

CHAPTER 153A

HEARING INSTRUMENT DISPENSING

153A.13 Definitions.

153A.14 Regulation.

153A.15 Prohibited acts; enforcement; and penalty.

153A.17 Expenses.

153A.18 Consumer information center.

153A.19 Hearing aids; restrictions on sales.

153A.01 [Repealed, 1988 c 689 art 2 s 269]**153A.02** [Repealed, 1988 c 689 art 2 s 269]**153A.03** [Repealed, 1988 c 689 art 2 s 269]**153A.04** [Repealed, 1988 c 689 art 2 s 269]**153A.05** [Repealed, 1988 c 689 art 2 s 269]**153A.06** [Repealed, 1988 c 689 art 2 s 269]**153A.07** [Repealed, 1988 c 689 art 2 s 269]**153A.08** [Repealed, 1988 c 689 art 2 s 269]**153A.09** [Repealed, 1988 c 689 art 2 s 269]**153A.10** [Repealed, 1988 c 689 art 2 s 269]**153A.11** [Repealed, 1988 c 689 art 2 s 269]**153A.12** [Repealed, 1988 c 689 art 2 s 269]**153A.13 DEFINITIONS.**

Subdivision 1. **Applicability.** The definitions in this section apply to sections 153A.13 to 153A.18.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of health.

Subd. 3. **Hearing instrument.** "Hearing instrument" means an instrument designed to or represented as being able to aid defective human hearing. "Hearing instrument" includes the instrument's parts, attachments, and accessories, including, but not limited to, ear molds. Batteries and cords are not parts, attachments, or accessories of a hearing instrument. Surgically implanted hearing instruments, and assistive listening devices that do not require testing, fitting, or the use of ear molds and are not worn within the ear canal, are not hearing instruments.

Subd. 4. **Hearing instrument selling.** "Hearing instrument selling" means fitting and selling hearing instruments, assisting the consumer in instrument selection, selling hearing instruments at retail, or testing human hearing in connection with these activities.

Subd. 5. **Seller of hearing instruments.** "Seller of hearing instruments" means a natural person who engages in hearing instrument selling whether or not registered by the commissioner of health or licensed by an existing health-related board.

History: 1988 c 689 art 2 s 55; 1989 c 282 art 2 s 46

153A.14 REGULATION.

Subdivision 1. **Application for permit.** A seller of hearing instruments shall apply to the commissioner for a permit to sell hearing instruments. The commissioner shall provide applications for permits. At a minimum, the information that an applicant must provide includes the seller's name, social security number, business address and phone number, employer, and information about the seller's education, training, and experience in testing human hearing and fitting hearing instruments. The commissioner may reject an application for a permit if there is evidence of a violation or failure to comply with sections 153A.13 to 153A.15.

Subd. 2. **Issuance of permit.** The commissioner shall issue a permit to each seller

of hearing instruments who applies under subdivision 1 if the commissioner determines that the applicant is in compliance with sections 153A.13 to 153A.15.

Subd. 3. Nontransferability of permit. The permit cannot be transferred.

Subd. 4. Sale of hearing instruments without permit. It is unlawful for any person not holding a valid permit to sell a hearing instrument as defined in section 153A.13, subdivision 3. A person who sells a hearing instrument without the permit required by this section is guilty of a gross misdemeanor.

Subd. 5. Rulemaking authority. The commissioner shall adopt rules under chapter 14 to implement sections 153A.13 to 153A.18.

Subd. 6. Hearing instruments to comply with federal and state requirements. The commissioner shall ensure that hearing instruments are sold in compliance with state requirements and the requirements of the United States Food and Drug Administration. Failure to comply with state or federal regulations may be grounds for enforcement actions.

Subd. 7. Contested cases. The commissioner shall comply with the contested case procedures in chapter 14 when suspending, revoking, or refusing to issue a permit under this section.

History: 1988 c 689 art 2 s 56; 1992 c 464 art 2 s 1

153A.15 PROHIBITED ACTS; ENFORCEMENT; AND PENALTY.

Subdivision 1. Prohibited acts. The commissioner may reject an application for a permit or may act under subdivision 2 against a seller of hearing instruments for failure to comply with sections 153A.13 to 153A.15. Failure to apply to the commissioner for a permit, or supplying false or misleading information on the application for a permit, is a ground for action under subdivision 2. The following acts and conduct are also grounds for action under subdivision 2:

(1) prescribing or otherwise recommending to a consumer or potential consumer the use of a hearing instrument, unless the prescription from a physician or recommendation from a hearing instrument seller or audiologist is in writing, is delivered to the consumer or potential consumer, and bears the following information in all capital letters of 12-point or larger bold-face type: "THIS PRESCRIPTION OR RECOMMENDATION MAY BE FILLED BY, AND HEARING INSTRUMENTS MAY BE PURCHASED FROM, THE DISPENSER, AUDIOLOGIST, OR PHYSICIAN OF YOUR CHOICE." A prescription or written recommendation must include, upon the authorization of the consumer or potential consumer, the audiogram upon which the prescription or recommendation is based if there has been a charge for the audiogram;

(2) representing through any advertising or communication to a consumer or potential consumer that a person's permit to sell hearing instruments indicates state approval, endorsement, or satisfaction of standards of training or skill;

(3) being disciplined through a revocation, suspension, restriction, or limitation by another state for conduct subject to action under subdivision 2;

(4) presenting advertising that is false or misleading;

(5) providing the commissioner with false or misleading statements of credentials, training, or experience;

(6) engaging in conduct likely to deceive, defraud, or harm the public; or demonstrating a willful or careless disregard for the health, welfare, or safety of a consumer;

(7) splitting fees or promising to pay a portion of a fee to any other professional other than a fee for services rendered by the other professional to the client;

(8) engaging in abusive or fraudulent billing practices, including violations of federal Medicare and Medicaid laws, Food and Drug Administration regulations, or state medical assistance laws;

(9) obtaining money, property, or services from a consumer through the use of undue influence, high pressure sales tactics, harassment, duress, deception, or fraud; or

(10) failing to comply with restrictions on sales of hearing aids in section 153A.19.

Subd. 2. Enforcement actions. When the commissioner finds that a seller of hearing instruments has violated one or more provisions of sections 153A.13 to 153A.15, the commissioner may do one or more of the following:

(1) deny or reject the application for a permit;

(2) revoke the permit;

(3) suspend the permit;

(4) impose, for each violation, a civil penalty that deprives the seller of any economic advantage gained by the violation and that reimburses the department of health for costs of the investigation and proceeding; and

(5) censure or reprimand the dispenser.

Subd. 3. Procedures. The commissioner shall establish, in writing, internal operating procedures for receiving and investigating complaints and imposing enforcement actions. The written internal operating procedures may include procedures for sharing complaint information with government agencies in this and other states. Establishment of the operating procedures are not subject to rulemaking procedures under chapter 14. Procedures for sharing complaint information shall be consistent with the requirements for handling government data under chapter 13.

Subd. 3a. Discovery. In all matters relating to the lawful regulation activities under this chapter, the commissioner may issue subpoenas to require the attendance and testimony of witnesses and production of books, records, correspondence, and other information relevant to any matter involved in the investigation. The commissioner or the commissioner's designee may administer oaths to witnesses or take their affirmation. The subpoenas may be served upon any person named therein anywhere in the state by any person authorized to serve subpoenas or other processes in civil actions of the district courts. If a person to whom a subpoena is issued does not comply with the subpoena, the commissioner may apply to the district court in any district and the court shall order the person to comply with the subpoena. Failure to obey the order of the court may be punished by the court as contempt of court. All information pertaining to individual medical records obtained under this section shall be considered health data under section 13.38.

Subd. 4. Penalties. A person violating sections 153A.13 to 153A.15 is guilty of a misdemeanor. The commissioner may impose an automatic civil penalty equal to one-fourth the renewal fee on each hearing instrument seller who fails to renew the permit required in section 153A.14 by the renewal deadline established by the commissioner in rule.

History: 1988 c 689 art 2 s 57; 1989 c 282 art 2 s 47; 1991 c 202 s 10,11,41; 1992 c 464 art 2 s 1

153A.16 [Repealed, 1991 c 202 s 42]

153A.17 EXPENSES.

The expenses for administering the permit requirements including the complaint handling system for hearing aid sellers in sections 153A.14 and 153A.15 and the consumer information center under section 153A.18 must be paid from initial permit fees and renewal fees. The total fees collected must as closely as possible equal anticipated expenditures during the fiscal biennium as provided for in section 16A.128. The commissioner shall by rule, with the approval of the commissioner of finance, adjust any fee the commissioner is empowered to assess as provided for in section 16A.128. The fee established must include a surcharge amount necessary to recover, over a five-year period, the commissioner's direct expenditures for adoption of the rules.

History: 1988 c 689 art 2 s 59; 1991 c 202 s 12

153A.18 CONSUMER INFORMATION CENTER.

The commissioner shall establish a consumer information center to assist actual and potential purchasers of hearing aids by providing them with information regarding hearing instrument sales. The consumer information center shall disseminate information about consumers' legal rights related to hearing instrument sales, provide information relating to complaints about sellers of hearing instruments, and provide information about outreach and advocacy services for consumers of hearing instruments. In establishing the center and developing the information, the commissioner shall consult with representatives of hearing instrument sellers, audiologists, physicians, and consumers.

History: 1988 c 689 art 2 s 60

153A.19 HEARING AIDS; RESTRICTIONS ON SALES.

Subdivision 1. Definition. "Hearing aid" means any instrument or device designed for or represented as aiding defective human hearing, and any parts, attachments, or accessories of the instrument or device, including but not limited to ear molds. Batteries and cords shall not be considered parts, attachments, or accessories of a hearing aid.

Subd. 2. 30-day guarantee and buyer right to cancel. No person shall sell a hearing aid in this state unless:

(a) The seller provides the buyer with a 30-day written money-back guarantee. The guarantee must permit the buyer to cancel the purchase for any reason within 30 days after receiving the hearing aid by giving or mailing written notice of cancellation to the seller. If the hearing aid must be repaired, remade, or adjusted during the 30-day money-back guarantee period, the running of the 30-day period is suspended one day for each 24-hour period that the hearing aid is not in the buyer's possession. A repaired, remade, or adjusted hearing aid must be claimed by the buyer within three working days after notification of availability, after which time the running of the 30-day period resumes. The guarantee must entitle the buyer, upon cancellation, to receive a full refund of payment within 30 days of return of the hearing aid to the seller. The seller may retain as a cancellation fee ten percent of the buyer's total purchase price of the hearing aid.

(b) The seller shall provide the buyer with a contract written in plain English, that contains uniform language and provisions that meet the requirements and are certified by the attorney general under the Plain Language Contract Act, sections 325G.29 to 325G.36. The contract must include, but is not limited to, the following: in immediate proximity to the space reserved for the signature of the buyer, or on the first page if there is no space reserved for the signature of the buyer, a clear and conspicuous disclosure of the following specific statement in all capital letters of no less than 12-point boldface type: MINNESOTA STATE LAW GIVES THE BUYER THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT ANY TIME PRIOR TO MIDNIGHT OF THE 30TH CALENDAR DAY AFTER RECEIPT OF THE HEARING AID(S). THIS CANCELLATION MUST BE IN WRITING AND MUST BE GIVEN OR MAILED TO THE SELLER. IF THE BUYER DECIDES TO RETURN THE HEARING AID(S) WITHIN THIS 30-DAY PERIOD, THE BUYER WILL RECEIVE A REFUND OF \$..... (State the dollar amount of refund.)

Subd. 3. Itemized repair bill. (a) Any person or company who agrees to repair a hearing aid must provide the owner of the hearing aid, or the owner's representative, with a bill that specifically itemizes all parts and labor charges for services rendered. The bill must also include the person's or company's name, address, and phone number.

(b) This subdivision does not apply to:

(1) a person or company that repairs a hearing aid pursuant to an express warranty covering the entire hearing aid and the warranty covers the entire costs, both parts and labor, of the repair; and

(2) a person or company that repairs a hearing aid and the entire hearing aid, after

being repaired, is expressly warranted for a period of at least six months, the warranty covers the entire costs, both parts and labor, of the repair, and a copy of the express warranty is given to the owner or the owner's representative. The owner of the hearing aid or the owner's representative must be given a written express warranty that includes the name, address, and phone number of the repairing person or company; the make, model, and serial number of the hearing aid repaired; the exact date of the last day of the warranty period; and the terms of the warranty.

Subd. 4. Repair warranty. Any guarantee of hearing aid repairs must be in writing and delivered to the owner of the hearing aid stating the repairer's name, address, telephone number, length of guarantee, model, and serial number of the hearing aid and all other terms and conditions of the guarantee.

Subd. 5. Misdemeanor. Any person who is found to have violated this section is guilty of a misdemeanor.

Subd. 6. Additional. In addition to the penalties provided in subdivision 5, any person who is found to have violated this section is subject to the penalties and remedies provided in section 325F.69, subdivision 1.

History: 1973 c 383 s 1; 1975 c 182 s 1; 1984 c 418 s 1; 1986 c 444; 1987 c 204 s 1; 1988 c 495 s 2,3; 1988 c 689 art 2 s 41-43; 1991 c 202 s 8,41