



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 374**

September 5, 2023 - Offered by Representative STUBBS.

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

Analysis by the Legislative Reference Bureau

This bill makes several changes to the practice of fitting and dealing in hearing aids. Under current law, no person may engage in the practice of fitting and dealing in hearing aids unless he or she holds a license as a hearing instrument specialist issued by the Department of Safety and Professional Services or a license as an audiologist issued by the Hearing and Speech Examining Board. The practice of fitting and dealing in hearing aids is defined to mean the measurement of human hearing by means of an audiometer or by any other means accepted by the Hearing and Speech Examining Board solely for the purpose of making selections, adaptations or sales of hearing aids intended to compensate for impaired hearing.

This bill amends the definition of the practice of fitting and dealing in hearing aids to be the practice of ordering, fitting, and dealing in hearing aids and to include ordering the use of hearing aids intended to compensate for impaired hearing. Further, the bill provides that no license is required to sell or fit an over-the-counter hearing aid, as defined under federal law. Under federal law, air-conduction hearing aids may be sold over the counter without a prescription under certain circumstances.

Finally, under current law, a hearing instrument specialist or an audiologist who engages in the practice of fitting and dealing in hearing aids must deliver to each person supplied with a hearing aid a receipt that contains certain information. The bill provides that a hearing instrument specialist or audiologist is not required to deliver a receipt to a person supplied with a hearing aid if the hearing aid is an over-the-counter hearing aid, as defined under federal law.

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

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

2 459.01 (3) “Hearing instrument specialist” means any person who is or is
3 required to be licensed under s. 459.05 to engage in the practice of ordering, fitting,
4 and dealing in ~~or fitting~~ hearing aids.

5 **SECTION 2.** 459.01 (5) of the statutes is amended to read:

6 459.01 (5) “Practice of ordering, fitting, and dealing in hearing aids” means the
7 measurement of human hearing by means of an audiometer or by any other means
8 accepted by the examining board solely for the purpose of ordering the use of hearing
9 aids or making selections, adaptations, or sales of hearing aids intended to
10 compensate for impaired hearing. This term also includes making impressions for
11 ear molds.

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

13 459.02 (1) No person may engage in the practice of ~~selling or~~ ordering, fitting,
14 and dealing in hearing aids or display a sign or in any other way advertise or
15 represent himself or herself as a person who ~~practices the~~ engages in the practice of

1 ~~ordering, fitting or sale of, and dealing in~~ hearing aids unless he or she holds a valid
2 license issued under this subchapter or a valid license or permit to practice audiology
3 issued under subch. II. The license required by s. 459.05 shall be conspicuously
4 posted in his or her office or place of business as registered with the department at
5 all times. Duplicate licenses shall be issued by the department under this
6 subchapter to valid license holders operating more than one office without additional
7 payment.

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

9 459.02 (2) Nothing in this subchapter or subch. II shall prohibit any
10 corporation or mercantile establishment which maintains an established business
11 address from engaging in the business of selling or offering for sale hearing aids at
12 retail without a license, provided that for the purpose of selling ordering and fitting
13 hearing aids it employs persons licensed under this subchapter or persons issued
14 licenses or permits to practice audiology under subch. II.

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

16 459.02 (3) No license is required under this subchapter or subch. II to sell or
17 fit an over-the-counter hearing aid, as defined in 21 USC 360j (q).

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

19 459.03 (1) ~~A~~ Except as provided in sub. (1m), a hearing instrument specialist
20 who engages in the practice of ordering, fitting, and dealing in hearing aids shall
21 deliver to each person supplied with a hearing aid a receipt. The receipt shall contain
22 the signature and show the business address and license title and number of the
23 hearing instrument specialist, together with specifications as to the make and model
24 of the hearing aid furnished and full terms of sale clearly stated. If a hearing aid

1 which is not new is sold, the receipt and the container thereof must be clearly marked
2 as “used” or “reconditioned” whichever is applicable.

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

4 459.03 **(1m)** A hearing instrument specialist is not required to deliver a receipt
5 to a person supplied with a hearing aid if the supplied hearing aid is an
6 over-the-counter hearing aid, as defined in 21 USC 360j (q).

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

8 459.05 **(1m)** Whenever the examining board determines that another state or
9 jurisdiction has requirements equivalent to or higher than those in effect in the state
10 for the practice of ordering, fitting, and selling dealing in hearing aids, and that such
11 state or jurisdiction has a program equivalent to or stricter than the program for
12 determining whether applicants in this state are qualified to fit and sell engage in
13 the practice of ordering, fitting, and dealing in hearing aids, the department may
14 issue a license by reciprocity to applicants who hold valid licenses to order, deal in,
15 or fit hearing aids in such other state or jurisdiction, who pay the fee specified in s.
16 440.05 (2), and who are otherwise qualified for licensure. No applicant for a license
17 by reciprocity under this subsection shall be required to submit to or undergo a
18 qualifying examination, if the applicant personally appears at the next meeting of
19 the examining board after filing the application to answer any questions the
20 examining board has.

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

22 459.06 **(3)** The applicant for license by examination shall appear at a time and
23 place as the examining board designates, to be examined by means of written and
24 practical tests in order to demonstrate that he or she is qualified to engage in the
25 practice ~~the~~ of ordering, fitting of, and dealing in hearing aids. Such examinations

1 shall be conducted at least twice a year and at such other times and places designated
2 by the examining board.

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

4 459.07 (2) Upon receiving an application under this section, accompanied by
5 the fee under s. 440.05 (6), the examining board may grant a trainee permit which
6 may entitle the applicant to engage in the practice of ordering, fitting of, and dealing
7 in hearing aids for a period of one year. A person holding a valid hearing instrument
8 specialist license issued under this subchapter or a valid license to practice audiology
9 issued under s. 459.24 (3) shall be responsible for the direct supervision and training
10 of the applicant and shall be liable for all negligent acts and omissions of the trainee
11 in the practice of ordering, fitting of, and dealing in hearing aids.

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

13 459.08 (1) A person who holds a license shall notify the department in writing
14 or in accordance with other notification procedures approved by the department of
15 the regular address of the places where he or she engages or intends to engage in the
16 practice of ordering, fitting or selling, and dealing in hearing aids. The licensee shall
17 inform the board of any changes in these addresses within 30 days of the change.

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

19 459.095 (3) In consultation with the department, promulgate rules that
20 require each person issued a license under this subchapter to whom s. 459.09 (1) (b)
21 applies to complete a specified continuing education program or course of study to
22 ensure competence with respect to a matter related to the practice of ordering,
23 fitting, and dealing in hearing aids if the examining board has received a significant
24 number of consumer complaints about the matter or if the examining board
25 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:

1 459.20 (2) (b) Engaging in the practice of ordering, fitting, and dealing in
2 hearing aids.

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

4 459.20 (3p) “Practice of ordering, fitting, and dealing in hearing aids” means
5 the measurement of human hearing by means of an audiometer or by any other
6 means accepted by the examining board for the purpose of ordering the use of hearing
7 aids or making selections, adaptations, or sales of hearing aids intended to
8 compensate for impaired hearing, ~~and. This term also~~ includes making impressions
9 for ear molds.

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

11 459.22 (2) (f) Require an individual to be licensed under this subchapter to
12 engage in the practice of speech-language pathology or audiology, other than
13 engaging in the practice of ordering, fitting, and dealing in hearing aids, in a position
14 for which the department of public instruction requires licensure as a speech and
15 language pathologist or audiologist, if the individual’s entire practice of
16 speech-language pathology or audiology, other than engaging in the practice of
17 ordering, fitting, and dealing in hearing aids, is limited to the duties of that position.

18 **SECTION 20.** 459.24 (3m) (intro.) of the statutes is amended to read:

19 459.24 (3m) FITTING AND SALE OF HEARING AIDS. (intro.) An audiologist licensed
20 under this subchapter or an individual granted a permit to practice audiology under
21 this subchapter who engages in the practice of ordering, fitting, and dealing in
22 hearing aids shall do all of the following:

23 **SECTION 21.** 459.24 (3m) (a) of the statutes is amended to read:

24 459.24 (3m) (a) ~~Deliver~~ Except as provided in sub. (3r), deliver to each person
25 supplied with a hearing aid a receipt. The receipt shall contain the signature and

1 show the business address, license or permit title, and number of the licensee or
2 permittee, together with specifications as to the make and model of the hearing aid
3 and full terms of sale clearly stated. If a hearing aid that is not new is sold, the receipt
4 and the container must be clearly marked as “used” or “reconditioned”, whichever is
5 applicable. The terms of the guarantee, if there is any given, shall be set out in not
6 less than 8-point type.

7 **SECTION 22.** 459.24 (3r) of the statutes is created to read:

8 459.24 (3r) DELIVERY OF RECEIPT. An audiologist is not required to deliver a
9 receipt to a person supplied with a hearing aid if the supplied hearing aid is an
10 over-the-counter hearing aid, as defined in 21 USC 360j (q).

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

12 459.34 (2) (ce) Violated any federal or state statute, rule or regulation that
13 relates to the practice of ordering, fitting, and dealing in hearing aids. This
14 paragraph does not apply to speech-language pathologists.

15 (END)