

CHAPTER 46

(HB 95)

AN ACT relating to the selling and fitting of hearing instruments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 334.020 is amended to read as follows:

No person shall engage in the sale or practice of fitting hearing instruments or display a sign or in any other way advertise or represent himself *or herself* as a person who practices the sale or fitting of hearing instruments unless he *or she* holds:

- (1) An unsuspended, unrevoked license issued by the board pursuant to KRS 334.080;
- (2) ~~A~~, ~~or unless he holds a~~ current, unsuspended, unrevoked apprentice permit pursuant to KRS 334.090. The license or permit shall be conspicuously posted in each office or place of business; *or*
- (3) *A license to practice as an audiologist issued by the Kentucky Board of Speech-Language Pathology and Audiology pursuant to KRS Chapter 334A.*

➔Section 2. KRS 334.030 is amended to read as follows:

- (1) Any person who practices the sale or fitting of hearing instruments shall obtain from the buyer of a hearing instrument, at the time such buyer assumes any financial obligation with respect to the purchase, the buyer's signature on a written and dated agreement, offer to purchase, or receipt. The written agreement, offer to purchase, or receipt shall contain the following information:
 - (a) Licensee's signature, printed name and business address, and license number issued to the licensee by the board pursuant to this chapter;
 - (b) Make, model, and serial number of the hearing instrument;
 - (c) Immediately following the information required by subsection (1)(a), (b), and (d) of this section, shall be the statement, in all capital letters in no smaller type than the largest used in the body copy portion, that: ANY COMPLAINTS CONCERNING THE SALE OR SERVICE OF THIS HEARING INSTRUMENT WHICH ARE NOT CORRECTED BY THE SPECIALIST IN HEARING INSTRUMENTS SHOULD BE DIRECTED TO: KENTUCKY LICENSING BOARD FOR SPECIALISTS IN HEARING INSTRUMENTS **AT ITS CURRENT MAILING ADDRESS FOUND ON THE BOARD WEB SITE**~~[, COMMONWEALTH OF KENTUCKY, FRANKFORT, KENTUCKY 40601];~~ and
 - (d) Notice and statement of the purchaser's thirty (30) day right to cancel pursuant to KRS 334.210.
- (2) The written agreement, offer to purchase, or receipt shall bear in no smaller type than the largest used in the body copy portion the following statement: "The purchaser has been advised at the outset of his *or her* relationship with the specialist in hearing instruments that any examination(s) or representation(s) is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefore shall not be regarded as medical opinion or advice."
- (3) Upon delivery of a hearing instrument, the client shall be furnished a delivery statement which shall include specifications as to the make, model, serial number, and delivery date, with full terms of the sale clearly stated. If a hearing instrument which is not new is offered for sale or is sold, that fact shall be clearly stated and conspicuously disclosed and read in the oral sales presentation before the buyer assumes any financial obligation with respect to the purchase, and the receipt shall be clearly marked as "used," "reconditioned," or "not new," whatever is applicable, with terms of guarantee, if any.
- (4) No person who practices the selling or fitting of hearing instruments shall visit the home or place of business of a potential buyer for the purpose of soliciting or inducing a sale of a hearing instrument without having obtained, prior to any visit, the expressed written consent of the potential buyer to such a visit. The consent required by this subsection shall clearly and conspicuously state that the potential buyer is aware that the specialist in hearing instruments may attempt to sell a hearing instrument during his *or her* visit.

➔Section 3. KRS 334A.020 is amended to read as follows:

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

- (1) "Board" means the Kentucky Board of Speech-Language Pathology and Audiology;
- (2) "Person" means any individual, organization, or corporate body, except that only individuals can be licensed under this chapter;
- (3) "Speech-language pathologist" means one who practices speech-language pathology. A speech-language pathologist may describe himself to the public by any title or description of services incorporating the words "speech-language pathologist," "speech-language pathology," "speech-language therapy," "speech-language correction," "speech-language correctionist," "speech-language therapist," "speech clinic," "speech clinician," "speech pathologist," "language pathologist," "language pathology," "language therapist," "logopedics," "logopedist," "communicology," "communicologist," "aphasiologist," "voice therapy," "voice therapist," "voice pathology," "voice pathologist," "phoniatriest," "communication disorders," or "verbal therapist";
- (4) "The practice of speech pathology" means the application of principles, methods, and procedures for the measurement, testing, audiometric screening, identification, appraisal, determination of prognosis, evaluation, consultation, remediation, counseling, instruction, and research related to the development and disorders of speech, voice, verbal and written language, cognition/communication, or oral and pharyngeal sensori-motor competencies for the purpose of designing and implementing programs for the amelioration of these disorders and conditions. Any representation to the public by title or by description of services, methods, or procedures for the evaluation, counseling, remediation consultation, measurement, testing, audiometric screening, identification, appraisal, instruction, and research of persons diagnosed with conditions or disorders affecting speech, voice, verbal and written language, cognition/communication, or oral and pharyngeal sensori-motor competencies shall be considered to be the practice of speech-language pathology;
- (5) "Audiologist" is defined as one who practices audiology. An audiologist may describe himself to the public by any title or description of services incorporating the words "audiologist," "audiology," "audiological," "hearing center," "hearing clinic," "hearing clinician," "hearing therapist," "audiometry," "audiometrist," "audiometrics," "otometry," "otometrist," "aural rehabilitationist," or "hearing conservationist";
- (6) "The practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and disorders of hearing for the purpose of modifying communicative disorders involving speech, language, auditory behavior, or other aberrant behavior related to hearing loss; planning, directing, conducting, or participating in identification and hearing conservation programs; and habilitative and rehabilitative programs, including hearing aid recommendations and evaluation, *selling or fitting of hearing instruments*, auditory training, or speech reading;
- (7) "Continuing professional education" in speech-language pathology and audiology consists of planned learning experiences beyond a basic educational program leading to a degree. These experiences are designed to promote knowledge, skills, and attitudes of speech-language pathology and audiology practitioners to enable them to provide professional services in their areas of training that are based on current research and best practices;
- (8) "Speech-language pathology assistant" means one who assists in the practice of speech-language pathology only under the supervision and direction of an appropriately qualified supervisor and only within the public school system in the Commonwealth. Any speech pathology services provided without appropriate supervision or outside the public school system shall be deemed to be the unlicensed practice of speech pathology and shall subject the offending party to penalties established pursuant to KRS 334A.990;
- (9) "Assisting in the practice of speech pathology" means the provision of certain specific components of a speech or language service program provided by a speech-language pathology assistant under the supervision and direction of an appropriately qualified supervisor.
 - (a) If the training, supervision, documentation, and planning are appropriate, the following tasks may be delegated to a speech-language pathology assistant:
 1. Conduct speech-language and hearing screenings without interpretation following specified screening protocols developed by a speech-language pathologist and audiologist, respectively;
 2. Follow documented treatment plans or protocols as prescribed by the supervisor;
 3. Document student progress toward meeting established objectives as stated in the treatment plan;
 4. Provide direct treatment assistance to identified students under the supervision of the supervisor;

5. Assist with clerical and other related duties as directed by the supervisor;
 6. Report to the supervisor about the treatment plan based on a student's performance;
 7. Schedule activities, prepare charts, records, graphs, or otherwise display data. This shall not include report generation;
 8. Perform simple checks and maintenance of equipment;
 9. Participate with the supervisor in research projects, inservice training, and public relations programs;
 10. Assist in the development and maintenance of an appropriate schedule for service delivery;
 11. Assist in implementing collaborative activities with other professionals;
 12. Assist in administering tests for diagnostic evaluations and progress monitoring; and
 13. Participate in parent conferences, case conferences, or any interdisciplinary team in consultation with, or in the presence of, the supervisor.
- (b) The following activities shall be outside the scope of practice of the speech-language pathology assistant:
1. Performing any activity which violates the code of ethics promulgated by the board by administrative regulation;
 2. Interpreting test results, or performing diagnostic evaluations without supervision;
 3. Conducting client or family counseling without the recommendation, guidance, and approval of the supervisor;
 4. Writing, developing, or modifying a student's individualized treatment plan in any way without the recommendation, guidance, and approval of the supervisor;
 5. Treating students without following the individualized treatment plan prepared by the supervisor or without access to supervision;
 6. Signing any due process document without the co-signature of the supervisor;
 7. Selecting or discharging students;
 8. Disclosing clinical or confidential information, either orally or in writing, to anyone not designated by the supervisor;
 9. Making referrals for additional services; and
 10. Representing himself or herself as something other than a speech-language pathology assistant;
- (10) "Supervisor" means a person who holds a Kentucky license as a speech-language pathologist or who holds Education Professional Standards Board master's level certification as a teacher of exceptional children in the areas of speech and communication disorders as established by administrative regulation;
- (11) "Interim license" means a license issued by the board pursuant to KRS 334A.035 to a person for the purpose of completing the supervised postgraduate professional experience required under that section prior to an application for licensure as a speech-language pathologist or a speech-language pathology assistant; and
- (12) "Temporary license" means a license that may be issued by the board administrator pursuant to KRS 334A.183 to any applicant who has met all the requirements for permanent licensure in accordance with that section.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 334A IS CREATED TO READ AS FOLLOWS:

- (1) ***Any person who practices the sale or fitting of hearing instruments shall obtain from the buyer of a hearing instrument, at the time the buyer assumes any financial obligation regarding the purchase, the buyer's signature on a written and dated agreement, offer to purchase, or receipt. The written agreement, offer to purchase, or receipt shall contain the:***
- (a) 1. ***Licensee's signature and printed name;***
 2. ***Licensee's business address; and***

3. *License number issued to the licensee by the board pursuant to this chapter;*
- (b) *Make, model, and serial number of the hearing instrument;*
- (c) *Notice and statement of the purchaser's thirty (30) day right to cancel pursuant to Section 6 of this Act; and*
- (d) *Immediately following the information required by paragraphs (a), (b), and (c) of this subsection, the statement, in all capital letters in no smaller type than the largest used in the body copy portion, that: "ANY COMPLAINTS CONCERNING THE SALE OR SERVICE OF THIS HEARING INSTRUMENT WHICH ARE NOT CORRECTED BY A LICENSED AUDIOLOGIST SHOULD BE DIRECTED TO: KENTUCKY BOARD OF SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY, COMMONWEALTH OF KENTUCKY, FRANKFORT, KENTUCKY 40601."*
- (2) *The written agreement, offer to purchase, or receipt shall bear in no smaller type than the largest used in the body copy portion the following statement: "The purchaser has been advised at the outset of his or her relationship with an audiologist licensed under KRS Chapter 334A that any examination or representation is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and, therefore, shall not be regarded as medical opinion or advice."*
- (3) *Upon delivery of a hearing instrument, the client shall be furnished a delivery statement which shall include specifications as to the make, model, serial number, and delivery date, with full terms of the sale clearly stated. If a hearing instrument which is not new is offered for sale or is sold, that fact shall be clearly stated and conspicuously disclosed and read in the oral sales presentation before the buyer assumes any financial obligation regarding the purchase, and the receipt shall be clearly marked as "used," "reconditioned," or "not new," whatever is applicable, with terms of guarantee, if any.*
- (4) *No person who practices the selling or fitting of hearing instruments shall visit the home or place of business of a potential buyer for the purpose of soliciting or inducing a sale of a hearing instrument without having previously obtained the express written consent of the potential buyer to such a visit. The consent required by this subsection shall clearly and conspicuously state that the potential buyer is aware that the licensed audiologist may attempt to sell a hearing instrument during his or her visit.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 334A IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Any person who desires to make a complaint against a licensee under this chapter shall file a written complaint with the board.*
- (b) *The board may conduct an investigation into any complaint which it feels may constitute a violation of this chapter or the administrative regulations it promulgates.*
- (c) *The board may require that the licensee file a written statement or report regarding the facts and circumstances concerning the complaint along with other information, material, or data reasonably related to it.*
- (d) *The board may request the assistance of the Attorney General in connection with an investigation.*
- (e) *The board may employ the services of a hearing officer to:*
1. *Conduct hearings and prehearing conferences;*
 2. *Advise the board as to legal matters; and*
 3. *Provide other legal services deemed appropriate by the board.*
- (2) *If the board determines the charges made in the complaint are sufficient to warrant a hearing to determine whether the license issued under this chapter shall be suspended, revoked, or subject to reprimand or fine, it shall conduct a hearing in accordance with KRS Chapter 13B.*
- (3) *The provisions of this chapter shall in no way limit the jurisdiction and authority of the Attorney General to take any necessary action under the Kentucky Consumer Protection Act, KRS 367.110 to 367.300.*
- (4) *The board may suspend, revoke, refuse to issue or renew any license for a fixed period of time, place on probation, issue a written reprimand to a licensee, levy a fine not to exceed one thousand dollars (\$1,000), or any combination thereof, based on a finding of the board that a person licensed under this chapter has committed any of the following acts:*

- (a) *Change of personal name, corporate name, charter, entity, or partnership name or composition to avoid the imposition of liens or court action;*
- (b) *The conviction of a felony or misdemeanor, if in accordance with KRS Chapter 335B, including KRS 335B.020. The record of conviction, or a copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence of that conviction;*
- (c) *Procuring of a license by fraud or deceit practiced upon the board;*
- (d) *Unethical conduct as defined by the board by promulgation of an administrative regulation;*
- (e) *Engaging in any unfair, false, misleading, or deceptive act or practice;*
- (f) *Incompetence or negligence in the practice of selling or fitting hearing instruments; or*
- (g) *Violating any provision of this chapter or the administrative regulations promulgated by the board.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 334A IS CREATED TO READ AS FOLLOWS:

- (1) *The client in a hearing instrument purchase has the right to cancel the purchase for any reason at any time prior to midnight of the thirtieth calendar day after actual receipt of the hearing instrument.*
- (2) *Cancellation occurs when the client gives written notice of cancellation to the seller at the address stated in the notice and statement of the client's right to cancel as provided in subsection (5) of this section.*
- (3) *Notice of cancellation, if given by mail, is given when it is deposited in the mail properly addressed and postage prepaid.*
- (4) *Notice of cancellation given by the client need not take a particular form and is sufficient if it indicates in writing the intention of the client not to be bound by the hearing instrument sale.*
- (5) *In the sale of a hearing instrument, the seller shall present to each client, at the time the client assumes any financial obligation regarding the purchase of a hearing instrument, a written notice and statement of the client's right to cancel which shall:*
 - (a) *Appear under the conspicuous caption, "CLIENT'S RIGHT TO CANCEL WITHIN 30 DAYS"; and*
 - (b) *Contain the following specific statement in all capital letters in no smaller type than the largest used in the body copy portion of the written agreement, offer to purchase, or receipt: "THE CLIENT HAS THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT ANY TIME PRIOR TO MIDNIGHT OF THE 30TH CALENDAR DAY AFTER ACTUAL RECEIPT OF THE HEARING INSTRUMENT(S). YOU MAY CANCEL THE PURCHASE BY NOTIFYING THE SELLER THAT YOU DO NOT WANT THE HEARING INSTRUMENT(S) BY MAILING A NOTICE BEFORE.....TO THE SELLER AT: UPON CANCELLATION, THE SELLER MAY KEEP UP TO 10% OF THE SELLING PRICE."*
- (6) *The seller shall enter on the notice and statement presented under subsection (5) of this section the:*
 - (a) *Date which is thirty (30) calendar days after the client receives the hearing instrument;*
 - (b) *Seller's full name and address; and*
 - (c) *Cancellation charges allowed by this section.*
- (7) *Until the seller has complied with this section, the client may cancel the purchase by notifying the seller in any manner and by any means of his or her intention to cancel.*
- (8) *Within fifteen (15) days after the return of the hearing instrument and any other goods or property delivered by the seller pursuant to the sale by the client, the seller shall tender to the client any payments made by the client, less any amount retained by the seller to repair damage to the hearing instrument due to a lack of reasonable care of the hearing instrument purchased, and terminate all financial obligations created in connection with the purchase of the canceled hearing instrument or instruments by the client.*
- (9) *If payment by the client includes any goods or property traded in, the goods or property shall be tendered to the client in substantially as good condition as when they were received by the seller. If the seller fails to tender the goods or property as provided by this subsection, the client may elect to recover an amount equal to the trade-in allowance for the goods or property.*

- (10) *This section shall not apply to a sale of a hearing instrument that replaces a damaged or unworkable hearing instrument when the replacement hearing instrument is identical to the damaged or unworkable hearing instrument.*
- (11) *Until the seller has complied with this section, the client may retain possession of all goods or property delivered to him or her by the seller and has a lien on the goods or property in his or her possession or control for any recovery to which he or she is entitled.*
- (12) *The client shall take reasonable care of the goods, as defined by the board through the promulgation of administrative regulations, in his or her possession before cancellation and for a reasonable time thereafter until delivered to the seller.*
- (13) *Any waiver by the client of rights provided in this section shall be void and shall not operate to relieve the seller of any obligation placed upon him or her by this section.*
- (14) *Nothing in this section shall in any way limit the right to cancel home solicitation sales pursuant to KRS 367.410 to 367.460.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 334A IS CREATED TO READ AS FOLLOWS:

Any person licensed to sell hearing instruments under this chapter shall maintain for not less than three (3) years, in a file under the name of the person to whom a hearing instrument was sold:

- (1) *A copy of the written approval for a hearing instrument;*
- (2) *Recommendation for or written waiver of a hearing instrument; and*
- (3) *An agreement, offer to purchase, or receipt given the person, pursuant to subsection (1) of Section 4 of this Act.*

➔Section 8. KRS 334A.040 is amended to read as follows:

- (1) Nothing in this chapter shall be construed to prevent a qualified person licensed in this state under any other law from engaging in the profession for which the person is licensed.
- (2) Nothing in this chapter shall be construed to prevent qualified hearing aid dispensers from engaging in those practices and procedures used solely for the fitting and selling of hearing aids.
- (3) Nothing in this chapter shall be construed as restricting or preventing activities of a speech-language pathology or audiology nature or the use of the official title of the position for which they were employed on the part of the following persons:
 - (a) Speech-language pathologists or audiologists employed by the federal government, if they are performing such activities solely within the confines or under the jurisdiction of the organization in which they are employed and do not offer to render speech-language pathology or audiology services as defined in subsections (4) and (6) of KRS 334A.020 to the public outside of the institutions or organizations in which they are employed. However, such persons may, without obtaining a license under this chapter, consult or disseminate their research findings and scientific information to other such accredited academic institutions or governmental agencies. They also may offer lectures to the public for a fee, monetary or otherwise, without being licensed under this chapter; or
 - (b) Registered and practical nurses or others trained to perform audiometric testing under the direct supervision of a licensed physician or surgeon.
- (4) Nothing in this chapter shall be construed as restricting the activities and services of a student or speech-language pathology intern pursuing a course of study leading to a degree in speech-language pathology at an accredited or approved college or university or an approved clinical training facility, if these activities and services constitute a part of the planned course of study and if such persons are designated by such title as "speech-language pathology intern," "speech-language pathology trainee," or other such title clearly indicating the training status appropriate to his or her level of training under the supervision of a licensed speech-language pathologist.
- (5) Nothing in this chapter shall be construed as restricting the activities and services of a student or audiology intern pursuing a course of study leading to a degree in audiology at an accredited or approved college or university or an approved clinical training facility, if these activities and services constitute a part of the planned course of study and if such persons are designated by such title as "audiology intern," "audiology

trainee," or other such title clearly indicating the training status appropriate to his or her level of training, under supervision of a licensed audiologist.

- (6) Nothing in this chapter shall be construed as restricting a speech-language pathologist or audiologist from another state from offering his or her speech-language pathology or audiology services in this state if the services are performed for no more than five (5) days in any calendar year and if that person meets the qualifications and requirements stated in the section on qualifications, except that such person need not apply for licensure under this chapter.
- (7) *This chapter shall not apply to a person while he or she is engaged in the practice of fitting hearing instruments and assistive listening devices if his or her practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public, charitable institution or nonprofit organization, which is primarily supported by voluntary contributions.*
- (8) *This chapter shall not be construed to prevent any person who is a medical or osteopathic physician licensed to practice in the Commonwealth of Kentucky from treating or fitting hearing instruments to the human ear, which includes the making of ear molds, so long as he or she does not engage in the sale of hearing instruments.*

Signed by Governor March 29, 2022.