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SENATE BILL NO. 1279

Senate Amendments in [] - January 30, 2023

Prefiled January 10, 2023

A *BILL to amend and reenact §§ 54.1-1500, 54.1-1501, 54.1-1504, and 54.1-1505 of the Code of Virginia, relating to Department of Professional and Occupational Regulation; over-the-counter and prescription hearing aids.*

Patrons Prior to Engrossment—Senators Boysko and Favola; Delegate: Shin

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-1500, 54.1-1501, 54.1-1504, and 54.1-1505 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-1500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Audiologist" means the same as that term is defined in § 54.1-2600.

"Board" means the Board for Hearing Aid Specialists and Opticians.

"Hearing aid" means any wearable instrument or device designed or offered to aid or compensate for impaired human hearing and any parts, attachments, or accessories, including earmolds, but excluding batteries and cords.

"Licensed hearing aid specialist" means any person who is the holder of a hearing aid specialist license issued by the Board for Hearing Aid Specialists and Opticians.

"Licensed optician" means any person who is the holder of an optician license issued by the Board for Hearing Aid Specialists and Opticians.

"Licensed optometrist" means any person authorized by Virginia law to practice optometry.

"Licensed physician" means any person licensed by the Board of Medicine to practice medicine and surgery.

"Optician" means any person not exempted by § 54.1-1506 who prepares or dispenses eyeglasses, spectacles, lenses, or related appurtenances, for the intended wearers or users, on prescriptions from licensed physicians or licensed optometrists, or as duplications or reproductions of previously prepared eyeglasses, spectacles, lenses, or related appurtenances; or who, in accordance with such prescriptions, duplications or reproductions, measures, adapts, fits, and adjusts eyeglasses, spectacles, lenses, or appurtenances, to the human face.

"Over-the-counter hearing aid" means an air-conduction hearing aid that does not require implantation or other surgical intervention and is intended for use by a person age 18 or older to compensate for perceived mild to moderate hearing impairment.

"Practice of audiology" means the same as that term is defined in § 54.1-2600.

"Practice of fitting or dealing in hearing aids" means (i) the measurement of human hearing by means of an audiometer or by any other means solely for the purpose of making selections, adaptations, or sale of hearing aids, (ii) the sale of *prescription* hearing aids, or (iii) the making of impressions for earmolds *for prescription hearing aids*. A practitioner, at the request of a physician or a member of a related profession, may make audiograms for the professional's use in consultation with the hard-of-hearing.

"*Prescription hearing aid*" means a hearing aid that is not an over-the-counter hearing aid.

"Sell" or "sale" means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or practitioners.

"Temporary permit" means a permit issued while an applicant is in training to become a licensed hearing aid specialist.

§ 54.1-1501. Exemptions; sale of hearing aids by corporations, etc., measuring hearing.

A. Physicians licensed to practice in Virginia and certified by the American Board of Otolaryngology or eligible for such certification shall not be required to pass an examination as a prerequisite to obtaining a license under this chapter.

B. Nothing in this chapter shall prohibit a corporation, partnership, trust, association, or other like organization maintaining an established business address from engaging in the business of selling or offering for sale *prescription* hearing aids at retail without a license, provided that it employs only licensed practitioners in the direct sale and fitting of ~~such products~~ *prescription hearing aids*.

C. Nothing in this chapter shall prohibit any person who does not sell hearing aids or accessories or who is not employed by an organization which sells hearing aids or accessories from engaging in the

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59 practice of measuring human hearing for the purpose of selection of hearing aids.

60 D. Audiologists licensed to practice in Virginia who have earned a doctoral degree in audiology shall
61 not be required to pass an examination as a prerequisite to obtaining a license under this chapter.

62 **§ 54.1-1504. License required.**

63 No person shall engage in the practice of fitting or dealing in *prescription* hearing aids or display a
64 sign or in any other way advertise or represent himself as a person who practices the fitting or dealing
65 of *prescription* hearing aids unless he holds a license as provided in this chapter. *Nothing in this chapter*
66 *shall [be] construed as requiring a licensee to engage in the business of selling over-the-counter*
67 *hearing aids.*

68 **§ 54.1-1505. Return of prescription hearing aid by purchaser or lessee.**

69 A. Within ~~thirty~~ 30 days of the date of delivery, any purchaser or lessee of a *prescription* hearing aid
70 shall be entitled to return ~~the~~ *such* hearing aid for any reason, provided *that* such *hearing* aid is returned
71 in satisfactory condition. Such purchaser or lessee shall be entitled to a replacement or a refund of all
72 charges paid, less a reasonable charge for medical, audiological, and hearing aid evaluation services
73 provided by the hearing aid specialist.

74 B. The right of a purchaser or lessee to return a *prescription* hearing aid and the charges to be
75 imposed upon the return of such hearing aid, as provided in subsection A of this section, shall be
76 explained and given in writing in at least ~~ten-point~~ *10-point*, bold-faced type to such purchaser or lessee
77 by the hearing aid specialist.

78 C. The provisions of this section shall be subject to the provisions of the Virginia Consumer
79 Protection Act (§ 59.1-196 et seq.).