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BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE HOUSE

2

CS FOR HOUSE BILL NO. 430 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act regulating audiologists, hearing aid dealers  
7 and the dispensing of hearing aids."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. LEGISLATIVE FINDINGS, PURPOSE. (a) The legislature finds  
10 that the practice of audiology and the dispensing of hearing aids affects  
11 the health, safety and welfare of the public and requires regulation and  
12 control by the state in the public interest.

13 (b) The purpose of this Act is to establish the procedures necessary  
14 to ensure that the public is protected from the incompetent, unprofession-  
15 al, improper, and unauthorized practice of audiology and dispensing of  
16 hearing aids, and to assure the availability of the highest possible quali-  
17 ty audiology and hearing aid services for the hearing impaired persons of  
18 the state.

19 \* Sec. 2. AS 08.01.010 is amended by adding new paragraphs to read:

20 (24) regulation of audiologists under AS 08.11;

21 (25) regulation of hearing aid dealers under AS 08.55.

22 \* Sec. 3. AS 08.01.050(a) is amended to read:

23 (a) The department shall provide the following administrative  
24 and budgetary services when appropriate:

25 (1) collect fees and issue receipts;

26 (2) maintain records and files;

27 (3) issue and receive application forms;

28 (4) notify applicants of acceptance or rejection of appli-  
29 cants as determined by the board or as determined by the department

1 under AS 08.11 for audiologists or under AS 08.55 for hearing aid  
2 dealers;

3 (5) designate dates examinations are to be held and notify  
4 applicants;

5 (6) publish notice of examination;

6 (7) arrange space for holding examinations;

7 (8) notify applicants of results of examinations;

8 (9) issue licenses and certificates or temporary licenses  
9 or certificates as authorized by the board or as authorized by the  
10 department under AS 08.11 for audiologists or under AS 08.55 for  
11 hearing aid dealers;

12 (10) issue duplicate licenses or certificates upon proof by  
13 the licensee of loss of the original and payment by the licensee of a  
14 fee of \$2 except as otherwise provided in this title;

15 (11) notify licensees of renewal dates at least 30 days  
16 before the expiration date of their licenses;

17 (12) compile and maintain current a register of licenses;

18 (13) answer routine inquiries;

19 (14) maintain files relating to individual licensees;

20 (15) arrange for printing and advertising;

21 (16) purchase supplies;

22 (17) employ secretarial help when needed;

23 (18) perform other services that [WHICH] may be requested by  
24 the board;

25 (19) provide investigative services to the boards estab-  
26 lished under AS 08.04, AS 08.20, AS 08.36, AS 08.64, AS 08.68, AS 08.-  
27 70, AS 08.71, AS 08.72, AS 08.80, AS 08.84, and AS 08.86, for the  
28 purpose of assisting those boards in matters of professional disci-  
29 pline and in responding to consumer complaints.

1 \* Sec. 4. AS 08.01.087 is amended to read:

2           Sec. 08.01.087. POWERS AND DUTIES OF DEPARTMENT. (a) The  
3 department may, upon its own motion, conduct investigations to deter-  
4 mine whether a [ANY] person has violated a provision of this chapter  
5 or a regulation adopted under it, or a provision of [A CHAPTER IN]  
6 this title or regulation adopted under this title dealing with an  
7 occupation or board [ONE OF THE BOARDS] listed in AS 08.01.010 [OR A  
8 REGULATION ADOPTED BY ONE OF THOSE BOARDS], or to secure information  
9 useful in the administration of this chapter.

10           (b) If it appears to the commissioner that a person has engaged  
11 in or is about to engage in an act or practice in violation of a  
12 provision of this chapter or a regulation adopted under it, or a  
13 provision of this title or regulation adopted under this title dealing  
14 with an occupation or board [OR ANY OF THE LAWS PERTAINING TO OR  
15 REGULATIONS ADOPTED BY THE BOARDS] listed in AS 08.01.010, the commis-  
16 sioner may, if the commissioner considers it in the public interest,  
17 and after notification of a proposed order or action by telephone or  
18 telegraph to all board members, if a board regulates the act or prac-  
19 tice involved, [BY TELEPHONE OR TELEGRAPH OF A PROPOSED ORDER OR  
20 ACTION] unless a majority of the members of the board object within 10  
21 days,

22           (1) issue an order directing the person to stop the act or  
23 practice; however, reasonable notice of and an opportunity for a  
24 hearing must first be given to the person, except that the commis-  
25 sioner may issue a temporary order before a hearing is held; a tempo-  
26 rary order remains in effect until a final order affirming, modifying,  
27 or reversing the temporary order is issued or until 15 days after the  
28 person receives the notice and has not requested a hearing by that  
29 time; a temporary order becomes final if the person to whom the notice

1 is addressed does not request a hearing within 15 days after receiving  
2 the notice; the commissioner or the commissioner's designee shall be  
3 the hearing officer at the hearing and shall issue a final order  
4 within 10 days after the hearing;

5 (2) bring an action in the superior court to enjoin the  
6 acts or practices and to enforce compliance with this chapter, a  
7 regulation adopted under it, [OR] an order issued under it, or with a  
8 provision of this title or regulation adopted under this title dealing  
9 with an occupation or board [OR ANY OF THE LAWS PERTAINING TO OR  
10 REGULATIONS ADOPTED BY THE BOARDS] listed in AS 08.01.010;

11 (3) examine or have examined the books and records of a  
12 [ANY] person whose business activities require licensure by a board  
13 listed in AS 08.01.010, or whose occupation is listed in AS 08.01.010;  
14 the commissioner [AND HE] may require the [THAT] person to pay the  
15 reasonable costs of the examination; and

16 (4) issue subpoenas for the attendance of witnesses, and  
17 the production of books, records and other documents.

18 \* Sec. 5. AS 08.01.110 is amended to read:

19 Sec. 08.01.110. DEFINITIONS. In this chapter

20 (1) "board" includes the boards and commissions listed in  
21 AS 08.01.010;

22 (2) "department" means the Department of Commerce and  
23 Economic Development;

24 (3) "commissioner" means the commissioner of commerce and  
25 economic development;

26 (4) "license" means a [ANY] license, certificate, permit,  
27 or registration or similar evidence of authority issued for an occupa-  
28 tion or by one of the boards listed in AS 08.01.010;

29 (5) "licensee" means a [ANY] person who holds a license;

1                   (6) "occupation" means a trade or profession [ANY OF THE  
2 TRADES OR PROFESSIONS FOR WHICH LICENSURE IS REQUIRED BY ONE OF THE  
3 BOARDS] listed in AS 08.01.010.

4 \* Sec. 6. AS 08.02.010(a) is amended to read:

5                   (a) An audiologist licensed under AS 08.11, a [A] person li-  
6 censed in the state as a chiropractor under AS 08.20, a dentist under  
7 AS 08.36, a medical practitioner or osteopath under AS 08.64, a regis-  
8 tered nurse under AS 08.68, an optometrist under AS 08.72, a regis-  
9 tered pharmacist under AS 08.80, a registered physical therapist under  
10 AS 08.84, or a psychologist under AS 08.86, shall use as professional  
11 identification appropriate letters or a title after that person's name  
12 which represents that person's specific field of practice. The letters  
13 or title shall appear on all signs, stationery or other advertising in  
14 which the person offers or displays personal professional services to  
15 the public. In addition, a person engaged in the practice of medicine  
16 or osteopathy under AS 08.64.380(2), or a person engaged in any manner  
17 in the healing arts who diagnoses, treats, tests, or counsels other  
18 persons in relation to human health or disease and uses the letters  
19 "M.D." or the title "doctor" or "physician" or another [ANY OTHER]  
20 title that [WHICH] tends to show that the person is willing or qual-  
21 ified to diagnose, treat, test, or counsel another person, shall  
22 clarify the letters or title by adding the appropriate specialist  
23 designation, if any, such as "dermatologist", "radiologist", "audio-  
24 logist", "naturopath", or the like.

25 \* Sec. 7. AS 08 is amended by adding a new chapter to read:

26                   CHAPTER 11. AUDIOLOGISTS.

27                   Sec. 08.11.010. QUALIFICATIONS FOR AUDIOLOGIST LICENSE. (a)  
28 The department shall issue a license to practice audiology to an  
29 individual who

1 (1) is 18 years of age or older;  
2 (2) applies on a form provided by the department;  
3 (3) pays the fee required under AS 08.11.050;  
4 (4) furnishes evidence satisfactory to the department that  
5 the person

6 (A) has not engaged in conduct that is a ground for  
7 imposing disciplinary sanctions under AS 08.11.080;

8 (B) holds a master's degree or doctorate in audiology  
9 from an accredited educational institution approved by the de-  
10 partment; and either has

11 (i) a Certificate of Clinical Competence in  
12 Audiology from the American Speech-Language-Hearing Associa-  
13 tion or the equivalent of the certificate; or

14 (ii) practiced audiology for two years as of  
15 January 1, 1986, or is in the process of completing the year  
16 of supervised clinical experience required for the Certifi-  
17 cate of Clinical Competence of the American Speech-Language-  
18 Hearing Association.

19 Sec. 08.11.020. TEMPORARY LICENSE TO PRACTICE AUDIOLOGY AS AN  
20 AUDIOLOGIST. (a) On receipt of the completed application the depart-  
21 ment shall issue a temporary license for the practice of audiology as  
22 an audiologist to an individual who is licensed to practice audiology  
23 in another state and has submitted to the department an application  
24 for a license under AS 08.11.010.

25 (b) The department may issue a temporary license to the follow-  
26 ing:

27 (1) a nonresident for the practice of audiology as an  
28 audiologist in the state for 30 days or less in a calendar year, if  
29 the individual is licensed to practice audiology in another state,

1 territory of the United States, foreign country, or province that has  
2 requirements for a license to practice audiology that are substan-  
3 tially equivalent to or higher than the requirements of AS 08.11.010;

4 (2) a nonresident for the practice of audiology as an  
5 audiologist in the state for 30 days or less in a calendar year, if  
6 the individual meets the qualifications and requirements for a license  
7 under AS 08.11.010, and resides in a state or territory of the United  
8 States or a foreign country or province that does not license indi-  
9 viduals to practice audiology.

10 (c) The department may impose by regulation additional limita-  
11 tions that it determines appropriate on a temporary license issued  
12 under this section.

13 Sec. 08.11.030. DURATION AND RENEWAL OF LICENSE. (a) A license  
14 issued under this chapter is subject to renewal every four years on a  
15 date set by the department. The department shall renew the license of  
16 an individual licensed under this chapter who applies for renewal and  
17 pays the renewal fee.

18 (b) If an individual fails to renew a license under (a) of this  
19 section, the license lapses.

20 (c) The department may reinstate a lapsed license if the license  
21 has lapsed for less than two years and if the individual submits to  
22 the department an application for renewal and pays a delinquency fee  
23 in addition to the renewal fee.

24 (d) A suspended license is subject to expiration and must be  
25 renewed as provided in this section, but the renewal does not entitle  
26 the individual while the license remains suspended to practice audiol-  
27 ogy or to engage in other activity or conduct that violates the order  
28 or judgment that suspended the license.

29 Sec. 08.11.040. DISPLAY OF LICENSE. (a) An individual licensed

1 to practice audiology as an audiologist in the state shall display the  
2 license in a prominent place at each place of business of the indi-  
3 vidual.

4 (b) If an audiologist has more than one place of business, the  
5 department shall, on request and payment of a fee, issue a duplicate  
6 license for each place of business of the individual.

7 Sec. 08.11.050. FEES. The department shall set fees under  
8 AS 08.01.065 for each of the following:

- 9 (1) application;
- 10 (2) credential review;
- 11 (3) audiologist license;
- 12 (4) temporary license;
- 13 (5) renewal of license;
- 14 (6) delinquency;
- 15 (7) reinstatement;
- 16 (8) duplicate license.

17 Sec. 08.11.060. MALPRACTICE INSURANCE. An audiologist shall  
18 maintain insurance against liability for negligence in the practice of  
19 audiology for the audiologist who works for the audiologist.

20 Sec. 08.11.070. DEALING IN HEARING AIDS. An audiologist may  
21 deal in hearing aids as a hearing aid dealer without being licensed as  
22 a hearing aid dealer under AS 08.55, but shall comply with AS 08.55.-  
23 050, 08.55.070, 08.55.100, 08.55.110(a), 08.55.110(b)(3) and (c) -  
24 (g), and 08.55.130(7) - (13) when dealing in hearing aids.

25 Sec. 08.11.080. GROUNDS FOR IMPOSITION OF DISCIPLINARY SANCTIONS  
26 ON AN AUDIOLOGIST. After a hearing, the department may impose a  
27 disciplinary sanction on an audiologist when the department finds that  
28 the licensee

- 29 (1) secured a license through deceit, fraud, or intentional

1 misrepresentation;

2 (2) engaged in deceit, fraud, or intentional misrepresenta-  
3 tion in the course of practicing audiology;

4 (3) advertised professional services in a false or mislead-  
5 ing manner;

6 (4) has been convicted of a felony or other crime that  
7 affects the person's ability to continue to practice competently and  
8 safely;

9 (5) continued to practice audiology after becoming unfit  
10 due to

11 (A) professional incompetence;

12 (B) use of drugs or alcohol in a manner that affects  
13 the person's ability to practice audiology competently and  
14 safely;

15 (C) physical or mental disability;

16 (6) permitted another person to use the licensee's license;

17 (7) employed a person who does not have a valid current  
18 license to practice audiology to perform work covered by this chapter;

19 (8) failed to comply with a provision of this chapter or a  
20 regulation adopted under this chapter, or an order of the department.

21 Sec. 08.11.090. DISCIPLINARY SANCTIONS. (a) When it finds that  
22 an audiologist has committed an act listed in AS 08.11.080, the de-  
23 partment may impose the following sanctions singly or in combination:

24 (1) permanently revoke a license to practice;

25 (2) suspend a license for a determinate period of time;

26 (3) censure a licensee;

27 (4) issue a letter of reprimand;

28 (5) place a licensee on probationary status and require the  
29 licensee to

1 (A) report regularly to the department on matters  
2 involving the basis of probation;

3 (B) limit practice to those areas prescribed;

4 (C) continue professional education until a satisfac-  
5 tory degree of skill has been attained in those areas determined  
6 by the department to need improvement;

7 (6) impose limitations or conditions on the practice of a  
8 licensee.

9 (b) The department may withdraw a limitation, condition, or  
10 probationary status if it finds that the deficiency that required the  
11 sanction has been remedied.

12 (c) The department may summarily suspend a license before final  
13 hearing or during the appeals process if the department finds that the  
14 licensee poses a clear and immediate danger to the public welfare and  
15 safety if the licensee continues to practice. An individual whose  
16 license is suspended under this subsection is entitled to a hearing by  
17 the department no later than seven days after the effective date of  
18 the order. The individual may appeal the suspension after the hearing  
19 to the superior court.

20 (d) The department may reinstate a license that has been sus-  
21 pended or revoked if the department finds after a hearing that the  
22 individual is able to practice with reasonable skill and safety.

23 (e) One year after revocation of a license issued under this  
24 chapter, the individual whose license was revoked may reapply for the  
25 license. The department may require an examination for reinstatement.

26 Sec. 08.11.100. PROHIBITED ACTS. Unless a person is licensed  
27 under this chapter, the person may not

28 (1) practice audiology;

29 (2) use a title indicating or representing that the person

1 practices as an audiologist;

2 (3) advertise that the person practices audiology.

3 Sec. 08.11.110. PENALTY. A person who violates AS 08.11.100 is  
4 guilty of a class B misdemeanor.

5 Sec. 08.11.120. EXEMPTIONS. (a) This chapter does not apply to  
6 an individual who practices audiology consistent with the accepted  
7 standards and code of ethics of the individual's profession as part of  
8 the individual's duties as

9 (1) a physician licensed under AS 08.64;

10 (2) an employee of the federal government who is required  
11 to practice audiology during the employment, if

12 (A) the employer maintains appropriate supervision of  
13 the individual's practice of audiology;

14 (B) the individual practices audiology as part of the  
15 duties for which the individual is employed;

16 (C) the individual practices audiology in the facility  
17 where the individual is employed or under the supervision of the  
18 federal governmental unit where the individual is employed; and

19 (D) the individual does not render or offer to render  
20 audiology services to the public for compensation in addition to  
21 the salary the individual receives from the federal governmental  
22 unit;

23 (3) a student, intern, or resident pursuing a course of  
24 study in audiology at an accredited college or a clinical training  
25 facility approved by the department, if the activities of the student,  
26 intern, or resident constitute part of a supervised course of study  
27 and the student, intern, or resident is designated as an "audiology  
28 intern," "audiology trainee," or other title approved by the depart-  
29 ment that clearly indicates that the person is training to be an

1 audiologist.

2 (b) Notwithstanding the provisions of this chapter,

3 (1) a nurse licensed under AS 08.68 may perform hearing  
4 sensitivity evaluations;

5 (2) an individual licensed as a hearing aid dealer under  
6 AS 08.55 may deal in hearing aids;

7 (3) an individual holding a class A certificate issued by  
8 the Conference of Executives of American Schools of the Deaf may teach  
9 the hearing impaired;

10 (4) an individual may engage in the testing of hearing as  
11 part of a hearing conservation program that complies with the regu-  
12 lations of the Occupational Safety and Health Administration of the  
13 federal government if the individual is certified to do the testing by  
14 a state or federal agency acceptable to the Occupational Safety and  
15 Health Administration.

16 (c) An individual who is not an audiologist, but who is exempt  
17 under this section may not use a title or description stating or  
18 implying that the person is an audiologist.

19 (d) An individual exempt under (a)(2) of this section may con-  
20 sult with and disseminate research findings and scientific information  
21 to accredited academic institutions or governmental agencies, and  
22 offer lectures to the public for a fee, monetary or otherwise, without  
23 being licensed under this chapter.

24 (f) An individual who is not licensed under this chapter but who  
25 teaches the practice of audiology in an audiologist training program  
26 at a college or university may use the title "audiologist" but may not  
27 practice audiology.

28 Sec. 08.11.130. PROCEDURES. The Administrative Procedure Act  
29 (AS 44.62) applies to regulations and proceedings under this chapter.

1           Sec. 08.11.200. DEFINITIONS. In this chapter, unless the con-  
2 text indicates otherwise,

3           (1) "audiologist" means an individual who is licensed under  
4 AS 08.11.010 to practice audiology in the state;

5           (2) "dealing in hearing aids" has the meaning given in  
6 AS 08.55.200;

7           (3) "department" means the Department of Commerce and  
8 Economic Development;

9           (4) "hearing aid" has the meaning given in AS 08.55.200;

10           (5) "practice of audiology" means the application of prin-  
11 ciples, methods, and procedures of measurement, testing, appraisal,  
12 prediction, consultation, habilitation, rehabilitation, counseling and  
13 instruction related to hearing and hearing impairment for the purpose  
14 of modifying communicative disorders involving speech, language,  
15 auditory function, including auditory training, speech reading and the  
16 recommendation, evaluation, fitting, and sale of hearing aids, includ-  
17 ing the fitting of ear molds.

18 \* Sec. 8. AS 08 is amended by adding a new chapter to read:

19                           CHAPTER 55. HEARING AID DEALERS.

20           Sec. 08.55.010. QUALIFICATIONS FOR LICENSE. (a) The department  
21 shall issue a license to act as a hearing aid dealer to an individual  
22 who

23           (1) is 18 years of age or older;

24           (2) applies on a form provided by the department;

25           (3) has a high school diploma or the equivalent;

26           (4) has a business license issued under AS 43.70.020;

27           (5) furnishes evidence satisfactory to the department that  
28 the individual has not engaged in conduct that is a ground for impos-  
29 ing disciplinary sanctions under AS 08.55.130;

1           (6) submits with the application a statement disclosing  
2 whether the applicant

3           (A) has, during the five-year period immediately  
4 preceding the date of the application been convicted of a felony,  
5 or had a final judgment entered against the applicant in a civil  
6 action, if the felony or civil action involved fraud, embezzle-  
7 ment, or misappropriation of property;

8           (B) is subject to an injunctive order that is current-  
9 ly in effect from a pending proceeding or action brought by a  
10 public agency;

11           (C) is a defendant in a pending criminal or civil  
12 action relating to fraud, embezzlement, misappropriation of  
13 property, or the antitrust or trade regulation laws of the United  
14 States or a state;

15           (D) has, during the five-year period immediately  
16 preceding the date of the application, been reorganized, had a  
17 debt adjustment, or has been adjudicated a bankrupt under bank-  
18 ruptcy proceedings due to insolvency or was a principal executive  
19 officer or general partner of a business that has been reor-  
20 ganized, had a debt adjustment, or has been adjudicated a bank-  
21 rupt due to insolvency during the five-year period;

22           (7) furnishes a description of each item in (6) of this  
23 subsection that the applicant disclosed as being applicable to the  
24 applicant.

25           (b) An individual who is a physician or an audiologist may deal  
26 in hearing aids without being licensed under this chapter, but shall  
27 comply with AS 08.55.050, 08.55.070, 08.55.100, 08.55.110(a), 08.55.-  
28 110(b)(3) and (c) - (g), and 08.55.130(7) - (13) when dealing in  
29 hearing aids.

1 (c) If an individual licensed under this chapter has more than  
2 one place of business, the department shall, on request and payment of  
3 a fee, issue a duplicate license for each place of business of the  
4 individual.

5 Sec. 08.55.020. DURATION AND RENEWAL OF LICENSE. (a) A license  
6 to act as a hearing aid dealer is valid for one year and is subject to  
7 renewal.

8 (b) On or before the expiration of one year after the issuance  
9 of a license under this chapter, a licensee may apply for renewal of  
10 the license, and the department shall renew the license if the li-  
11 censee pays the renewal fee, has a current business license to act as  
12 a hearing aid dealer under AS 43.70.020, and provides evidence satis-  
13 factory to the department that the individual has not engaged in  
14 conduct that is a ground for imposing disciplinary sanctions under  
15 AS 08.55.130.

16 (c) If a licensee fails to renew a license under (b) of this  
17 section, the license lapses.

18 (d) The department may reinstate a lapsed license under (b) of  
19 this section if the license has not lapsed for more than two years and  
20 if the person pays a delinquency fee in addition to the renewal fee.

21 Sec. 08.55.030. BOND REQUIRED. (a) An applicant for a license  
22 under AS 08.55.010 shall at the time of applying for the license file  
23 with the department a surety bond in the amount of \$5,000 running to  
24 the state and conditioned on the applicant's promise to pay all

25 (1) taxes and contributions due the state and political  
26 subdivisions of the state;

27 (2) amounts that may be adjudged against the applicant by  
28 reason of negligently or improperly dealing in hearing aids or  
29 breaching a contract when dealing in hearing aids.

1 (b) In lieu of the surety bond the applicant may file with the  
2 department a cash deposit or other negotiable security acceptable to  
3 the department in the amount specified for the bond.

4 (c) The bond required by this section remains in effect until  
5 cancelled by action of the surety, the principal, or the department.  
6 A person may not commence an action on the bond later than three years  
7 after cancellation of the bond.

8 Sec. 08.55.040. FEES. The department shall set fees under  
9 AS 08.01.065 for each of the following:

- 10 (1) application;
- 11 (2) hearing aid dealer license;
- 12 (3) renewal of license;
- 13 (4) renewal delinquency;
- 14 (5) duplicate license.

15 Sec. 08.55.050. ITEMS TO BE PROVIDED BY HEARING AID DEALER. (a)  
16 A hearing aid dealer shall give the following items to a consumer at  
17 the time the consumer contracts with the hearing aid dealer to buy or  
18 lease a hearing aid:

- 19 (1) an instructional brochure that contains operating  
20 instructions, purchase privileges, and performance data for the hear-  
21 ing aid;
- 22 (2) a statement of the dealer's registration number;
- 23 (3) a statement of the manufacturer's specifications, make,  
24 model, and serial number for the hearing aid;
- 25 (4) a clear statement of the full terms of the contract;
- 26 and
- 27 (5) a written statement indicating that the consumer may  
28 file a written complaint about a hearing aid or a hearing aid dealer  
29 with the department and giving the mailing address and location

1 address of the department.

2 (b) Before the sale of a used hearing aid, the hearing aid  
3 dealer shall clearly mark the receipt and the container for the hear-  
4 ing aid as "used" or "reconditioned," whichever is applicable, and  
5 with the terms of a guarantee that the dealer provides.

6 Sec. 08.55.060. PRIOR HEARING EVALUATION. (a) A hearing aid  
7 dealer who is not a physician or an audiologist may not sell or lease  
8 a hearing aid unless the prospective user of the hearing aid presents  
9 to the hearing aid dealer a written statement signed by a physician or  
10 an audiologist stating that the physician or the audiologist has  
11 evaluated the prospective user's hearing and that the prospective user  
12 is a candidate for a hearing aid.

13 (b) The exam on which the physician or the audiologist bases the  
14 statement required in (a) of this section must have occurred within  
15 the six months immediately preceding the date when the prospective  
16 user presents the statement to the hearing aid dispenser.

17 (c) If the prospective user is 18 years of age or older, the  
18 hearing aid dealer may afford the prospective user an opportunity to  
19 waive in writing the evaluation required by (a) of this section if the  
20 hearing aid dealer

21 (1) informs the prospective user that the exercise of the  
22 waiver is not in the best interest of the prospective user's health;

23 (2) does not actively encourage the prospective user to  
24 waive the evaluation; and

25 (3) is not a physician or an audiologist, affords the  
26 prospective user the opportunity to sign the following statement:

27 I have been advised by (HEARING AID DEALER'S  
28 NAME) that it would be in my best interest if  
29 I had a hearing evaluation by a licensed

1 physician (preferably a physician who spe-  
2 cializes in diseases of the ear) or a li-  
3 censed audiologist before purchasing or  
4 leasing a hearing aid.

5  
6 \_\_\_\_\_  
(PROSPECTIVE USER'S SIGNATURE)

7 (d) The hearing aid dealer shall retain the evaluation statement  
8 of the physician or the audiologist, or the prospective user's signed  
9 statement for four years after the date of the sale of the hearing  
10 aid.

11 Sec. 08.55.070. TRANSMITTAL OF HEARING AID BY MAIL. If a hear-  
12 ing aid dealer mails a hearing aid to a customer, the dealer shall  
13 send the hearing aid by certified mail.

14 Sec. 08.55.080. COMPLAINTS. (a) A person may file a complaint  
15 with the department about a hearing aid or a hearing aid dealer within  
16 three years from the date of the cause of the complaint.

17 (b) A hearing aid dealer shall prominently display in the busi-  
18 ness establishment of the dealer a sign indicating that a person may  
19 file a complaint with the department about a hearing aid or a hearing  
20 aid dealer and giving the mailing and location address of the depart-  
21 ment.

22 Sec. 08.55.090. INSURANCE REQUIREMENTS. A hearing aid dealer  
23 shall maintain liability insurance for dealing in hearing aids in an  
24 amount that the department determines by regulation to be appropriate.

25 Sec. 08.55.100. CALIBRATION REQUIREMENTS. A hearing aid dealer  
26 shall maintain in conformity with the standards set by the American  
27 National Standard Institute the calibration of each audiometer used by  
28 the hearing aid dispenser, and shall keep a record of the results of  
29 the annual calibration of each audiometer used by the dealer.

1           Sec. 08.55.110. CANCELLATION OPTION. (a) In addition to the  
2 cancellation allowed under AS 45.02.350, a person who has purchased or  
3 leased a hearing aid from a hearing aid dealer may cancel the sale or  
4 lease as provided under (b) of this section or by giving written  
5 notice of the intention to cancel the sale or lease to the dealer not  
6 later than 30 days following the later of (1) the date the person  
7 receives the hearing aid, or (2) the date the hearing aid dealer  
8 provides the person with the notice under (c) of this section. The  
9 person may use the notice received under (c) of this section to cancel  
10 the sale or lease by signing the form where indicated.

11           (b) In addition to the other rights and remedies the purchaser  
12 or lessee of a hearing aid may have, the purchaser or lessee of a  
13 hearing aid has the right to cancel the sale or lease by giving writ-  
14 ten notice of the cancellation to the hearing aid dealer if

15           (1) the hearing aid dealer is not a physician or an audio-  
16 logist, and within 60 days from the receipt by the purchaser or lessee  
17 of the hearing aid or the notice to be provided under (c) of this  
18 section, whichever receipt is later, a physician or an audiologist  
19 advises the person in writing to cancel the sale or lease and speci-  
20 fies in writing the medical or audiological reason for the advice; or

21           (2) the hearing aid dealer, if not a physician or audio-  
22 logist, has violated a provision of this chapter in the sale or lease  
23 of the hearing aid to the person;

24           (3) the hearing aid dealer who is a physician or audio-  
25 logist has violated AS 08.55.050, 08.55.070, 08.55.100, 08.55.110(a),  
26 08.55.110(b)(3) or (c) - (g), or 08.55.130(7) - (13) in the sale or  
27 lease of the hearing aid to the person.

28           (c) A hearing aid dealer shall give a person who has purchased  
29 or leased a hearing aid from the dealer notice of the right to cancel

1 the purchase or lease that is substantially identical to the following  
2 form with all of the information filled in except the signature and  
3 date lines for the purchaser or lessee:

4 NOTICE OF RIGHT TO CANCEL

5 \_\_\_\_\_  
6 Name of Hearing Aid Dealer

7 \_\_\_\_\_  
8 Address of Hearing Aid Dealer

9 \_\_\_\_\_  
10 Date of Sale or Lease

11 You may cancel this transaction, without  
12 penalty or obligation, within 30 days from the  
13 date you receive the hearing aid or this notice,  
14 whichever is later.

15 You may also cancel this transaction, without  
16 penalty or obligation, within 60 days from the  
17 date you receive the hearing aid or this notice,  
18 whichever is later, if the hearing aid dealer is  
19 not a licensed physician or a licensed audiologist  
20 and if a licensed physician or a licensed audio-  
21 logist advises you in writing to cancel this  
22 transaction.

23 If you cancel this transaction, the property  
24 you traded in, the payments you made under the  
25 sale or lease (less certain costs allowed by state  
26 law) and any negotiable instrument executed by you  
27 will be returned within 10 business days following  
28 receipt by the hearing aid dealer of your cancel-  
29 lation notice, and the hearing aid dealer will

1 cancel any security interest arising out of the  
2 sale or lease.

3 If you cancel, you must make available to the  
4 hearing aid dealer, in as good a condition as when  
5 received, less normal wear and tear, the goods  
6 delivered to you under this sale or lease, unless  
7 the dealer notifies you to keep the goods or to  
8 hold them until the dealer collects them.

9 If you make the goods available for the  
10 hearing aid dealer to collect after your cancella-  
11 tion, and the hearing aid dealer does not collect  
12 them from you within 20 days of your cancellation,  
13 you may retain or dispose of the goods without  
14 further obligation to the hearing aid dealer. If  
15 you fail to make the goods available for the  
16 hearing aid dealer to collect after your cancel-  
17 lation, then the sale or lease is not cancelled  
18 and you remain liable for performance of the  
19 obligations of the sale or lease.

20 To cancel this transaction, mail (by cer-  
21 tified mail, return receipt request) or deliver a  
22 signed and dated copy of this notice or another  
23 written notice to (name of hearing aid dealer), at  
24 (address of hearing aid dealer's place of busi-  
25 ness) and (hearing aid dealer's telephone number)  
26 no later than midnight of (Date).

27 I hereby cancel this transaction.

28 (Date) \_\_\_\_\_

29 \_\_\_\_\_

1 (Purchaser's or Lessee's signature)

2 I have read and understand the terms of  
3 cancellation of this purchase/lease.

4 \_\_\_\_\_  
5 Purchaser's or Lessee's signature

6 \_\_\_\_\_  
7 Date

8 (d) If a purchaser or lessee of a hearing aid cancels the pur-  
9 chase or lease under (a) or (b) of this section, the hearing aid  
10 dealer shall and within 10 days of receipt of a notice of the cancel-  
11 lation

12 (1) refund to the purchaser or lessee all deposits, in-  
13 cluding the downpayment, less (A) 10 percent of the total purchase  
14 price for each 30 days that the purchaser or lessee had the hearing  
15 aid, to pay for the reasonable rental value of the hearing aid; (B)  
16 the reasonable price of ear molds or custom casings prepared for the  
17 purchaser or lessee; and (C) the reasonable costs actually incurred by  
18 the hearing aid dealer to make goods that were traded in by the pur-  
19 chaser or lessee ready for sale; the hearing aid dealer may retain the  
20 money allowed under this paragraph only up to the amount of a down-  
21 payment made by the purchaser or lessee;

22 (2) return to the purchaser or lessee all goods traded in  
23 to the hearing aid dealer as part of the sale or lease;

24 (3) return to the purchaser or lessee a negotiable instru-  
25 ment signed by the purchaser or lessee; and

26 (4) cancel a security interest taken by the hearing aid  
27 dealer for the purchase or lease.

28 (e) If a hearing aid dealer fails to collect the hearing aid  
29 from the consumer within 20 days of receipt of the cancellation, the

1 purchaser or lessee may retain or dispose of the hearing aid without  
2 further obligation to the dealer.

3 (f) If a purchaser or lessee of a hearing aid fails to make the  
4 hearing aid available for the hearing aid dealer to collect, the  
5 purchaser or lessee remains liable for the purchase or lease.

6 (g) To give written notice under this section, a person shall  
7 deliver the notice to the hearing aid dealer in person or to the place  
8 of business of the dealer, or mail the notice to the place of business  
9 of the dealer by certified mail, return receipt requested.

10 Sec. 08.55.120. TESTING OF HEARING. (a) A hearing aid dealer  
11 may take threshold measurements to determine the degree of hearing  
12 impairment of a person, but may not test or use the threshold mea-  
13 surements to determine the cause of a hearing impairment or charge a  
14 fee for taking the threshold measurements test.

15 (b) A hearing aid dealer shall include in every advertisement  
16 for the services of the dealer the following statement bordered in  
17 black:

18 Alaska law permits a hearing aid dealer who is not a licensed  
19 physician or a licensed audiologist to test hearing  
20 only for the purpose of selling or leasing hearing aids;  
21 the tests given by a hearing aid dealer are not to be  
22 used to diagnose the cause of a hearing impairment.

23 Sec. 08.55.130. GROUNDS FOR IMPOSITION OF DISCIPLINARY SANC-  
24 TIONS. After a hearing, the department may impose a disciplinary  
25 sanction on an individual licensed under this chapter when the depart-  
26 ment finds that the person

27 (1) secured a license through deceit, fraud, or intentional  
28 misrepresentation;

29 (2) engaged in deceit, fraud, or intentional

1 misrepresentation in the course of providing professional services or  
2 engaging in professional activities;

3 (3) advertised professional services in a false or mislead-  
4 ing manner;

5 (4) has been convicted of a felony or other crime that  
6 affects the individual's ability to continue to practice competently  
7 and safely;

8 (5) failed to comply with a provision of this chapter or a  
9 regulation adopted under this chapter, or an order of the department;

10 (6) continued to practice after becoming unfit due to

11 (A) professional incompetence;

12 (B) addiction to or severe dependency on alcohol or  
13 another drug that impairs the individual's ability to prac-  
14 tice safely;

15 (C) physical or mental disability;

16 (7) employed a person who did not have a valid current  
17 license to deal in hearing aids to perform work covered by this chap-  
18 ter;

19 (8) failed or refused to honor a representation, promise,  
20 agreement or warranty made by the person while dealing in hearing  
21 aids;

22 (9) advertised a model, type, or kind of hearing aid for  
23 sale that the person does not sell;

24 (10) failed to maintain a business address and telephone  
25 number at which the individual could normally be reached during regu-  
26 lar business hours;

27 (11) included in a contract or receipt for the purchase or  
28 lease of a hearing aid a confession of judgment or a waiver of a right  
29 of the consumer under this chapter;

1           (12) used undue influence, coercion, or other wilful act or  
2 representation to interfere with the exercise by the consumer of the  
3 rights provided in this chapter;

4           (13) negotiated, transferred, sold, or assigned a note or  
5 other evidence of indebtedness to a finance company or other third  
6 party within two months of delivering a hearing aid to a purchaser or  
7 lessee of the hearing aid by mail or in person;

8           (14) permitted another person to use the licensee's license;

9           (15) dealt in hearing aids while suffering from a serious  
10 disease that was contagious or infectious.

11           Sec. 08.55.140. DISCIPLINARY SANCTIONS. (a) When it finds that  
12 a licensee has committed an act listed in AS 08.55.130, the department  
13 may impose the following sanctions singly or in combination:

14           (1) permanently revoke a license to practice;

15           (2) suspend a license for a determinate period of time;

16           (3) censure a licensee;

17           (4) issue a letter of reprimand;

18           (5) place a licensee on probationary status and require the  
19 licensee to

20           (A) report regularly to the department on matters  
21 involving the basis of probation;

22           (B) limit practice to those areas prescribed;

23           (C) continue professional education until a satisfac-  
24 tory degree of skill has been attained in those areas determined  
25 by the department to need improvement;

26           (6) impose limitations or conditions on the practice of a  
27 licensee.

28           (b) The department may withdraw a limitation, condition, or  
29 probationary status if it finds that the deficiency that required the

1 sanction has been remedied.

2 (c) The department may summarily suspend a license before final  
3 hearing or during the appeals process if the department finds that the  
4 licensee poses a clear and immediate danger to the public welfare and  
5 safety if the licensee continues to practice. A person whose license  
6 is suspended under this subsection is entitled to a hearing by the de-  
7 partment no later than seven days after the effective date of the  
8 order. The person may appeal the suspension after the hearing to the  
9 superior court.

10 (d) The department may reinstate a license that has been sus-  
11 pended or revoked if the department finds after a hearing that the  
12 applicant is able to deal in hearing aids with reasonable skill and  
13 safety.

14 Sec. 08.55.150. PROHIBITED ACTS. (a) Unless a person is li-  
15 censed under this chapter or AS 08.11, the person may not

- 16 (1) deal in hearing aids;  
17 (2) use a title indicating or representing that the person  
18 deals in hearing aids or is licensed to deal in hearing aids;  
19 (3) advertise that the person deals in hearing aids.

20 (b) A person may not

- 21 (1) sell, barter, or offer to sell or barter a license  
22 issued under this chapter;  
23 (2) purchase or obtain by barter a license issued under  
24 this chapter with the intent to use it as evidence of the holder's  
25 qualification to deal in hearing aids;  
26 (3) materially alter a license issued under this chapter  
27 with fraudulent intent;  
28 (4) use or attempt to use as valid a license to deal in  
29 hearing aids that has been purchased, fraudulently obtained,

1           counterfeited, or materially altered.

2           Sec. 08.55.160. PENALTY. A person who violates AS 08.55.150 is  
3 guilty of a class B misdemeanor.

4           Sec. 08.55.170. NOTICE OF PLACE OF BUSINESS. A person who holds  
5 a license under this chapter shall notify the department in writing of  
6 the regular address of the place or places where the person deals or  
7 intends to deal in hearing aids.

8           Sec. 08.55.180. PROCEDURES. The Administrative Procedure Act  
9 (AS 44.62) applies to regulations and proceedings under this chapter.

10          Sec. 08.55.200. DEFINITIONS. In this chapter

11           (1) "audiologist" means an individual licensed as an audio-  
12 logist under AS 08.11;

13           (2) "dealing in hearing aids" means the sale or lease, or  
14 attempted sale or lease of hearing aids, and the recommendation,  
15 selection, fitting, or adaptation of hearing aids;

16           (3) "department" means the Department of Commerce and  
17 Economic Development;

18           (4) "hearing aid" means a prosthetic instrument or device  
19 designed for or represented as aiding, improving, or correcting defec-  
20 tive human hearing and the parts, attachments, or accessories of the  
21 instrument or device; "hearing aid" does not include cochlear im-  
22 plants, middle-ear implants, vibro-tactile speech-reading aids, other  
23 aids for cued speech, or group or individual auditory training units  
24 and assistive devices;

25           (5) "hearing aid dealer" means an individual licensed under  
26 AS 08.55.010;

27           (6) "physician" means a person licensed as a physician  
28 under AS 08.64.

29          \* Sec. 9. AS 09.55.560(1) is amended to read:

1           (1) "health care provider" means an audiologist licensed  
2 under AS 08.11; a chiropractor licensed under AS 08.20; a dental  
3 hygienist licensed under AS 08.32; a dentist licensed under AS 08.36;  
4 a nurse licensed under AS 08.68; a dispensing optician licensed under  
5 AS 08.71; an optometrist licensed under AS 08.72; a pharmacist li-  
6 censed under AS 08.80; a physical therapist licensed under AS 08.84; a  
7 physician licensed under AS 08.64; a podiatrist; a psychologist and a  
8 psychological associate licensed under AS 08.86; and a hospital as  
9 defined in AS 18.20.130, including a governmentally owned or operated  
10 hospital; a corporate entity covered under AS 21.88.050(b)(12); and an  
11 employee of a health care provider acting within the course and scope  
12 of employment;

13 \* Sec. 10. AS 21.88.900(a)(9) is amended to read:

14           (9) "health care provider" means an audiologist licensed  
15 under AS 08.11; a chiropractor licensed under AS 08.20; a dental  
16 hygienist licensed under AS 08.32; a dentist licensed under AS 08.36;  
17 a nurse licensed under AS 08.68; a dispensing optician licensed under  
18 AS 08.71; an optometrist licensed under AS 08.72; a pharmacist li-  
19 censed under AS 08.80; a physical therapist licensed under AS 08.84; a  
20 physician licensed under AS 08.64; a podiatrist; a psychologist and a  
21 psychological associate licensed under AS 08.86; a hospital as defined  
22 in AS 18.20.130, including a governmentally owned or operated hospi-  
23 tal; a corporate entity covered under AS 21.88.050(b)(11); an employee  
24 of a health care provider acting within the course and scope of em-  
25 ployment;

26 \* Sec. 11. AS 44.62.330(a) is amended by adding new paragraphs to read:

27           (53) Department of Commerce and Economic Development con-  
28 cerning the licensing and regulation of audiologists (AS 08.11);

29           (54) Department of Commerce and Economic Development

1           concerning the licensing and regulation of hearing aid dealers (AS  
2           08.55).

3           \* Sec. 12. AS 45.50.471(b) is amended by adding a new paragraph to  
4 read:

5                       (26) dealing in hearing aids and failing to comply with  
6 AS 08.55.

7           \* Sec. 13. AS 45.50.561 is amended by adding new paragraphs to read:

8                       (10) "dealing in hearing aids" has the meaning given in  
9 AS 08.55.200;

10                      (11) "hearing aid" has the meaning given in AS 08.55.200.

11           \* Sec. 14. AS 47.17.070(9) is amended to read:

12                      (9) "practitioner of the healing arts" includes chiroprac-  
13 tors, dental hygienists, dentists, health aides, nurses, nurse practi-  
14 tioners, optometrists, osteopaths, physical therapists, physicians,  
15 physician's assistants, psychiatrists, psychologists, psychological  
16 associates, audiologists licensed under AS 08.11, hearing aid dealers  
17 licensed under AS 08.55, religious healing practitioners, and  
18 surgeons;

19

20