

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 670
Health Care Committee Substitute Adopted 5/12/11
Finance Committee Substitute Adopted 5/17/11
House Committee Substitute Favorable 6/15/11

Short Title: Revise Membership/Hearing Aid Fitters Board.

(Public)

Sponsors:

Referred to:

April 20, 2011

1 A BILL TO BE ENTITLED
2 AN ACT RELATING TO HEARING AID FITTING AND DISPENSING BY CERTAIN
3 LICENSED AUDIOLOGISTS AND REVISING THE MEMBERSHIP ON THE NORTH
4 CAROLINA STATE HEARING AID DEALERS AND FITTERS BOARD.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 93D-1 reads as rewritten:

7 **"§ 93D-1. Definitions.**

8 For the purposes of this Chapter:

- 9 (1) "Board" shall mean the North Carolina State Hearing Aid Dealers and Fitters
10 Board.
11 (2) "Fitting and selling hearing aids" shall mean the evaluation or measurement
12 of the powers or range of human hearing by means of an audiometer or by
13 other means and the consequent selection or adaptation or sale or rental of
14 hearing aids intended to compensate for hearing loss including the making of
15 an impression of the ear.
16 (3) "Hearing aid" shall mean any instrument or device designed for or
17 represented as aiding, improving or compensating for defective human
18 hearing and any parts, attachments or accessories of such an instrument or
19 device.
20 (4) "Registered Sponsor" shall mean a person with a permanent license as an
21 audiologist under Article 22 of Chapter 90 of the General Statutes who is
22 registered in accordance with G.S. 93D-3(c)(16), or a licensee of the Board
23 who has been approved as a sponsor of an apprentice.
24 (5) "Hearing Instrument Specialist" shall mean a person licensed by the Board to
25 engage in fitting or selling hearing aids in North Carolina."

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

27 **"§ 93D-2. Fitting and selling without license unlawful.**

28 It shall be unlawful for any person to fit or sell hearing aids unless ~~he~~the person has first
29 obtained a license from the North Carolina State Hearing Aid Dealers and Fitters Board or is an
30 apprentice working under the supervision of a ~~board licensee~~Registered Sponsor.

31 **SECTION 3.** G.S. 93D-3(a) reads as rewritten:

32 "(a) There is hereby created a board whose duty it shall be to carry out the purposes and
33 enforce the provisions of this Chapter, and which shall be known as the "North Carolina State
34 Hearing Aid Dealers and Fitters Board." The Board shall be composed of seven members. Four



1 members who have been ~~actively engaged in the fitting and selling of hearing aids for a~~ licensed
2 Hearing Instrument Specialist for at least the preceding three years prior to appointment, shall
3 be appointed by the Governor. These initial appointments are for the following terms: one for
4 one year, one for two years, one for three years and one for four years. All appointments made
5 on or after July 1, 1981, shall be for terms of three years.

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

9 One member, who shall be a person with hearing loss, shall be appointed by the Governor
10 to represent the interest of hearing aid consumers.~~from a list of two audiologists residing in~~
11 ~~North Carolina, which list shall be compiled by the North Carolina Speech and Hearing~~
12 ~~Association.~~ This initial appointment shall be for a term ~~of three years ending June 30, 2013.~~
13 All appointments made on or after ~~July 1, 1981,~~ July 1, 2013, shall be for a term of three years.

14 One member shall be appointed by the Governor to represent the interest of the public at
15 large. This member shall have no ties to the hearing aid business nor shall he be an audiologist.
16 The Governor shall appoint the public member not later than July 1, 1981, to serve a term of
17 three years.

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

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

27 **SECTION 4.** G.S. 93D-3(c) reads as rewritten:

28 "(c) The Board shall:

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

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

7 (10) Inform the Attorney General of any information or knowledge it acquires
8 regarding any "price-fixing" activity whatsoever in connection with the sales
9 and service of hearing aids;

10 (11) Establish and enforce rules to guarantee that a full refund will be made by
11 the seller of a hearing aid to the purchaser when presented with a written
12 medical opinion of an otolaryngologist that the purchaser's hearing cannot be
13 improved by the use of a hearing aid;

14 (12) Fund, establish, conduct, approve and sponsor instructional programs for
15 registered apprentices and for persons who hold a license as well as for
16 persons interested in obtaining adequate instruction or programs of study to
17 qualify them for registration to the extent that the Board deems such
18 instructional programs to be beneficial or necessary;

19 (13) Register persons serving as apprentices as set forth in G.S. 93D-9;

20 (14) Have the power to set and collect fees in accordance with Chapter 150B of
21 the General Statutes for the items listed in this subdivision and for other
22 items for which this Chapter gives the Board the authority to set a fee:

23 a. For a continuing education make-up class provided by the Board, a
24 fee not to exceed fifty dollars (\$50.00) per person for each day of
25 instruction. The Board may not offer a make-up class that is longer
26 than two days;

27 b. For a license examination preparation course provided by the Board,
28 a fee not to exceed fifty dollars (\$50.00) per person for each day of
29 instruction. The Board may not offer an examination preparation
30 course that is longer than three days;

31 c. For approval of a continuing education program provider, a fee not to
32 exceed forty dollars (\$40.00);

33 d. For verifying and recording attendance at a continuing education
34 program not provided by the Board, a fee not to exceed fifteen
35 dollars (\$15.00) per licensee per program;

36 e. For providing a voluntary two-day apprentice training workshop, a
37 fee not to exceed one hundred dollars (\$100.00) per person, and for
38 providing a three-day voluntary apprentice training workshop, a fee
39 not to exceed one hundred fifty dollars (\$150.00) per person;

40 f. For administering an examination, a fee of three hundred dollars
41 (\$300.00); and

42 g. For the registration of a Registered Sponsor not otherwise licensed
43 under this Chapter, a fee of one hundred fifty dollars (\$150.00) per
44 annum;

45 (15) Adopt annually a balanced budget prior to the beginning of its fiscal year,
46 against which expenditures shall be reviewed throughout the fiscal year to
47 ensure that expenditures during the year do not exceed receipts for that year
48 plus amounts held by the Board in reserve. Except for monies from charges
49 for photocopying and similar charges, the Board's receipts shall consist of
50 and be limited to funds derived from fees expressly authorized by ~~law~~ law;
51 and

1 (16) Register any person holding a valid permanent license as an audiologist
2 under Article 22 of Chapter 90 of the General Statutes, who holds a doctoral
3 degree in Audiology and who makes an application to serve as a Registered
4 Sponsor to apprentice as set forth in G.S. 93D-9, but who is not otherwise
5 subject to licensure by the Board."

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

7 "**§ 93D-5. Requirements for registration; examinations; apprentice licenses.**

8 (a) No person shall begin the fitting and selling of hearing aids in this State unless the
9 person has been issued a license by the Board or is an apprentice working under the supervision
10 of a ~~licensee~~ Registered Sponsor. Except as hereinafter provided, each applicant for a license
11 shall pay a fee set by the Board, not to exceed two hundred fifty dollars (\$250.00), which fee
12 may be prorated by the Board, and shall show to the satisfaction of the Board that the applicant:

13 (1) Is a person of good moral character.

14 (2) Is 18 years of age or older.

15 (3) Has an education equivalent to a four-year course in an accredited high
16 school.

17 (4) Repealed by Session Laws 2007-406, s. 3, effective August 21, 2007.

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

20 (c) No license shall be issued to any person until the person has served as an apprentice
21 as set forth in G.S. 93D-9 for a period of at least one year; provided, that ~~this subsection~~ the
22 one-year apprenticeship requirement shall not apply to those ~~be waived for persons qualified~~
23 under G.S. 93D-6 nor to those persons holding a license in Audiology issued by the North
24 Carolina Board of Examiners for Speech and Language Pathologist and Audiologist who have
25 undergone 250 hours of supervised activity fitting and selling hearing aids under the direct
26 supervision of a licensed hearing aid dispenser approved by the Board, or have met the
27 licensure requirements under Article 22 of Chapter 90 of the General Statutes and have worked
28 full time for one year fitting and selling hearing aids in the office of and under the direct
29 supervision of an otolaryngologist and have participated in 250 hours of Board-supervised,
30 continuing professional education in fitting hearing aids. G.S. 93D-6; persons holding a
31 permanent license as an audiologist under Article 22 of Chapter 90 of the General Statutes who
32 have undergone 250 hours of supervised activity fitting or selling hearing aids in another state
33 or jurisdiction for the preceding three years; and persons who have worked full-time for one
34 year in the office of and under the direct supervision of an otolaryngologist fitting or selling
35 hearing aids."

36 **SECTION 6.** G.S. 93D-7 reads as rewritten:

37 "**§ 93D-7. Statements of sale.**

38 Every person fitting and selling a hearing aid, be it new or used, in the State of North
39 Carolina, at or before the time of delivery of the hearing aid shall render to the user and/or
40 purchaser a statement of sale to include the following:

41 (1) Date of delivery

42 (2) Condition of hearing aid; new, used, reconditioned

43 (3) Hearing aid identification number

44 (4) Name of manufacturer

45 (5) Price of hearing aid

46 (6) Charge for fitting and service

47 (7) Name of dealer and/or fitter

48 (8) Signature of customer."

49 **SECTION 7.** G.S. 93D-8(a) reads as rewritten:

50 "**§ 93D-8. Examination of applicants; issue of license certificate.**

1 (a) Every applicant for a license who is notified by the Board that he has fulfilled the
2 requirements of ~~G.S. 93D-5(a)~~, G.S. 93D-5, except those making application pursuant to
3 G.S. 93D-6, shall appear at a time, place and before such persons as the Board may designate,
4 to be examined by written and practical tests in order to demonstrate that ~~he~~ the applicant is
5 qualified for the fitting and selling of hearing aids. The Board shall give one examination of the
6 type prescribed herein each year at a duly prescribed time and place, which shall be publicized
7 for at least 90 days in advance. Additional examinations may be given at the discretion of the
8 Board. The examination provided in this section shall not include questions requiring a medical
9 or surgical education but shall consist of:

- 10 (1) Tests of knowledge in the following areas as they pertain to the fitting of
11 hearing aids:
12 a. The basic physics of sound,
13 b. The human hearing mechanism, including the science of hearing and
14 the cause and rehabilitation of abnormal hearing and hearing
15 disorders, and
16 c. The structure and function of hearing aids.
17 (2) Tests of proficiency in the following techniques as they pertain to the fitting
18 of hearing aids:
19 a. Pure tone audiometry, including air conduction testing and bone
20 conduction testing,
21 b. Live voice and recorded voice speech audiometry, including speech
22 reception threshold testing and speech discrimination testing,
23 c. Effective masking,
24 d. Recording and evaluation of audiograms and speech audiometry to
25 determine hearing aid candidacy,
26 e. Selection and adaption of hearing aids and testing of hearing aids,
27 f. Taking earmold impressions, and
28 g. Such other skills as may be required for the fitting of hearing aids in
29 the opinion of the Board."

30 **SECTION 8.** G.S. 93D-9 reads as rewritten:

31 **"§ 93D-9. Registration of apprentices.**

32 (a) Any person age 17 or older may apply to the Board for registration as an apprentice.
33 Each applicant must be sponsored by a ~~hearing aid dealer and fitter licensed by the~~
34 ~~Board.~~ Registered Sponsor.

35 (b) Upon receiving an application accompanied by a fee in an amount set by the Board,
36 not to exceed one hundred dollars (\$100.00), the Board may register the applicant as an
37 apprentice, which shall entitle the applicant to fit and sell hearing aids under the supervision of
38 ~~a holder of a regular license.~~ Registered Sponsor.

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

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

46 (e) If a person who is registered as an apprentice takes and fails to pass the next
47 succeeding examination given after one full year of apprenticeship, the Board may renew the
48 apprenticeship license for a period of time to end 30 days after the results of the examination
49 given next after the date of renewal of said registration. The fee for renewal of apprenticeship
50 registration shall be set by the Board at an amount not to exceed one hundred fifty dollars
51 (\$150.00).

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

3 (g) The Board shall adopt rules implementing initial and renewal registration of
4 Registered Sponsors."

5 **SECTION 9.** G.S. 93D-10 reads as rewritten:

6 "**§ 93D-10. Registration and notice.**

7 The Board shall register each ~~apprentice~~apprentice, Registered Sponsor, and each person to
8 whom it grants a license. The secretary-treasurer of the Board shall keep a record of the place
9 of business of all ~~licensees and~~licensees, Registered Sponsors, and apprentices. Any notice
10 required to be given by the Board to a person holding a license or ~~apprenticeship~~registration
11 may be given by mailing to him at the last address received by the Board from him."

12 **SECTION 10.** G.S. 93D-12 reads as rewritten:

13 "**§ 93D-12. License to be displayed at office.**

14 Every person to whom a ~~license or apprenticeship~~license, apprenticeship certificate, or
15 sponsor registration is granted shall display the same in a conspicuous part of his office
16 wherein the fitting and selling of hearing aids is conducted, or shall have a copy of such license
17 ~~or apprenticeship certificate,~~ or registration on his person and exhibit the same upon request
18 when fitting or selling hearing aids outside of his office."

19 **SECTION 11.** G.S. 93D-13 reads as rewritten:

20 "**§ 93D-13. Discipline, suspension, revocation of licenses and registrations; records.**

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

- 25 (1) Repealed by Session Laws 2007-406, s. 5, effective August 21, 2007.
- 26 (2) Gross incompetence.
- 27 (3) Inability to perform the functions for which the person is licensed or
28 substantial impairment of the person's ability to perform the functions for
29 which the person is licensed by reason of physical or mental disability.
- 30 (4) Commission of a criminal offense indicating professional unfitness.
- 31 (5) The use of a false name or alias in his or her business.
- 32 (6) Conduct involving willful deceit.
- 33 (7) Conduct involving fraud or any other business conduct involving moral
34 turpitude.
- 35 (8) Advertising of a character or nature tending to deceive or mislead the public.
- 36 (9) Advertising declared to be unethical by the Board or prohibited by the code
37 of ethics established by the Board.
- 38 (10) Permitting another person to use his or her license.
- 39 (10a) Failure by a ~~licensee~~Registered Sponsor to properly supervise an apprentice
40 under his or her supervision.
- 41 (11) For violating any of the provisions of this Chapter.

42 (b) Board action in revoking or suspending a license or registration shall be in
43 accordance with Chapter 150B of the General Statutes. Any person whose license or
44 registration has been suspended for any of the grounds or reasons herein set forth, may, after
45 the expiration of 90 days but within two years, apply to the Board to have the same reissued;
46 upon a showing satisfactory to the Board that reissuance will not endanger the public health
47 and welfare, the Board may reissue a license to such person for a fee set by the Board, not to
48 exceed two hundred dollars (\$200.00). If application is made subsequent to two years from date
49 of suspension, reissuance shall be in accordance with the provisions of G.S. 93D-8.

50 (c) Records, papers, and other documents containing information collected or compiled
51 by or on behalf of the Board as a result of an investigation, inquiry, or interview conducted in

1 connection with registration, licensure, or a disciplinary matter shall not be considered public
2 records within the meaning of Chapter 132 of the General Statutes. Any notice or statement of
3 charges, notice of hearing, or decision rendered by the Board in connection with a hearing is a
4 public record. However, information that identifies a consumer who has not consented to the
5 public disclosure of services rendered to the consumer by a person registered or licensed under
6 this Chapter shall be deleted from the public record. All other records, papers, and documents
7 containing information collected or compiled by or on behalf of the Board shall be public
8 records, provided that any information that identifies a consumer who has not consented to the
9 public disclosure of services rendered to the consumer is deleted."

10 **SECTION 12.** G.S. 93D-14 reads as rewritten:

11 "**§ 93D-14. Persons not affected.**

12 ~~This Chapter shall not prevent any person from engaging in the measuring of human~~
13 ~~hearing for the purpose of selection of hearing aids, provided such person or organization~~
14 ~~employing such person does not sell hearing aids or accessories thereto, nor shall this Chapter~~
15 ~~apply to any physician licensed to practice medicine or surgery in the State of North Carolina.~~
16 ~~Nothing in this Chapter shall permit a licensee hereunder to perform any practices or services~~
17 ~~set forth in Article 17 of Chapter 90 of the General Statutes of North Carolina.~~

18 (a) Nothing in this Chapter shall apply to a physician licensed to practice medicine or
19 surgery in the State of North Carolina.

20 (b) Any person who meets the requirements of having both a doctoral degree in
21 Audiology and holding a valid permanent license as an audiologist under Article 22 of Chapter
22 90 of the General Statutes of North Carolina is exempt from licensure under this Chapter. A
23 person who does not meet both requirements of having a doctoral degree in Audiology and
24 holding a valid permanent license as an audiologist under Article 22 of Chapter 90 of the
25 General Statutes of North Carolina must become a registered apprentice or be licensed by the
26 Board before fitting or selling hearing aids in the State of North Carolina.

27 (c) Nothing in this Chapter shall be construed to exempt an audiology assistant or
28 certified technician, working under the supervision of a licensee or a person exempt from
29 licensure under this Chapter, from being subject to the provisions of this Chapter. Such a
30 person, before engaging in fitting or selling hearing aids, as defined in this Chapter, must be
31 registered as an apprentice under a Registered Sponsor or be licensed by the Board.

32 (d) The provisions of this Chapter shall not apply to the activities and services of an
33 audiology student pursuing a course of study in an accredited college or university, if these
34 activities and services constitute a part of such person's course of study."

35 **SECTION 13.** The term of the member currently serving on the North Carolina
36 State Hearing Aid Dealers and Fitters Board who was appointed by the Governor from a list of
37 audiologists compiled by the North Carolina Speech and Hearing Association expires on the
38 effective date of this act. The Governor must appoint a person to fill this vacancy on the Board
39 who represents the interest of hearing aid consumers, in accordance with G.S. 93D-3, as
40 amended by this act.

41 **SECTION 14.** This act is effective when it becomes law.