary or
44 material to the inquiry. Each summons or subpoena shall be issued

1 under the hand of the secretary and treasurer or the president of the
2 Board and shall have the force and effect of a summons or subpoena
3 issued by a court of record. Any witness who shall refuse or neglect to
4 appear in obedience thereto or to testify or produce books, papers, or
5 other documents or writings required shall be liable to contempt
6 charges. The Board shall pay to any witness subpoenaed before it the
7 fees and per diem as paid witnesses in civil actions in the superior
8 court of the county where such hearing is held;

- 9 (10) Inform the Attorney General of any information or knowledge it
10 acquires regarding any "price-fixing" activity whatsoever in
11 connection with the sales and service of hearing aids;
- 12 (11) Establish and enforce rules to guarantee that a full refund will be made
13 within 90 days by the seller of a hearing aid to the purchaser when
14 presented with a written medical opinion of an otolaryngologist that
15 the purchaser's hearing cannot be improved by the use of a hearing aid;
- 16 (12) Fund, establish, conduct, approve and sponsor instructional programs
17 for registered apprentices and for persons who hold a license as well as
18 for persons interested in obtaining adequate instruction or programs of
19 study to qualify them for registration to the extent that the Board
20 deems such instructional programs to be beneficial or necessary;
- 21 (13) Register persons ~~servng~~applying as apprentices as set forth in
22 G.S. 93D-9;
- 23 (14) Have the power to set and collect fees in accordance with Chapter
24 150B of the General Statutes for the items listed in this subdivision
25 and for other items for which this Chapter gives the Board the
26 authority to set a fee:
- 27 a. For a continuing education make-up class provided by the
28 Board, a fee not to exceed fifty dollars (\$50.00) per person for
29 each day of instruction. The Board may not offer a make-up
30 class that is longer than two days;
- 31 b. For a license examination preparation course provided by the
32 Board, a fee not to exceed fifty dollars (\$50.00) per person for
33 each day of instruction. The Board may not offer an
34 examination preparation course that is longer than three days;
- 35 c. For approval of a continuing education program provider, a fee
36 not to exceed forty dollars (\$40.00);
- 37 d. For verifying and recording attendance at a continuing
38 education program not provided by the Board, a fee not to
39 exceed fifteen dollars (\$15.00) per licensee per program;
- 40 e. For providing a voluntary two-day apprentice training
41 workshop, a fee not to exceed one hundred dollars (\$100.00)
42 per person, and for providing a three-day voluntary apprentice
43 training workshop, a fee not to exceed one hundred fifty dollars
44 (\$150.00) per person;

1 f. For administering an examination, a fee not to exceed
2 ~~seventy five dollars (\$75.00); and~~ three hundred dollars
3 (\$300.00);

4 g. For administering a prequalifying examination to applicants for
5 apprenticeship, a fee not to exceed twenty-five dollars (\$25.00);
6 and

7 (15) Adopt annually a balanced budget prior to the beginning of its fiscal
8 year, against which expenditures shall be reviewed throughout the
9 fiscal year to ensure that expenditures during the year do not exceed
10 receipts for that year plus amounts held by the Board in reserve.
11 Except for monies from charges for photocopying and similar charges,
12 the Board's receipts shall consist of and be limited to funds derived
13 from fees expressly authorized by law.

14 ~~(d) Out of the funds coming into the possession of said Board, each member~~
15 ~~thereof may receive as reimbursement for each day he is actually engaged in the~~
16 ~~assigned duties of his office, the sum of eight cents (8¢) per mile for travel plus the~~
17 ~~actual costs of meals and public lodging while away from home, which costs of meals~~
18 ~~and lodging may not exceed twenty dollars (\$20.00) per day. Such expenses shall be~~
19 ~~paid.~~ Each member of the Board shall receive per diem and reimbursement for travel and
20 subsistence as provided in G.S. 93B-5. The expenses shall be paid from the fees and
21 assessments received by the Board under the provisions of this Chapter. No part of these
22 expenses or any other expenses of the Board, in any manner whatsoever, shall be paid
23 out of the State treasury. All moneys received in excess of expense allowance and
24 mileage, as above provided, shall be held by the secretary-treasurer as a special fund for
25 meeting other expenses of the Board and carrying out the provisions of this Chapter.

26 ~~The secretary treasurer shall give a bond to the Board to be approved by the Board,~~
27 ~~in the sum of five thousand dollars (\$5,000) conditioned upon the faithful performance~~
28 ~~of the duties of his office.~~

29 ~~The Board shall make an annual report of its proceedings to the Governor on the~~
30 ~~first Monday in June of each year, which report shall contain an account of all moneys~~
31 ~~received and disbursed by the Board and a complete listing of names and addresses of~~
32 ~~all licensees and apprentices. Copies of the report and list of licensees and apprentices~~
33 ~~shall be filed in the office of the State Auditor, the Secretary of State, and Attorney~~
34 ~~General in accordance with G.S. 93B-2."~~

35 **SECTION 5.** G.S. 93D-5 reads as rewritten:

36 "**§ 93D-5. Requirements for registration; licensure; examinations; apprentice**
37 **licenses.**

38 (a) No person shall begin the fitting and selling of hearing aids in this State
39 unless the person has been issued a license by the Board or is an apprentice who has
40 taken and passed a prequalifying examination and is working under the supervision of a
41 licensee. Except as hereinafter provided, each applicant for a license shall pay a fee set
42 by the Board, not to exceed ~~one hundred fifty dollars (\$150.00),~~ two hundred fifty
43 dollars (\$250.00), which fee may be prorated by the Board, and shall show to the
44 satisfaction of the Board that the applicant:

- 1 (1) Is a person of good moral character,
- 2 (2) Is 18 years of age or older,
- 3 (3) Has an education equivalent to a four-year course in an accredited high
4 ~~school, school.~~
- 5 (4) ~~Is free of contagious or infectious disease.~~

6 (b) Except as hereinafter provided, no license shall be issued to a person until ~~he~~
7 the person has successfully passed a qualifying examination administered by the Board.

8 (c) No license shall be issued to any person until ~~he~~the person has served as an
9 apprentice as set forth in G.S. 93D-9 for a period of at least one year; provided, that this
10 subsection shall not apply to those persons qualified under G.S. 93D-6 nor to those
11 persons holding ~~masters degrees~~licenses in Audiology or persons holding doctoral
12 degrees in Audiology from accredited training programs who have undergone 250 hours
13 of supervised activity fitting and selling hearing aids under the direct supervision of a
14 licensed hearing aid ~~dealer~~dispenser approved by the Board, or have met the licensure
15 requirements under Article 22 of Chapter 90 of the General Statutes and have worked
16 full time for one year fitting and selling hearing aids in the office of and under the direct
17 supervision of an otolaryngologist and have participated in 250 hours of
18 Board-supervised, continuing professional education in fitting hearing aids."

19 **SECTION 6.** G.S. 93D-9 reads as rewritten:

20 "**§ 93D-9. Registration of apprentices.**

21 (a) Any person age ~~17~~18 or older may apply to the Board for registration as an
22 apprentice. Each applicant must be sponsored by a hearing aid dealer and fitter licensed
23 by the Board.

24 (b) Upon receiving an application accompanied by a fee in an amount set by the
25 Board, not to exceed one hundred dollars (\$100.00), the Board may register the
26 applicant as an ~~apprentice, which~~apprentice and upon successfully passing a
27 prequalifying examination within 30 days from the date of application, the registration
28 shall entitle the applicant to fit and sell hearing aids under the supervision of a holder of
29 a regular license. The prequalifying examination shall consist of pure tone audiometry,
30 which includes air and bone conduction testing and regulations.

31 (c) No applicant shall be registered as an apprentice by the Board under this
32 section unless the applicant shows to the satisfaction of the Board that the applicant is or
33 will be supervised and trained by a hearing aid fitter and seller who holds a license.

34 (d) If a person 18 years of age or older who is registered as an apprentice under
35 this section does not take the next succeeding examination given after a minimum of
36 one full year of apprenticeship, the person's apprentice registration shall not be renewed,
37 except for good cause shown to the satisfaction of the Board.

38 (e) If a person who is registered as an apprentice takes and fails to pass the next
39 succeeding examination given after one full year of apprenticeship, the Board may
40 renew the apprenticeship license for a period of time to end 30 days after the results of
41 the examination given next after the date of renewal of said registration. The fee for
42 renewal of apprenticeship registration shall be set by the Board at an amount not to
43 exceed one hundred fifty dollars (\$150.00).

1 (f) The Board shall adopt rules implementing initial and renewal registration of
2 apprentices."

3 **SECTION 7.** G.S. 93D-11 reads as rewritten:

4 "**§ 93D-11. Annual fees; failure to pay; expiration of license; occupational**
5 **instruction courses.**

6 Every licensed person who engages in the fitting and selling of hearing aids shall
7 pay to the Board an annual license renewal fee in an amount set by the Board, not to
8 exceed ~~one hundred fifty dollars (\$150.00)~~ two hundred fifty dollars (\$250.00). Such
9 The payment shall be made prior to the first day of April in each year. In case of default
10 in payment the license shall expire 30 days after notice by the secretary-treasurer to the
11 last known address of the licensee by registered mail. The Board may reinstate an
12 expired license upon the showing of good cause for late payment of fees, upon payment
13 of said fees within 60 days after expiration of the license, and upon the further payment
14 of a late penalty of twenty-five dollars (\$25.00). After 60 days after the expiration date,
15 the Board may reinstate the license for good cause shown upon application for
16 reinstatement and payment of a late penalty of fifty dollars (\$50.00) and the renewal fee.
17 The Board may require all licensees to successfully attend and complete a course or
18 courses of occupational instruction funded, conducted or approved or sponsored by the
19 Board on an annual basis as a condition to any license renewal and evidence of
20 satisfactory attendance and completion of any such course or courses shall be provided
21 the Board by the licensee."

22 **SECTION 8.** G.S. 93D-13 reads as rewritten:

23 "**§ 93D-13. Discipline, suspension, revocation of ~~licenses~~ licenses; records.**

24 (a) The Board may in its discretion administer the punishment of private
25 reprimand, suspension of license for a fixed period or revocation of license as the case
26 may warrant in their judgment for any violation of the rules and regulations of the
27 Board or for any of the following causes:

28 (1) ~~Habitual drunkenness~~

29 (2) ~~Gross incompetence~~ incompetence.

30 (3) ~~Knowingly fitting and selling hearing aids while suffering with a~~
31 ~~contagious or infectious disease~~ Inability to perform functions for
32 which the person is licensed or substantial impairment of the person's
33 ability to perform the functions for which the person is licensed by
34 reason of physical or mental disability.

35 (4) Commission of a criminal offense indicating professional
36 ~~unfitness~~ unfitness.

37 (5) The use of a false name or alias in his ~~business~~ or her business.

38 (6) Conduct involving willful ~~deceit~~ deceit.

39 (7) Conduct involving fraud or any other business conduct involving
40 moral ~~turpitude~~ turpitude.

41 (8) Advertising of a character or nature tending to deceive or mislead the
42 ~~public~~ public.

43 (9) Advertising declared to be unethical by the Board or prohibited by the
44 code of ethics established by the ~~Board~~ Board.

- 1 (10) Permitting another person to use his ~~license~~, or her license.
2 (10a) Failure by a licensee to properly supervise an apprentice under his
3 supervision, and or her supervision.
4 (11) For violating any of the provisions of this Chapter.
5 (b) Board action in revoking or suspending a license shall be in accordance with
6 Chapter 150B of the General Statutes. Any person whose license has been suspended
7 for any of the grounds or reasons herein set forth, may, after the expiration of 90 days
8 but within two years, apply to the Board to have the same reissued; upon a showing
9 satisfactory to the Board that ~~such~~ reissuance will not endanger the public health and
10 welfare, the Board may reissue a license to such person for a fee set by the Board, not to
11 exceed two hundred dollars (\$200.00). If application is made subsequent to two years
12 from date of suspension, reissuance shall be in accordance with the provisions of
13 G.S. 93D-8.
14 (c) Records, papers, and other documents containing information collected or
15 compiled by or on behalf of the Board as a result of an investigation, inquiry, or
16 interview conducted in connection with registration, licensure, or a disciplinary matter
17 shall not be considered a public record. However, information that identifies a consumer
18 who has not consented to the public disclosure of services rendered to the consumer by
19 a person registered or licensed under this Chapter shall be deleted from the public
20 record. All other records, papers, and documents containing information collected or
21 compiled by or on behalf of the Board shall be public records; provided, that any
22 information that identifies a consumer who has not consented to the public disclosure of
23 services rendered to the consumer is deleted."

24 **SECTION 9.** This act is effective when it becomes law.