

2001

CHAPTER H-2.01

An Act respecting Hearing Aid Sales and Services

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(Assented to June 28, 2001)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

PART I Preliminary Matters

Short title

1 This Act may be cited as *The Hearing Aid Sales and Services Act*.

Interpretation

2 In this Act:

- (a) “**audiologist**” means an audiologist who holds a valid licence issued pursuant to *The Speech-Language Pathologists and Audiologists Act*;
- (b) “**court**” means the Court of Queen’s Bench;

- (c) **“department”** means the department over which the minister presides;
- (d) **“director”** means the person appointed as the director of hearing aid dealer licensing pursuant to subsection 20(1), and includes a deputy director;
- (e) **“hearing aid”** means a wearable device that is designed or offered for the purpose of aiding or compensating for impaired human hearing, and includes any parts, attachments or accessories for the device, including an ear mould, but does not include batteries or cords;
- (f) **“hearing aid dealer”** means a person who, on a retail basis, carries on the business of:
 - (i) selling, leasing, offering for sale or lease or soliciting orders for the future delivery of hearing aids to members of the public; or
 - (ii) providing or offering to provide hearing aid services to members of the public;
- (g) **“hearing aid services”** means:
 - (i) testing or measuring human hearing as it relates to hearing acuity, sensitivity and communication, for the purpose of selecting, adapting or recommending hearing aids for sale or lease;
 - (ii) selecting, adapting or recommending hearing aids for sale or lease; or
 - (iii) making impressions for ear moulds to be used in connection with hearing aids;
- (h) **“inspector”** means an inspector appointed pursuant to subsection 20(2), and includes the director;
- (i) **“licence”** means a valid licence issued pursuant to section 6;
- (j) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (k) **“prescribed”** means prescribed in the regulations.

Exemptions

3 This Act does not apply to:

- (a) a district health board or affiliate within the meaning of *The Health Districts Act* that provides hearing aid services; or
- (b) any prescribed person or class of persons.

PART II
Licensing

Licence required

4 (1) No person shall carry on the business of a hearing aid dealer unless the person holds a licence.

(2) Every person who carries on the business of a hearing aid dealer shall have a separate licence for each location at which the person carries on the business of a hearing aid dealer.

(3) For the purposes of subsection (2), a temporary location at which a licensee is conducting a visiting hearing clinic is deemed not to be a location at which the person carries on the business of a hearing aid dealer.

Application for licence

5(1) An applicant for a licence must apply to the director on a form supplied by the director and include with the application:

- (a) the prescribed fee;
- (b) the business address of the location with respect to which the licence is sought;
- (c) an address for service in Saskatchewan;
- (d) any prescribed information; and
- (e) any additional information the director may require.

(2) The director may require any applicant for a licence and any licensee to deliver within a specified time a bond or other form of security acceptable to the director in any amount that the director may require.

Issuance or refusal of licences

6(1) The director may:

- (a) issue or renew a licence if, in the opinion of the director, the applicant meets all of the requirements of this Act and the regulations; or
- (b) refuse to issue or renew a licence if:
 - (i) in the opinion of the director, the applicant does not meet all of the requirements of this Act and the regulations; or
 - (ii) the director has reason to believe that it is not in the public interest to issue the licence.

(2) The director may include as a provision of a licence any terms and conditions that the director considers appropriate.

(3) No licensee shall fail to comply with a term or condition included in the licensee's licence.

Duration of licence

7 A licence is valid for the period set out in the licence or, if no period is set out in the licence, for one year from the date on which it was issued, unless the licence is suspended or cancelled.

Licence not transferable

8 A licence is not transferable from one person to another.

Display of licence

9(1) A licensee shall display the licensee's licence in a prominent place in the business premises with respect to which it is issued.

(2) A licensee shall produce a copy of the licensee's licence for inspection when requested to do so by any person.

Reporting changes

10(1) A licensee shall provide the director with written notice of the following, within 30 days after the occurrence:

- (a) a change in the licensee's business name, street address, postal address or telephone number;
- (b) in the case of a licensee that is a corporation, a change in the licensee's officers or directors;
- (c) the termination or commencement of employment of persons who perform hearing aid services on behalf of the licensee.

(2) A notice required by subsection (1) must contain any particulars that the director may require.

Suspension, etc., of licence, administrative penalties

11(1) The director may receive and investigate complaints from members of the public with respect to the practices of hearing aid dealers.

(2) Where the director is satisfied that one of the circumstances set out in subsection (3) exists with respect to a licensee, the director may:

- (a) suspend, amend or cancel the licensee's licence; or
- (b) add to or vary the terms and conditions included in the licence.

(3) The director may take an action mentioned in subsection (2) where:

- (a) the licensee has contravened any provision of this Act or the regulations;
- (b) the licensee has failed to comply with any of the terms or conditions included in the licence;
- (c) the licensee has made a material misstatement in the application for the licence or in any of the information or material submitted to the director;
- (d) the licensee has made misrepresentations to the public, or has not complied with representations that the licensee has made to a person;
- (e) the licensee has acted in a fraudulent, dishonest or misleading fashion;

- (f) the licensee has failed to comply with any other law applicable to the licensee; or
 - (g) for any other reason it is in the public interest to do so.
- (4) Where, as a result of a complaint, the director is satisfied that one of the circumstances set out in subsection (3) exists and that a person has suffered as a result of the licensee's action or failure to act, the director may, by order, require the licensee to provide the person with:
- (a) a full or partial refund of any amount paid pursuant to a hearing aid contract;
 - (b) warranty or other repair services; or
 - (c) any other adjustment that the director considers fair and equitable in the circumstances.
- (5) Before taking an action mentioned in subsection (2) or making an order pursuant to subsection (4), the director shall:
- (a) give the licensee written notice of the director's decision to take that action or make that order and the reasons for the decision; and
 - (b) give the licensee an opportunity to make written representations to the director on why the action should not be taken or the order should not be made.
- (6) Where, on the expiry of the appeal period set out in subsection 19(2), a licensee has failed to comply with a decision of the director that requires the licensee to pay an amount to another person:
- (a) the decision may be enforced against the bond or other security furnished by the licensee pursuant to subsection 5(2); or
 - (b) a certified copy of the decision may be filed with a local registrar of the court and, when so filed, the decision is enforceable as if it were a judgment of the court for the recovery of a debt in the amount specified in the decision, and in the same manner as a judgment of the court.

Return of licence

12 Every licence issued is the property of the department and shall be returned to the director if the licence is suspended or cancelled.

PART III
Conduct of Business

Protection of title

13(1) No person shall use the title "hearing aid dealer", "hearing aid service", "hearing centre" or "hearing service centre" unless the person is a licensee.

(2) No person shall use the title "hearing instrument practitioner", "hearing instrument specialist" or "hearing instrument technician" unless the person meets the qualifications mentioned in subsection 14(1).

Employees

14(1) No hearing aid dealer shall employ a person to provide hearing aid services unless that person possesses the prescribed qualifications.

(2) A hearing aid dealer is responsible for the actions and activities undertaken by the hearing aid dealer's employees who provide hearing aid services on behalf of the hearing aid dealer.

Compliance with regulations

15 Every hearing aid dealer shall:

- (a) comply with the regulations; and
- (b) ensure that all hearing aids and hearing aid services provided by or on behalf of the hearing aid dealer meet any standards set out in the regulations.

Hearing tests

16(1) A hearing aid dealer or an employee of a hearing aid dealer who performs a hearing test on another person must produce an audiogram that meets the requirements set out in the regulations.

(2) No hearing aid dealer or employee of a hearing aid dealer who performs a hearing test on another person shall refuse to provide a copy of the audiogram to that person.

Provision of hearing aids, services to minors

17 No person other than an audiologist shall provide a hearing aid or hearing aid services to a person under the age of 18 years.

Cancellation of contract

18(1) A purchaser of a hearing aid is entitled to cancel the contract of sale:

- (a) within three days after the date of purchase, not including Saturday, Sunday or a statutory holiday, by giving written notice of cancellation to the hearing aid dealer; or
- (b) within the prescribed trial period, by returning the hearing aid to the hearing aid dealer.

(2) A purchaser of a hearing aid who cancels a contract of sale pursuant to clause (1)(a) is entitled to a refund, within 30 days after the day on which the hearing aid dealer receives the notice of cancellation, of any amount paid pursuant to the contract minus:

- (a) the cost of performing a hearing test on the purchaser; and
- (b) the cost of preparing an impression of the purchaser's ear.

(3) A purchaser of a hearing aid who cancels a contract of sale pursuant to clause (1)(b) is entitled to a refund of an amount determined in accordance with the regulations within 30 days after the day on which the hearing aid is returned to the hearing aid dealer.

(4) Subsections (1) to (3) are deemed to be terms of every contract for the sale of a hearing aid.

(5) A hearing aid dealer shall, in accordance with the regulations, advise each purchaser of a hearing aid of the purchaser's rights pursuant to this section.

PART IV Appeals

Appeal of director's decision

19(1) A licensee who is dissatisfied with a decision of the director pursuant to section 6 or 11 may appeal the decision in accordance with this section.

(2) An appeal pursuant to subsection (1) must be commenced by serving the minister with a notice of appeal in the prescribed form, accompanied by the prescribed fee, within 30 days after the date of the decision being appealed.

(3) On receipt of a notice of appeal in accordance with subsection (2), the minister shall appoint an adjudicator to conduct the appeal.

(4) Subject to subsection (5), commencement of an appeal does not stay or otherwise affect the validity of the decision that is the subject of the appeal.

(5) An appellant may, as part of an appeal, request the adjudicator to stay the decision of the director pending the determination of the appeal, and the adjudicator shall determine whether to grant the stay.

(6) The adjudicator shall:

(a) give notice in writing of the time and place of the hearing:

(i) to the appellant;

(ii) to the director; and

(iii) in an appeal of a decision that relates to a person who allegedly has suffered as a result of a licensee's action or failure to act, to that person; and

(b) conduct a review of the director's decision in accordance with this section.

(7) On receipt of a notice mentioned in subsection (6), the director shall provide the appellant, the adjudicator and the person, if any, mentioned in subclause (6)(a)(iii) with copies of all materials in the director's possession with respect to the decision that is the subject of the appeal.

(8) Subject to this Act and the regulations, an adjudicator shall determine the procedure for an appeal.

(9) At a hearing pursuant to this section, the appellant, the director and a person mentioned in subclause (6)(a)(iii) are entitled to make representations personally or by counsel.

- (10) An adjudicator has the powers of a commissioner pursuant to *The Public Inquiries Act*.
- (11) An adjudicator may accept any evidence that the adjudicator considers appropriate and is not bound by the rules of law concerning evidence.
- (12) An appellant is competent and compellable to give evidence at a hearing pursuant to this section.
- (13) Where an appellant fails to attend the hearing, the adjudicator may proceed with the hearing in the absence of the appellant.
- (14) An adjudicator may adjourn a hearing from time to time.
- (15) On completing an appeal, the adjudicator shall confirm, reverse or vary the decision of the director.
- (16) Where the adjudicator substantially confirms the decision of the director, the adjudicator may order the appellant to pay the costs of the hearing, calculated in accordance with the regulations.
- (17) Where the adjudicator reverses or substantially varies the decision of the director, the adjudicator shall order the director to refund to the appellant the fee paid for the hearing.
- (18) The decision of an adjudicator is final and binding on the parties, and there is no further appeal.
- (19) Where a licensee fails, within the time specified in the decision or, if no time is specified, within 30 days after the date of the decision, to comply with a decision of an adjudicator that requires the licensee to pay an amount to another person:
- (a) the decision may be enforced against the bond or other security furnished by the licensee pursuant to subsection 5(2); or
 - (b) a certified copy of the decision may be filed with a local registrar of the court and, when so filed, the decision is enforceable as if it were a judgment of the court for the recovery of a debt in the amount specified in the decision, and in the same manner as a judgment of the court.

PART V Administration

Director, inspectors

- 20(1)** The minister shall appoint a director of hearing aid dealer licensing to administer this Act and the regulations and may appoint any deputy director that the minister considers necessary.
- (2) The director may appoint any inspectors that the director considers necessary for the administration of this Act and the regulations.

Inspections

- 21(1)** For the purposes of the administration of this Act and the regulations, an inspector may make any inspection that the inspector considers necessary.

(2) Subject to subsection (3), for the purposes of conducting an inspection, an inspector may, at any reasonable time, without a warrant, do any or all of the following:

- (a) enter any place or premises where the business of a hearing aid dealer is being carried out, inspect the place or premises and observe the performance of hearing aid services by the hearing aid dealer and employees of the hearing aid dealer;
- (b) require a hearing aid dealer or an employee of a hearing aid dealer to produce any records or property that relate to the business of the hearing aid dealer;
- (c) make a copy of any records described in clause (b);
- (d) subject to subsection (4), if the inspector is unable to make a satisfactory copy of any records described in clause (b), remove the records after giving a receipt;
- (e) after giving a receipt, remove any property that may constitute evidence of a contravention of this Act or the regulations.

(3) An inspector shall not enter any premises that are a private dwelling without the consent of the occupier or a warrant obtained pursuant to *The Summary Offences Procedure Act, 1990*.

(4) Where any records are removed pursuant to clause (2)(d), the inspector may make copies of the records and shall:

- (a) make those copies with reasonable dispatch; and
- (b) promptly return the originals of the records to:
 - (i) the place from which they were removed; or
 - (ii) any other place that may be agreed to by the inspector and the hearing aid dealer.

(5) No hearing aid dealer or employee of a hearing aid dealer shall fail to produce any records or property as required by the inspector pursuant to clause (2)(b) in the manner and within the time specified by the inspector.

(6) A document certified by an inspector to be a copy made pursuant to this section:

- (a) is admissible in evidence without proof of the office or signature of the inspector; and
- (b) has the same probative force as the original document.

(7) No person shall obstruct an inspector in the lawful performance of the duties of an inspector pursuant to this Act or the regulations.

Investigation, inquiry

22 The director or an inspector may investigate or inquire into any suspected breach of this Act or the regulations.

PART VI
General

Service of documents

23(1) Unless otherwise provided for in this Act or the regulations, any notice or other document that is required to be served pursuant to this Act or the regulations may be served by:

- (a) personal service made:
 - (i) in the case of an individual, on that individual;
 - (ii) in the case of a partnership, on any partner; or
 - (iii) in the case of a corporation, on any officer or director; or
- (b) registered mail addressed to the last business or residential address of the person to be served that is known to the director.

(2) A notice or document sent by registered mail is deemed to have been served on the seventh day following the date of its mailing, unless the person to whom it was mailed establishes that, through no fault of that person, the person did not receive the notice or document or received it at a later date.

(3) If it is for any reason impracticable to effect service of any documents in the manner provided for in subsection (1), the court may, on an application that may be made *ex parte*, make an order for substituted service.

(4) A document served in accordance with the terms of an order mentioned in subsection (3) is deemed to have been properly served.

Regulations

24 For the purpose of carrying out this Act according to its intent, the Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) prescribing persons or classes of persons for the purposes of clause 3(b);
- (c) respecting the requirements to be met by applicants for licences;
- (d) prescribing the amounts and form of bonds or other forms of security required by the director to be furnished pursuant to this Act, the terms of forfeiture of bonds or other forms of security, the terms on which bonds or other forms of security may be cancelled, the period for which the bonds or other forms of security subsist, and respecting all matters pertaining to forfeiture;
- (e) prescribing the qualifications that must be possessed by employees of hearing aid dealers who provide hearing aid services;
- (f) governing the activities of hearing aid dealers;
- (g) prescribing standards for hearing aids and hearing aid services provided by hearing aid dealers or their employees;
- (h) prescribing standards for audiograms;

- (i) governing the advertising and marketing practices of hearing aid dealers;
- (j) establishing standards of conduct, competency and proficiency for hearing aid dealers and their employees in the provision of hearing aid services;
- (k) prescribing activities that constitute conflict of interest and prohibiting hearing aid dealers and employees of hearing aid dealers from participating in those activities;
- (l) for the purposes of clause 18(1)(b), prescribing the length of the trial period;
- (m) for the purposes of subsection 18(3), governing the determination of the amount of a refund to which a purchaser of a hearing aid who returns the hearing aid during the trial period is entitled;
- (n) for the purposes of subsection 18(5), governing the provision of advice by hearing aid dealers to purchasers of hearing aids with respect to their rights pursuant to that section;
- (o) governing the conduct of appeals;
- (p) for the purposes of subsection 19(16), governing the calculation of the costs of a hearing;
- (q) prescribing any forms required for the purposes of this Act;
- (r) prescribing the amounts of fees payable pursuant to this Act, the times for payment of fees and penalties for late payment of fees;
- (s) with respect to any matter governed by this Act:
 - (i) adopting, as amended from time to time or otherwise, all or any part of any relevant code or standard;
 - (ii) amending for the purposes of this Act or the regulations any code or standard adopted pursuant to subclause (i);
 - (iii) requiring compliance with a code or standard adopted pursuant to subclause (i);
- (t) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
- (u) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

Restraining order

25 Where a person who is required to be licensed pursuant to this Act carries on the business of a hearing aid dealer without being licensed or while that person's licence is suspended or cancelled, the director may apply to the court for an order restraining the person and any employee acting for or on behalf of the person from carrying on the business of a hearing aid dealer until the person is licensed or the suspension is terminated.

Offence and penalty

26 Every person who contravenes a provision of this Act or the regulations is guilty of an offence and liable on summary conviction to a fine of:

- (a) not more than \$5,000 in the case of a first offence; and
- (b) not more than \$10,000 in the case of a second or subsequent offence.

Non-liability

27 No action or proceeding lies or shall be commenced against the minister, the department, the director, a deputy director, an inspector, an adjudicator, an employee or agent of the department or any other person appointed to administer all or any of the provisions of this Act or the regulations for any loss or damage suffered by any person by reason of anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done, by any of them pursuant to or in the exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any duty imposed by this Act or the regulations.

Coming into force

28 This Act comes into force on proclamation.