

State of Wisconsin



2023 Senate Bill 373

Date of enactment:
Date of publication*:

2023 WISCONSIN ACT

AN ACT *to amend* 459.01 (3), 459.01 (5), 459.02 (1), 459.02 (2), 459.03 (1), 459.05 (1m), 459.06 (3), 459.07 (2), 459.08 (1), 459.095 (3), 459.10 (1) (d), 459.10 (1) (e), 459.10 (1) (j), 459.10 (1) (k), 459.20 (2) (b), 459.20 (3p), 459.22 (2) (f), 459.30 (2) (intro.), 459.30 (2) (a) and 459.34 (2) (ce); and *to create* 459.02 (3), 459.03 (1m) and 459.24 (3r) of the statutes; **relating to:** practice of ordering, fitting, and dealing in hearing aids and selling and fitting over-the-counter hearing aids.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 459.01 (3) of the statutes is amended to read:

459.01 (3) "Hearing instrument specialist" means any person who is or is required to be licensed under s. 459.05 to engage in the practice of ordering, fitting, and dealing in or ~~fitting~~ hearing aids.

SECTION 2. 459.01 (5) of the statutes, as affected by 2023 Wisconsin Act 82, is amended to read:

459.01 (5) "Practice of ordering, fitting, and dealing in hearing aids" means the measurement of human hearing by means of an audiometer or by any other means accepted by the examining board solely for the purpose of ordering the use of hearing aids or making selections, adaptations, or sales of prescription hearing aids intended to compensate for impaired hearing. This term also includes making impressions for ear molds and includes cerumen management in the course of examining ears, taking ear impressions, or fitting prescription hearing aids by an individual who holds a certificate to engage in cerumen management under s. 459.115.

SECTION 3. 459.02 (1) of the statutes is amended to read:

459.02 (1) No person may engage in the practice of ~~selling or~~ ordering, fitting, and dealing in hearing aids or display a sign or in any other way advertise or represent himself or herself as a person who ~~practices the~~ engages in the practice of ordering, fitting or sale of, and dealing in hearing aids unless he or she holds a valid license issued under this subchapter or a valid license or permit to practice audiology issued under subch. II. The license required by s. 459.05 shall be conspicuously posted in his or her office or place of business as registered with the department at all times. Duplicate licenses shall be issued by the department under this subchapter to valid license holders operating more than one office without additional payment.

SECTION 4. 459.02 (2) of the statutes is amended to read:

459.02 (2) Nothing in this subchapter or subch. II shall prohibit any corporation or mercantile establishment which maintains an established business address from engaging in the business of selling or offering for sale hearing aids at retail without a license, provided that for the purpose of ~~selling~~ ordering and fitting hearing aids it employs persons licensed under this subchapter or per-

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

sons issued licenses or permits to practice audiology under subch. II.

SECTION 5. 459.02 (3) of the statutes is created to read:

459.02 (3) No license is required under this subchapter or subch. II to sell or fit an over-the-counter hearing aid, as defined in 21 USC 360j (q).

SECTION 6. 459.03 (1) of the statutes is amended to read:

459.03 (1) ~~A~~ Except as provided in sub. (1m), a hearing instrument specialist who engages in the practice of ordering, fitting, and dealing in hearing aids shall deliver to each person supplied with a hearing aid a receipt. The receipt shall contain the signature and show the business address and license title and number of the hearing instrument specialist, together with specifications as to the make and model of the hearing aid furnished and full terms of sale clearly stated. If a hearing aid which is not new is sold, the receipt and the container thereof must be clearly marked as "used" or "reconditioned" whichever is applicable.

SECTION 7. 459.03 (1m) of the statutes is created to read:

459.03 (1m) A hearing instrument specialist is not required to deliver a receipt to a person supplied with a hearing aid if the supplied hearing aid is an over-the-counter hearing aid, as defined in 21 USC 360j (q).

SECTION 8. 459.05 (1m) of the statutes is amended to read:

459.05 (1m) Whenever the examining board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect in the state for the practice of ordering, fitting, and selling dealing in hearing aids, and that such state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants in this state are qualified to ~~fit and sell~~ engage in the practice of ordering, fitting, and dealing in hearing aids, the department may issue a license by reciprocity to applicants who hold valid licenses to order, deal in, or fit hearing aids in such other state or jurisdiction, who pay the fee specified in s. 440.05 (2), and who are otherwise qualified for licensure. No applicant for a license by reciprocity under this subsection shall be required to submit to or undergo a qualifying examination, if the applicant personally appears at the next meeting of the examining board after filing the application to answer any questions the examining board has.

SECTION 9. 459.06 (3) of the statutes is amended to read:

459.06 (3) The applicant for license by examination shall appear at a time and place as the examining board designates, to be examined by means of written and practical tests in order to demonstrate that he or she is qualified to engage in the practice the of ordering, fitting of,

and dealing in hearing aids. Such examinations shall be conducted at least twice a year and at such other times and places designated by the examining board.

SECTION 10. 459.07 (2) of the statutes is amended to read:

459.07 (2) Upon receiving an application under this section, accompanied by the fee under s. 440.05 (6), the examining board may grant a trainee permit which may entitle the applicant to engage in the practice of ordering, fitting of, and dealing in hearing aids for a period of one year. A person holding a valid hearing instrument specialist license issued under this subchapter or a valid license to practice audiology issued under s. 459.24 (3) shall be responsible for the direct supervision and training of the applicant and shall be liable for all negligent acts and omissions of the trainee in the practice of ordering, fitting of, and dealing in hearing aids.

SECTION 11. 459.08 (1) of the statutes is amended to read:

459.08 (1) A person who holds a license shall notify the department in writing or in accordance with other notification procedures approved by the department of the regular address of the places where he or she engages or intends to engage in the practice of ordering, fitting of selling, and dealing in hearing aids. The licensee shall inform the board of any changes in these addresses within 30 days of the change.

SECTION 12. 459.095 (3) of the statutes is amended to read:

459.095 (3) In consultation with the department, promulgate rules that require each person issued a license under this subchapter to whom s. 459.09 (1) (b) applies to complete a specified continuing education program or course of study to ensure competence with respect to a matter related to the practice of ordering, fitting, and dealing in hearing aids if the examining board has received a significant number of consumer complaints about the matter or if the examining board otherwise determines that there is a need for such a requirement. Rules promulgated under this subsection shall establish criteria for the examining board's approval of the continuing education program or course of study and of sponsors and cosponsors of the continuing education program or course of study. The rules shall also require the examining board to administer, prior to the continuing education program or course of study, an examination on the matter that is the subject of the continuing education program or course of study and to waive a requirement to complete the continuing education program or course of study if a person granted a license under this subchapter passes the examination. A person who takes an examination specified in this subsection shall pay the fee specified in s. 440.05 (1) (b).

SECTION 13. 459.10 (1) (d) of the statutes is amended to read:

459.10 (1) (d) Been found guilty of an offense the circumstances of which substantially relate to the practice of ordering, fitting, and dealing in hearing aids.

SECTION 14. 459.10 (1) (e) of the statutes is amended to read:

459.10 (1) (e) Violated this subchapter or ch. 440 or any federal or state statute or rule which relates to the practice of ordering, fitting, and dealing in hearing aids.

SECTION 15. 459.10 (1) (j) of the statutes is amended to read:

459.10 (1) (j) Engaged in conduct which evidenced a lack of knowledge or ability to apply principles or skills of the practice of ordering, fitting, and dealing in hearing aids.

SECTION 16. 459.10 (1) (k) of the statutes is amended to read:

459.10 (1) (k) Engaged in unprofessional conduct. In this subsection, “unprofessional conduct” means the violation of any standard of professional behavior which through experience, state statute, or administrative rule has become established in the practice of ordering, fitting, and dealing in hearing aids.

SECTION 17. 459.20 (2) (b) of the statutes is amended to read:

459.20 (2) (b) Engaging in the practice of ordering, fitting, and dealing in hearing aids.

SECTION 18. 459.20 (3p) of the statutes is amended to read:

459.20 (3p) “Practice of ordering, fitting, and dealing in hearing aids” means the measurement of human hearing by means of an audiometer or by any other means accepted by the examining board for the purpose of ordering the use of hearing aids or making selections, adaptations, or sales of hearing aids intended to compensate for impaired hearing, ~~and~~. This term also includes making impressions for ear molds.

SECTION 19. 459.22 (2) (f) of the statutes is amended to read:

459.22 (2) (f) Require an individual to be licensed under this subchapter to engage in the practice of speech–language pathology or audiology, other than engaging in the practice of ordering, fitting, and dealing in hearing

aids, in a position for which the department of public instruction requires licensure as a speech and language pathologist or audiologist, if the individual’s entire practice of speech–language pathology or audiology, other than engaging in the practice of ordering, fitting, and dealing in hearing aids, is limited to the duties of that position.

SECTION 20. 459.24 (3r) of the statutes is created to read:

459.24 (3r) DELIVERY OF RECEIPT. An audiologist is not required to deliver a receipt to a person supplied with a hearing aid if the supplied hearing aid is an over–the–counter hearing aid, as defined in 21 USC 360j (q).

SECTION 21. 459.30 (2) (intro.) of the statutes, as affected by 2023 Wisconsin Act 56, is amended to read:

459.30 (2) FITTING AND SALE OF HEARING AIDS. (intro.) An audiologist licensed under this subchapter, an audiologist who holds a valid compact privilege, or an individual granted a permit to practice audiology under this subchapter who engages in the practice of ordering, fitting, and dealing in hearing aids shall do all of the following:

SECTION 22. 459.30 (2) (a) of the statutes, as affected by 2023 Wisconsin Act 56, is amended to read:

459.30 (2) (a) ~~Deliver~~ Except as provided in sub. (3r), deliver to each person supplied with a hearing aid a receipt. The receipt shall contain the signature and show the business address, license or permit title, and number of the licensee, compact privilege holder, or permittee, together with specifications as to the make and model of the hearing aid and full terms of sale clearly stated. If a hearing aid that is not new is sold, the receipt and the container must be clearly marked as “used” or “reconditioned”, whichever is applicable. The terms of the guarantee, if there is any given, shall be set out in not less than 8–point type.

SECTION 23. 459.34 (2) (ce) of the statutes is amended to read:

459.34 (2) (ce) Violated any federal or state statute, rule or regulation that relates to the practice of ordering, fitting, and dealing in hearing aids. This paragraph does not apply to speech–language pathologists.