Regular Session, 2011

HOUSE BILL NO. 276

BY REPRESENTATIVE MONTOUCET

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

HEARING AID DEALERS: Provides with respect to the La. Hearing Aid Licensing Act

AN ACT

To amend and reenact R.S. 37:2442(6)(introductory paragraph), 2446.1(C), 2449(B), and 2449.1(B)(4), (C)(1) and (2), and (E), 2449.2(A)(introductory paragraph) and (B), and 2449.3(A) and to enact R.S. 37:2444.1 and 2444.2, relative to hearing aid dealers; to provide for definitions; to establish a testing period for hearing aids; to establish a three-day cooling off period for the purchase of a hearing aid; to provide for continuing education requirements; to provide for temporary training permits; to provide for guidelines for training of temporary training permit holders; to establish sponsor and co-sponsor requirements; to provide for authority of temporary training permit holders; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 37:2442(6)(introductory paragraph), 2446.1(C), 2449(B), 2449.1(B)(4), (C)(1) and (2), and (E), 2449.2(A)(introductory paragraph) and (B), and 2449.3(A) are hereby amended and reenacted and R.S. 37:2444.1 and 2444.2 are hereby enacted to read as follows:

§2442. Definitions

The following words or phrases, when used in this Chapter, shall have the following meanings:

* * *

(6) Unethical conduct ~~means~~ includes but is not limited to the following:

* * *

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§2444.1. Testing period for hearing aids

A. Any person licensed pursuant to this Chapter who sells a hearing aid to a consumer shall provide a written receipt or written contract to the consumer. The written receipt or contract shall provide the consumer with a thirty-day right to cancel the purchase if the consumer finds that the hearing aid does not function adequately for the consumer. If the consumer cancels the hearing aid purchase based on this Subsection, the consumer may obtain a refund if he returns the hearing aid to the seller in the same condition, ordinary wear and tear excluded, as when purchased. The written receipt or contract shall notify the consumer of the thirty-day right to cancel period in at least ten point type. The thirty-day right to cancel period shall commence from either the date the hearing aid is originally delivered to the consumer or the date the written receipt or contract is delivered to the consumer, whichever is later. The thirty-day period shall be interrupted for any period during which the hearing aid seller, dealer, or fitter has possession or control of the hearing aid after its original delivery.

B. Upon exercise of the thirty-day right to cancel a hearing aid purchase, the seller of the hearing aid is entitled to a cancellation fee not to exceed fifteen percent of all fees charged to the consumer, including testing, fitting, counseling, and the purchase price of the hearing aid. The exact amount of the cancellation fee shall be stated in the written receipt or contract provided to the consumer.

§2444.2. Three-day cooling off period

A. A consumer may cancel any transaction for the purchase of a hearing aid, without any penalty or obligation, within three business days of the date the hearing aid is actually ordered by the consumer. Upon such cancellation, any property traded in for credit, any payments made by the consumer under the contract or sale, and any negotiable instrument executed thereupon shall be returned by the seller to the consumer within ten business days following receipt by the seller of the cancellation notice. Any security interest arising out of the transaction shall be immediately canceled.

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B.(1) Upon cancellation, the consumer shall make available to the seller in the same mode as received, in substantially as good condition as when received, any goods delivered under the contract or sale. If the product, if received by delivery to consumer, is made available to the seller and the seller does not pick it up within twenty days of the date of the notice of cancellation, the consumer bears no further obligation for the return of the product; however, if the consumer fails to make the product available to the seller, or agrees to return the product to the seller and fails to do so, then the consumer remains liable for performance of all obligations under the contract.

(2) The notice of cancellation shall be effective if it is delivered to the seller within the time frame described in Paragraph (1) of this Subsection and shall include a signed and dated copy of the subject contract, receipt, sales form, or other document evidencing all the terms of the transaction and the consumer's written notice to cancel.

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§2446.1. Continuing education requirement

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C. Any person receiving a license by ~~reciprocity~~ endorsement or examination on July first or later in that year shall not be required to have the ~~ten~~ fifteen hours of continuing education until December thirty-first of the following year.

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§2449. Temporary training permit

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B. Upon receiving an application provided ~~under~~ pursuant to Subsection A of this Section, accompanied by a fee of one hundred dollars, the board shall issue a temporary training permit which shall entitle the applicant to participate in the fitting and selling of hearing aids, under direct supervision, for a period ending thirty days after the conclusion of the next examination the applicant is required to take.

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§2449.1. Guidelines for training of temporary training permit holders

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B. The guidelines shall include all of the following:

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(4) The responsibility of the sponsor and co-sponsor for direct ~~and indirect~~ supervision of all aspects of the training.

C. The training period begins on the date of the issuance of the temporary permit. A temporary training permit holder must complete at least one hundred fifty hours of directly supervised practicum that includes:

(1) Twenty-five contact hours of pure tone air conduction, bone conduction, and speech audiometry, recorded ~~and~~ or live voice, with fifteen of the required hours being with actual clients.

(2) Twenty-five contact hours of hearing instrument evaluations, including sound-field measurements with recorded ~~and~~ or live voice.

* * *

E. On completion of the directly supervised practicum required under Subsection C of this Section, the temporary training permit holder shall ~~complete~~ continue the permit holder's training under the ~~indirect~~ direct supervision of the permit holder's sponsor or co-sponsor.

§2449.2. Sponsor and co-sponsor requirements

A. A sponsor and co-sponsor of a temporary training permit holder ~~must~~ shall be a licensed hearing instrument dispenser having the qualifications established by this Chapter and:

* * *

B. A sponsor or co-sponsor, as appropriate, shall directly ~~and indirectly~~ supervise a temporary training permit holder. A sponsor or co-sponsor shall provide direct supervision by being located on the premises and available to the temporary training permit holder for prompt consultation. A sponsor or co-sponsor shall

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provide ~~indirect~~ direct supervision by reviewing daily a temporary training permit holder's patient contact and daily work.

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§2449.3. Authority of temporary training permit holder

A. A temporary training permit holder may provide routine fitting and dispensing of hearing instruments that have been ordered by the sponsor or co-sponsor. The sponsor~~,~~ or co-sponsor, in consultation with the board, is the sole judge of whether the permit holder has the qualifications necessary to perform routine fitting and dispensing. A sponsor or co-sponsor is accountable to the board for the actions and misdeeds of a temporary training permit holder acting at the sponsor's or co-sponsor's discretion.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Montoucet HB No. 276

Abstract: Modifies provisions in the La. Hearing Aid Licensing Act.

Present law (R.S. 37:2442(6)) defines "unethical conduct" by listing the specific activities that qualify as unethical behavior.

Proposed law modifies present law by specifying that the list of "unethical conduct" is illustrative and not exhaustive.

Proposed law (R.S. 37:2444.1(A)) requires a licensed hearing aid dealer who sells a hearing aid to a consumer to provide a written receipt or written contract to the consumer. Also, requires that the written receipt or contract contain a notification to the consumer that he has a 30-day right to cancel the purchase if he finds that the hearing aid does not function adequately. Also, allows the consumer to obtain a refund if he returns the hearing aid to the seller in the same condition, ordinary wear and tear excluded, as when purchased. Specifies that the written receipt or contract notifying the consumer of the 30-day right to cancel the transaction must be in at least 10 point type. Provides that the 30-day right to cancel period commences from either the date the hearing aid is originally delivered to the consumer or the date the written receipt or contract is delivered to the consumer, whichever is later. Also, specifies that the 30-day period is interrupted for any period during which the hearing aid seller, dealer, or fitter has possession or control of the hearing aid after its original delivery.

Proposed law (R.S. 37:2444.1(B)) provides that if a consumer exercises the 30-day right to cancel a hearing aid purchase, the seller of the hearing aid can access a cancellation fee not to exceed 15% of all fees charged to the consumer, including testing, fitting, counseling, and

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the purchase price of the hearing aid. Requires the exact amount of the cancellation fee to be stated in the written receipt or contract provided to the consumer.

Proposed law (R.S. 37:2444.2(A)) authorizes a consumer to cancel any transaction for the purchase of a hearing aid, without any penalty or obligation, within three business days from the date the hearing aid is actually ordered by the consumer; however, if the transaction is cancelled, any property traded in for credit, any payments made by the consumer under the contract or sale, and any negotiable instrument executed thereupon must be returned by the seller to the consumer within 10 business days following receipt by the seller of the cancellation notice. Also, any security interest arising out of the transaction must be immediately canceled.

Proposed law (R.S. 37:2444.2(B)(1)) specifies that upon cancellation, the consumer must make available to the seller in the same mode as received, in substantially as good condition as when received, any goods delivered under the contract or sale. Further provides that if the product, if received by delivery to consumer, is made available to the seller and the seller does not pick it up within 20 days of the date of the notice of cancellation, the consumer bears no further obligation for the return of the product; however, if the consumer fails to make the product available to the seller, or agrees to return the product to the seller and fails to do so, then the consumer remains liable for performance of all obligations under the contract.

Proposed law (R.S. 37:2444.2(B)(2)) provides that the notice of cancellation is effective if the consumer delivers the notice to the seller within the time frame described in proposed law and includes a signed and dated copy of the subject contract, receipt, sales form, or other document evidencing all the terms of the transaction and the consumer's written notice to cancel.

Present law (R.S. 37:2446.1(C)) provides that any person receiving a license by reciprocity or examination on July 1st or later in that year is not required to have 10 hours of continuing education until Dec. 31st of the following year.

Proposed law modifies present law by changing the licensing process for out-of-state hearing aid dealers from reciprocity to endorsement. Also, increases the number of required continuing education hours from 10 to 15.

Present law (R.S. 37:2449(B)) allows an applicant with a temporary training permit to participate in the fitting and selling of hearing aids, under supervision for a period ending 30 days after the conclusion of the next examination the applicant is required to take.

Proposed law specifies that the applicant must be under direct supervision when using a temporary permit to fit or sell hearing aids.

Present law (R.S. 37:2449.1(B)(4)) provides that the guidelines for the training of temporary training permit holders must include the responsibility of the sponsor for direct and indirect supervision of all aspects of the training.

Proposed law specifies that the sponsor and co-sponsor are responsible for direct training of temporary permit holders.

Present law (R.S. 37:2449.1(C)(1) and (2)) provides that the training period begins on the date of the issuance of the temporary permit. A temporary training permit holder must complete at least 150 hours of directly supervised practicum that includes:

(1) 25 contact hours of pure tone air conduction, bone conduction, and speech audiometry, recorded and live voice, with fifteen of the required hours being with actual clients; and

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(2) 25 contact hours of hearing instrument evaluations, including sound-field measurements with recorded and live voice.

Proposed law modifies present law by specifying that a part of the required 25 contact hours may be completed through recorded or live voice.

Present law (R.S. 37:2449.1(E)) provides that on completion of the directly supervised practicum required under present law, the temporary training permit holder must complete the permit holder's training under the indirect supervision of the permit holder's sponsor.

Proposed law modifies present law by specifying that the temporary permit holder must continue the permit holder's training under the direct supervision of the permit holder's sponsor or co-sponsor.

Present law (R.S. 37:2449.2(A)) provides that a sponsor of a temporary training permit holder must be a licensed hearing instrument dispenser having the qualifications established by present law.

Proposed law specifies that sponsor and co-sponsor of a temporary training permit holder must be a licensed hearing instrument dispenser having the qualifications established by present law.

Present law (R.S. 37:2449.2(B)) requires a sponsor, as appropriate, to directly and indirectly supervise a temporary training permit holder. Also, requires a sponsor to provide direct supervision by being located on the premises and available to the temporary training permit holder for prompt consultation. Finally, requires a sponsor to provide indirect supervision by reviewing daily a temporary training permit holder's patient contact and daily work.

Proposed law modifies present law by specifying that a sponsor and co-sponsor must directly supervise a temporary training permit holder. Also, requires a sponsor and co-sponsor to provide direct supervision by being located on the premises and available to the temporary training permit holder for prompt consultation. Finally, requires a sponsor and co-sponsor to provide direct supervision by reviewing daily a temporary training permit holder's patient contact and daily work.

Present law (R.S. 37:2449.3(A)) allows a temporary training permit holder to provide routine fitting and dispensing of hearing instruments that have been ordered by the sponsor. Provides that the sponsor in consultation with the board, is the sole judge of whether the permit holder has the qualifications necessary to perform routine fitting and dispensing. Also, provides that a sponsor is accountable to the board for the actions and misdeeds of a temporary training permit holder acting at the sponsor's discretion.

Proposed law modifies present law by specifying that a temporary training permit holder may provide routine fitting and dispensing of hearing instruments that have been ordered by the sponsor or co-sponsor. Provides that the sponsor or co-sponsor in consultation with the board, is the sole judge of whether the permit holder has the qualifications necessary to perform routine fitting and dispensing. Also, provides that a sponsor or co-sponsor is accountable to the board for the actions and misdeeds of a temporary training permit holder acting at the sponsor's or co-sponsor's discretion.

(Amends R.S. 37:2442(6)(intro. para.), 2446.1(C), 2449(B), 2449.1(B)(4), (C)(1) and (2), and (E), 2449.2(A)(intro. para.) and (B), and 2449.3(A); Adds R.S. 37:2444.1 and 2444.2)

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Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Health and Welfare to the original bill.

1. Deleted a provision that specified that the notice of cancellation is effective if the consumer mails the notice to the seller within the enumerated time frame.

2. Deleted proposed law that a sponsor or co-sponsor of a temporary training permit holder can be licensed by the La. Board of Examiners for Speech-Language Pathology and Audiology.

House Floor Amendments to the engrossed bill.

1. Deleted a provision that provided a sponsor or co-sponsor of a temporary training permit holder can be a licensed dispensing audiologist.

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