

Chapter 694

1977 REPLACEMENT PART (1981 reprint)

Hearing Aid Dealers

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Note: Section 46, chapter 842, Oregon Laws 1977, is operative July 1, 1986, and provides

Sec. 46. ORS 694 015, 694.025, 694 036, 694 042, 694 055, 694 065, 694 075, 694 085, 694 095, 694 115, 694 125, 694 136, 694 138, 694 145, 694 155, 694 165, 694 170, 694 185 and 694 991 relating to hearing aid dealers are repealed

GENERALLY

694.010 [Repealed by 1959 c 406 §34]

694.015 Definitions for ORS 694.015 to 694.170. As used in ORS 694.015 to 694.170, unless the context requires otherwise:

(1) "Division" means the Health Division.

(2) "Certificate of registration" includes a temporary certificate of registration.

(3) "Council" means the Advisory Council to the Health Division on Hearing Aids.

(4) "Hearing aid" means any prosthetic instrument or device designed for or represented as aiding, improving or correcting defective human hearing and any parts, attachments or accessories of such an instrument or device.

(5) "Dealing in hearing aids" means the sale, lease or rental or attempted sale, lease or rental of hearing aids in conjunction with the evaluation or measurement of the powers or range of human hearing and the recommendation, selection or adaptation of hearing aids.

[1959 c 634 §1, 1967 c 631 §1; 1971 c 650 §28]

694.020 [Amended by 1955 c 689 §2, repealed by 1959 c 406 §34]

694.025 Certificate of registration required to deal in hearing aids. No person shall deal in hearing aids or display a sign or in any other way advertise or hold himself out as a person who deals in hearing aids unless he holds a valid certificate of registration issued by the division as provided in ORS 694.015 to 694.170. [1959 c 634 §2, 1967 c 631 §2; 1971 c 650 §29]

694.030 [Amended by 1955 c 689 §3; repealed by 1959 c 406 §34]

694.035 [1959 c 634 §12, 1967 c 631 §3, repealed by 1975 c 673 §1 (694 036 enacted in lieu of 694 035)]

694.036 Statement to prospective hearing aid purchaser; contents; copy retained. (1) Prior to consummation of the sale of a hearing aid, a person dealing in hearing aids shall deliver to the prospective purchaser a written statement, signed by the person dealing in hearing aids, which shall

include but not be limited to all of the following:

(a) The name and address of the prospective purchaser;

(b) The date of the sale;

(c) Specifications as to the make, serial number and model number of the hearing aid or aids sold;

(d) The address or principal place of business of the person dealing in hearing aids;

(e) A statement to the effect that the aid or aids delivered to the purchaser are used or reconditioned, as the case may be, if that is the fact;

(f) The number of the certificate of registration of the person dealing in hearing aids;

(g) The terms of any guarantee or expressed warranty, if any, made to the purchaser with respect to such hearing aid or hearing aids, including that provided in ORS 694.042;

(h) The address of the Health Division and the procedure for making a complaint under ORS 694.015 to 694.170;

(i) In no smaller type than the largest used in the body copy portion, the following bordered statement:

"It is desirable that a person seeking help with his hearing problem (especially for the first time) consult an ear doctor and obtain a clinical hearing evaluation. Although hearing aids are often recommended for hearing problems, another form of treatment may be necessary."

; and

(j) The signature of the prospective purchaser indicating he has read and understands the information contained in the statement.

(2) A duplicate copy of the statement required under subsection (1) of this section shall be kept for one year by the person selling the hearing aid. The statement shall be made available to the Health Division upon request. [1975 c 673 §2 (enacted in lieu of 694 035)]

694.040 [Repealed by 1959 c 406 §34]

694.042 Right to rescind hearing aid purchase; grounds; notice of rescission; time limit; amount of refund. (1) In addition to any other rights and remedies he may have, the purchaser of a hearing aid shall have the right to rescind the transaction if:

(a) The purchaser for whatever reason consults a licensed medical physician specializing in diseases of the ear, or an audiologist and licensed medical physician, subsequent to purchasing the hearing aid, and either licensed physician or the audiologist advises such purchaser against purchasing or using a hearing aid and in writing specifies the medical or audiological reason for the advice, and the purchaser returns the hearing aid to the seller, or holds it at the seller's disposal, in its original condition less normal wear and tear; or

(b) The seller, in his dealings with the purchaser, committed any act listed in ORS 694.136 (2) to (16), or failed to provide the statement required by ORS 694.036.

(2) The purchaser of a hearing aid shall have the right to rescind provided in subsection (1) of this section only if he gives written notice of his intent to rescind the transaction to the seller at the seller's place of business by certified mail, return receipt requested, which notice shall be posted not later than 45 days following the date of delivery of the hearing aid to the purchaser.

(3) If the conditions of paragraph (a) or (b) of subsection (1) of this section and subsection (2) of this section have been met, the seller shall, without request, refund to the purchaser within 10 days after the cancellation all deposits, including any down payment, less 10 percent of the total purchase price per 30 days as reasonable rental, and less the reasonable price of ear molds, if any, and shall return all goods traded into the seller on account of or in contemplation of the sale less any reasonable costs actually incurred in making ready for sale goods so traded in, in which event the purchaser shall incur no additional liability for the cancellation. [1975 c 673 §6]

694.045 [1959 c 634 §3, repealed by 1967 c 631 §7]

694.050 [Repealed by 1959 c 406 §34]

LICENSING

694.055 Qualifications of applicants for registration; fee. An applicant for registration shall pay a fee of \$60 and shall show to the satisfaction of the division that he:

- (1) Is a person of good moral character.
- (2) Is 18 years of age or older.

(3) Has an education equivalent to a four-year course in a standard high school or has continuously dealt in hearing aids in this

state during the three years preceding January 15, 1960. [1959 c 634 §4; 1967 c 631 §4; 1973 c 182 §7, 1973 c 827 §76]

694.060 [Repealed by 1959 c 406 §34]

694.065 Examination of applicants.

(1) An applicant for registration who is notified by the division that he has fulfilled the requirements of ORS 694.055, shall appear at a time, place and before such persons as the division may designate, to be examined by written and practical tests.

(2) The division shall give one qualifying examination provided in subsection (1) of this section before January 15, 1960, and beginning in July of 1960 shall give a qualifying examination during the second full week in January and during the third full week in July in each year. [1959 c 634 §§5, 5a; 1967 c 631 §5]

694.070 [Repealed by 1959 c 406 §34]

694.075 Scope of examination. The qualifying examination provided in ORS 694.065 (1) shall consist of:

(1) Tests of knowledge in the following areas as they pertain to the fitting of hearing aids:

(a) Basic physics of sound.

(b) The human hearing mechanism, including the science of hearing and the causes and rehabilitation of abnormal hearing and hearing disorders.

(c) Structure and function of hearing aids.

(2) Tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:

(a) Pure tone audiometry, including air conduction testing and bone conduction testing

(b) Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing.

(c) Effective masking.

(d) Recording and evaluation of audiograms and speech audiometry to determine hearing aid candidacy.

(e) Selection and adaptation of hearing aids and testing of hearing aids.

(f) Taking earmold impressions. [1959 c 634 §6]

694.080 [Repealed by 1959 c 406 §34]

694.085 Registration and issuance of certificates; fees. The division shall register each applicant, without discrimination, who satisfactorily passes the examination and, upon payment of \$60 to the division, shall issue to the applicant a certificate of registration signed by the Assistant Director for Health. The certificate of registration shall be effective until the anniversary of the date of its issuance. [1959 c 634 §7; 1973 c 182 §8; 1977 c 873 §14]

694.090 [Amended by 1955 c.689 §4; repealed by 1959 c 406 §34]

694.095 Temporary certificate of registration; fee. (1) After January 15, 1960, an applicant who fulfills the requirements of ORS 694.055 and who has not previously applied to take the qualifying examination provided under ORS 694.065 (1) may apply to the division for a temporary certificate of registration.

(2) Upon receiving an application provided under subsection (1) of this section accompanied by a fee of \$5, the division shall issue a temporary certificate of registration which shall entitle the applicant to deal in hearing aids for a period ending 10 days after the conclusion of the next qualifying examination given after the date of issue.

(3) No temporary certificate of registration shall be issued by the division under this section unless the applicant shows to the satisfaction of the division that he is or will be under the direct supervision and training of a person who holds a valid certificate of registration issued under ORS 694.015 to 694.170.

(4) If a person who holds a temporary certificate of registration issued under this section does not take the next qualifying examination given after the date of issue, the temporary certificate shall not be renewed.

(5) If a person who holds a temporary certificate of registration issued under this section takes and fails to pass the next qualifying examination given after the date of issue, or if for good reason in the judgment of the division he fails to take the next qualifying examination, the division may renew the temporary certificate of registration for a period ending 10 days after the conclusion of the next qualifying examination given after the date of the renewal. Two renewals may be allowed; but in any event the time for which an individual may hold a temporary certificate of registration shall not exceed 16 months. The fee for renewal shall be \$20.

(6) If a person who holds a temporary certificate of registration issued under this section is found by the division to be dealing in hearing aids without the direct supervision and training required in subsection (3) of this section, the division may revoke, suspend, or fail to renew the temporary certificate. [1959 c 634 §9; 1967 c 631 §6; 1975 c 673 §3]

694.100 [Amended by 1955 c 689 §5; repealed by 1959 c 406 §34]

694.105 [1959 c 634 §10; repealed by 1967 c 631 §7]

694.110 [Amended by 1955 c 689 §6; repealed by 1959 c 406 §34]

694.115 Notice to division of place of business; notice to holders of certificates by division. (1) A person who holds a certificate of registration shall notify the division in writing of the regular address of the place or places where he deals or intends to deal in hearing aids.

(2) The division shall keep a record of the places of business of persons who hold certificates of registration.

(3) Any notice required to be given by the division to a person who holds a certificate of registration may be given by mailing it to him at the address of the last place of business of which he has notified the division. [1959 c 634 §11, 1967 c 631 §8]

694.120 [Repealed by 1959 c 406 §34]

694.125 Renewal of registration; fees; effect of failure to renew. Each person who deals in hearing aids shall, on or before the anniversary of issuance of the certificate of registration, pay to the division a fee of \$60 for a renewal of his certificate and shall keep such certificate conspicuously posted in his office or place of business at all times. A 30-day grace period shall be allowed after the renewal date, during which certificates of registration may be renewed on payment of a fee of \$65 to the division. The division may suspend the certificate of registration of any person who fails to renew his certificate before the expiration of the 30-day grace period. After the expiration of the grace period, the division may renew such a certificate upon the payment of \$70 to the division. No person who applies for renewal, whose certificate of registration was suspended for failure to renew, shall be required to submit to any examination as a condition of renewal if he renews within three years after the date of expiration of his certificate. [1959 c 634 §13, 1967 c 631 §9, 1973 c 182 §9; 1977 c 873 §15]

694.130 [Amended by 1955 c 689 §7; repealed by 1959 c 406 §34]

694.135 [1959 c 634 §14, 1967 c 631 §10; repealed by 1975 c 673 §4 (694 136 enacted in lieu of 694.135)]

694.136 Grounds for suspension or revocation of certificate or probation. Any person registered under ORS 694.015 to 694.170 may have his certificate of registration revoked or suspended for a fixed period, or may be placed on probation by the division for any of the following causes:

(1) The person, in the application for a certificate of registration, or in any written or oral communication to the division concerning the issuance or retention of the certificate of registration, has made any material misstatement of fact, or has failed to disclose any material fact necessary to make that which is stated not misleading.

(2) Using or causing or promoting the use of, in any advertising matter, promotional literature, testimonial, guarantee, warranty, label, insignia or any other representation, however disseminated or published, which is false, misleading or deceptive.

(3) Employing directly or indirectly any suspended or nonregistered person to perform any work covered by this chapter.

(4) Failing or refusing to honor or to perform as represented any representation, promise, agreement or warranty in connection with the promotion, dispensing or fitting of a hearing aid.

(5) Advertising a particular model, type or kind of hearing aid for sale which purchasers or prospective purchasers responding to the advertisement cannot purchase.

(6) Fitting or dispensing a hearing aid for use by any person without first determining through direct observation and personal interview whether any of the following conditions exist and, if so determined, failing to refer the person to a licensed medical physician specializing in diseases of the ear or if no such licensed physician is available in the community, to any licensed medical physician:

(a) Visible congenital or traumatic deformity of the ear;

(b) History of, or active drainage from the ear within the previous 90 days;

(c) History of sudden or rapidly progressive hearing loss within the previous 90 days;

(d) Acute or chronic dizziness;

(e) Unilateral hearing loss of sudden or recent onset within 90 days;

(f) Significant air-bone gap (greater than or equal to 15 decibels, American National Standards Institute, 500, 1,000 and 2,000 Hz average); or

(g) Any other condition that the division may by rule establish.

However, if the person or the parents or guardians of the person refuse for good cause, to seek medical opinion, the person dealing in hearing aids shall obtain from the person or the parents or guardian of the person a certificate to that effect in a form as prescribed by the division. It is a violation of this subsection for any person dealing in hearing aids or his employes and putative agents, upon making such required referral for medical opinion, to in any manner whatsoever disparage or discourage a prospective hearing aid user from seeking such medical opinion prior to the fitting and dispensing of a hearing aid. Nothing required to be performed by a person dealing in hearing aids under this subsection means that the person is engaged in the diagnosis of illness or the practice of medicine or any other activity prohibited by the provisions of ORS 694.036, 694.042, 694.095 and this section.

(7) Fitting or dispensing a hearing aid for use by any person under 16 years of age unless within 90 days of such sale the child has been referred:

(a) To a otolaryngologist for examination and for a recommendation of corrective measures which may be required; or

(b) To a properly licensed medical physician for like examination and recommendation; or

(c) To an audiologist licensed by the State of Oregon for an evaluation of the child's hearing and for a recommendation of corrective measures which may be required, provided that the child is also examined by a properly licensed medical physician who gives approval for possible hearing aid use.

If the parents or guardian of such person refuse for good cause to seek medical opinion, the person dealing in hearing aids shall obtain from such parents or guardian a certificate to that effect in a form prescribed by the division. However, the replacement of an identical hearing aid within one year is not subject to this subsection.

(8) Representing that the services or advice of a person licensed to practice medicine and surgery, osteopathy and surgery, or a clinical audiologist will be used or made available in the selection, fitting, adjustment, maintenance or repair of hearing aids when that is not true, or using the word "doctor," "clinic," or other words, abbreviations, or symbols which tend to connote a medical or osteopathic profession when such use is not accurate.

(9) Permitting another to use his certificate of registration.

(10) Engaging in the fitting or dispensing of hearing aids while suffering from a contagious or infectious disease involving undue risk to the public.

(11) Dealing in hearing aids under a false, misleading or deceptive name.

(12) For any violation of the provisions of this chapter.

(13) Failure to properly and reasonably accept responsibility for the actions of his employees.

(14) Allowing a person issued a temporary certificate of registration to deal in hearing aids without direct supervision.

(15) Failure by a hearing aid dealer to maintain a business address and telephone number at which he may be reached during normal business hours.

(16) Gross incompetence in dealing in hearing aids. [1975 c.675 §5 (enacted in lieu of 694 135)]

694.138 Certificate denial procedure.

Where the division proposes to refuse to issue or renew a certificate of registration, or proposes to revoke or suspend a certificate of registration, opportunity for hearing shall be accorded as provided in ORS 183.310 to 183.550. [1971 c 734 §156]

694.140 [Repealed by 1959 c 406 §34]

694.145 Prohibited acts and practices. No person shall:

(1) Sell, barter or offer to sell or barter a certificate of registration.

(2) Purchase or procure by barter a certificate of registration with intent to use it as evidence of the holder's qualification to deal in hearing aids.

(3) Alter materially a certificate of registration with fraudulent intent.

(4) Use or attempt to use as a valid certificate of registration a certificate which has been purchased, fraudulently obtained, counterfeited or materially altered.

(5) Wilfully make a false, material statement in an application for registration or for renewal of a certificate of registration. [1959 c.634 §15, 1967 c.631 §11]

694.150 [Repealed by 1959 c 406 §34]

ADMINISTRATION

694.155 Powers and duties of Health Division. The powers and duties of the division are as follows:

(1) To authorize all disbursements necessary to carry out the provisions of ORS 694.015 to 694.170.

(2) To supervise and administer qualifying examinations to test the knowledge and proficiency of applicants for registration.

(3) To register persons who apply to the division and who have qualified to deal in hearing aids.

(4) To purchase and maintain or rent audiometric equipment and facilities necessary to carry out the examination of applicants for registration.

(5) To issue and renew certificates of registration.

(6) To suspend or revoke certificates of registration in the manner provided in ORS 183.310 to 183.550.

(7) To appoint representatives to conduct or supervise the examination of applicants for registration.

(8) To designate the time and place for examining applicants for certificates of registration.

(9) To make and publish rules and regulations not inconsistent with the laws of this state which are necessary to carry out the provisions of ORS 694.015 to 694.170.

(10) To require the periodic inspection of the audiometric testing equipment and to carry out the periodic inspection of facilities of persons who deal in hearing aids.

(11) To appoint or employ subordinate employes. [1959 c 634 §23; 1967 c 631 §12]

694.160 [Repealed by 1959 c 406 §34]

694.165 Advisory Council on Hearing Aids; qualifications; terms; compensation and expenses. (1) There hereby is created the

Advisory Council to the Health Division on Hearing Aids. The council shall consist of five members to be appointed by the Governor.

(2) Members of the council shall be residents of this state. One member shall be a person licensed to practice medicine in this state who holds a certificate of qualification from the American Board of Otolaryngology. One member shall hold clinical certification in audiology with the American Speech and Hearing Association and shall be a member in good standing of that association. Three members shall be persons experienced in the fitting of hearing aids, who possess the qualifications provided in ORS 694.055; but all successors to the position of such members, who are appointed to the council after the date on which the division first issues a certificate of registration as provided in ORS 694.085, shall be persons who hold valid certificates of registration under ORS 694.015 to 694.170. No member of the council shall be a member or employe of the division.

(3) The term of office of a member is three years beginning on July 1 of the year of appointment. A member shall continue to serve until a successor has been appointed and qualifies. Before a member's term expires, the Governor shall appoint a successor to assume his duties on July 1 at the expiration of his predecessor's term. A vacancy in the office of a member shall be filled by appointment for the unexpired term.

(4) Members of the council are entitled to compensation and expenses as provided in ORS 292.495. [1959 c 634 §§16, 17, 19, 20; 1967 c 631 §13; 1969 c 314 §95]

694.170 Duties of council. (1) The council shall have the responsibility and duty of advising the division in all matters relating to ORS 694.015 to 694.170, shall prepare the examinations required by ORS 694.015 to 694.170 subject to the approval of the division and shall assist the division in carrying out the provisions of ORS 694.015 to 694.170.

(2) The division shall consider and be guided by the recommendations of the council in all matters relating to ORS 694.015 to 694.170. [1959 c 634 §21]

694.175 [1959 c 634 §22, repealed by 1971 c 753 §74]

694.180 [1959 c 634 §24, 1961 c 593 §5, repealed by 1971 c 753 §74]

694.185 Disposition of receipts. All moneys received by the Health Division under ORS 694.015 to 694.170 and 694.991 shall be

paid into the General Fund in the State Treasury and placed to the credit of the Health Division Account and such moneys hereby are appropriated continuously and shall be used only for the administration and enforcement of ORS 694.015 to 694.170 and 694.991. [1973 c 427 §4]

694.305 [1973 c 199 §1, renumbered 681 205]

694.315 [1973 c 199 §2, renumbered 681 220]

694.325 [1973 c.199 §4; renumbered 681 230]

694.335 [1973 c 199 §3, renumbered 681 250]

694.345 [1973 c 199 §5; renumbered 681 260]

694.355 [1973 c 199 §20, renumbered 681 270]

694.365 [1973 c 199 §22, renumbered 681 280]

694.375 [1973 c 199 §21, renumbered 681 290]

694.385 [1973 c 199 §6, renumbered 681 300]

694.395 [1973 c 199 §23; renumbered 681 310]

694.405 [1973 c 199 §25; renumbered 681 320]

694.415 [1973 c 199 §19; renumbered 681 330]

694.425 [1973 c 199 §24; renumbered 681 340]

694.435 [1973 c 199 §26; renumbered 681 350]

694.445 [1973 c 199 §7, renumbered 681.400]

694.455 [1973 c.199 §§9, 11, renumbered 681 410]

694.465 [1973 c 199 §18, renumbered 681 420]

694.475 [1973 c 199 §§12, 13, renumbered 681 430]

694.485 [1973 c 199 §14; renumbered 681 440]

694.495 [1973 c 199 §15, renumbered 681 450]

694.505 [1973 c 199 §16; renumbered 681 460]

694.515 [1973 c 199 §17, renumbered 681 470]

694.525 [1973 c 199 §27; renumbered 681 480]

PENALTIES

694.990 [Repealed by 1959 c 406 §34]

694.991 Penalties; concurrent jurisdiction of offenses. (1) Violation of any provision of ORS 694.015 to 694.170 is punishable, upon conviction, by a fine of not more than \$500 or by imprisonment for not more than 90 days, or both.

(2) Justice courts and district courts have concurrent jurisdiction with the circuit courts of violation under ORS 694.015 to 694.170. [1959 c 634 §§25, 26; subsection (3) enacted as 1973 c 199 §28; subsection (3) renumbered 681 991]