

By: Representative Warren

To: Public Health and Human Services

HOUSE BILL NO. 246

1 AN ACT TO REENACT SECTIONS 73-14-1 THROUGH 73-14-47,
2 MISSISSIPPI CODE OF 1972, WHICH REGULATES HEARING AID DEALERS; TO
3 AMEND SECTION 73-14-49, MISSISSIPPI CODE OF 1972, TO EXTEND THE
4 REPEALER ON THOSE SECTIONS; AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 **SECTION 1.** Section 73-14-1, Mississippi Code of 1972, is
7 reenacted as follows:

8 73-14-1. The State Board of Health established and empowered
9 by Section 41-3-1 et seq., Mississippi Code of 1972, shall
10 discharge as additional duties and responsibilities the provisions
11 of this chapter in the examination, licensing and regulation of
12 persons who sell and fit hearing aids and who test hearing while
13 engaged in the selling and fitting of hearing aids.

14 **SECTION 2.** Section 73-14-3, Mississippi Code of 1972, is
15 reenacted as follows:

16 73-14-3. The following definitions apply as used in this
17 chapter, unless the context otherwise requires:

18 (a) The "board" means the Mississippi State Board of
19 Health.

20 (b) "License" includes a temporary license.

21 (c) "Hearing aid" shall mean any wearable instrument or
22 device designed for or offered for the purpose of aiding or
23 compensating for impaired human hearing and any parts,
24 attachments, or accessories, including ear molds, but excluding
25 such things as telephone devices, batteries and cords.

26 (d) "Hearing aid specialist" means an individual
27 licensed by the board to engage in the practice of dispensing and
28 fitting hearing aids.

29 (e) "Practice of dispensing and fitting hearing aids"
30 means the evaluation or measurement of powers or range of human
31 hearing by means of an audiometer and the consequent selection or
32 adaptation or sale of hearing aids intended to compensate for
33 hearing loss, including the making of an impression of the ear.

34 (f) "Sell" or "sale" means any transfer of title or of
35 the right to use by lease, bailment, or any other contract,
36 excluding wholesale transactions with distributors or dealers.

37 (g) "Unethical conduct" means:

38 (i) The obtaining of any fee or the making of any
39 sale by fraud or misrepresentation.

40 (ii) Knowingly employing directly or indirectly
41 any suspended or unlicensed person to perform any work covered by
42 this chapter.

43 (iii) Representing that the professional services
44 or advice of a physician or audiologist will be used or made
45 available in the selling, fitting, adjustment, maintenance or
46 repair of hearing aids when that is not true, or using the words
47 "doctor," "clinic," "clinical," and/or "research audiologist,"
48 "audiologic," or any other like words, abbreviations or symbols
49 which tend to connote audiological or professional services, when
50 such use is not accurate.

51 (iv) Permitting another to use his license or
52 certificate or endorsement.

53 (v) Quoting prices of competitive hearing aids or
54 devices without disclosing that they are not the present current
55 prices, or showing, demonstrating, or representing competitive
56 models as being current models when such is not the fact.

57 (vi) Imitating or simulating the trademarks, trade
58 names, brands or labels of competitors with the capacity and
59 tendency or effect of misleading or deceiving purchasers or
60 prospective purchasers.

61 (vii) Defaming competitors by falsely imputing to
62 them dishonorable conduct, inability to perform contracts,
63 questionable credit standing, or by other false representations,
64 or falsely disparaging the products of competitors in any respect,
65 or their business methods, selling prices, values, credit terms,
66 policies or services.

67 (viii) Stating or implying that the use of any
68 hearing aid will restore or preserve hearing, prevent or retard
69 progression of a hearing impairment.

70 (ix) Dispensing and selling a hearing aid to a
71 child under the age of eighteen (18) years who has not been
72 examined and cleared for hearing aid use by a licensed physician
73 within a six-month period immediately prior to dispensing and
74 selling the hearing aid.

75 (x) Representing himself as being an audiologist
76 as defined in Section 73-38-3.

77 **SECTION 3.** Section 73-14-5, Mississippi Code of 1972, is
78 reenacted as follows:

79 73-14-5. (1) This chapter is not intended to prevent any
80 person from engaging in the practice of measuring human hearing
81 for the purpose of selection of hearing aids, provided such person
82 or organization employing such person does not sell hearing aids
83 or accessories thereto, except in the case of ear molds to be used
84 only for the purpose of audiologic evaluation.

85 (2) This chapter shall not apply to any physician or surgeon
86 licensed by the State of Mississippi.

87 (3) This chapter does not apply to a person while he is
88 engaged in the fitting of hearing aids, provided it is part of the
89 academic curriculum of an accredited institution of higher
90 education or part of a program conducted by a public tax-supported
91 institution or agency or nonprofit organization, unless such
92 person or institution or agency sells hearing aids, and/or
93 accessories, except ear molds.

94 **SECTION 4.** Section 73-14-7, Mississippi Code of 1972, is
95 reenacted as follows:

96 73-14-7. (1) The powers and duties of the Mississippi State
97 Board of Health under this chapter are as follows:

98 (a) To authorize all disbursements necessary to carry
99 out the provisions of this chapter.

100 (b) To supervise and administer qualifying examinations
101 to test the knowledge and proficiency of applicants for a license.

102 (c) To license persons who apply to the board and who
103 are qualified to practice the fitting, dispensing and selling of
104 hearing aids.

105 (d) To purchase and maintain or rent audiometric
106 equipment and facilities necessary to carry out the examination of
107 applicants for license.

108 (e) To issue and renew licenses.

109 (f) To suspend or revoke licenses pursuant to this
110 chapter.

111 (g) To appoint representatives to conduct or supervise
112 the examining of applicants for license.

113 (h) To designate the time and place for examining
114 applicants for license.

115 (i) To make and publish rules and regulations not
116 inconsistent with the laws of this state which are necessary to
117 carry out the provisions of this chapter, in compliance with the
118 provisions of Section 25-43-1 et seq., Mississippi Code of 1972,
119 which is the Administrative Procedures Law.

120 (j) To require the periodic inspection and calibration
121 of audiometric testing equipment and to carry out the periodic
122 inspection of facilities of persons who practice the fitting or
123 selling of hearing aids.

124 (k) To establish minimum requirements of test
125 procedures and test equipment to be used in the fitting of hearing

126 aids pursuant to this chapter, also the retention of all fittings
127 and records of fittings by the dealer.

128 (2) The Hearing Aid Advisory Council appointed pursuant to
129 Section 73-14-7 is hereby continued and reconstituted as follows:

130 The council shall consist of seven (7) members, four (4) of
131 whom are licensed hearing aid specialists who do not currently
132 hold any other professional license regulated by the State Board
133 of Health, one (1) of whom is a licensed audiologist, one (1) of
134 whom is a licensed physician, board certified in otolaryngology,
135 and one (1) of whom is a person of the board's own choosing from
136 the state at large, and said person shall be hearing impaired.
137 The person of the board's choosing shall not be a member of nor
138 have personal interest in any organization associated with hearing
139 aid specialists.

140 No person shall serve more than two (2) full consecutive
141 terms. No more than three (3) members shall be appointed to said
142 council from any one (1) Supreme Court district. The hearing aid
143 specialist appointments may be made from a list of at least three
144 (3) licensed hearing aid specialists furnished by the Mississippi
145 Hearing Aid Dealer Association, or its successor, for each vacancy
146 on the council, who have practiced and resided for three (3) years
147 in the state. The audiologist appointment may be made from a list
148 of at least three (3) licensed audiologists furnished by the
149 Mississippi Speech and Hearing Association, who has practiced and
150 resided for three (3) years in the state. The licensed physician
151 appointment may be made from a list of at least three (3) board
152 certified otolaryngologists furnished by the Mississippi Eye, Ear,
153 Nose and Throat Association, who has practiced and resided for
154 three (3) years in the state. Appointments to the council to fill
155 a vacancy occurring for other than expiration of a term shall only
156 be made for the remainder of the expired term. The council shall
157 promulgate such rules and regulations by which it shall conduct
158 its business. Members of the council shall receive no salary for

159 services performed on the council but may be reimbursed for their
160 reasonable and necessary actual expenses incurred in the
161 performance of the same, from funds provided for such purpose.
162 The council shall assist and advise the board in the development
163 of regulations and standards governing the licensure of hearing
164 aid dealers. Council members may be removed from office if found
165 guilty of any violation of any provision of this chapter. A
166 council member subject to formal disciplinary proceedings shall
167 disqualify himself from any council business until the charge is
168 resolved. A member must also disqualify himself from any council
169 business on which he may not make an objective evaluation and/or
170 decision.

171 **SECTION 5.** Section 73-14-13, Mississippi Code of 1972, is
172 reenacted as follows:

173 73-14-13. Any person who practices the fitting or dispensing
174 of hearing aids shall deliver to each person supplied with a
175 hearing aid, by him or at his order or direction, a bill of sale
176 which shall contain his signature and show the address of his
177 regular place of practice and the number of his license, together
178 with a description of the make and model of the hearing aid
179 furnished, the serial number of the hearing aid furnished, and the
180 amount charged therefor. The bill of sale shall also reveal the
181 condition of the hearing device and whether it is new, used or
182 rebuilt.

183 **SECTION 6.** Section 73-14-15, Mississippi Code of 1972, is
184 reenacted as follows:

185 73-14-15. No person shall engage in the sale or practice of
186 dispensing and fitting hearing aids or display a sign or in any
187 other way advertise or hold himself out as a person who practices
188 the dispensing and fitting of hearing aids unless he holds a
189 current, unsuspended, unrevoked license by the board as provided
190 in this chapter. The license required by this section shall be

191 kept conspicuously posted in his office or place of business at
192 all times.

193 **SECTION 7.** Section 73-14-17, Mississippi Code of 1972, is
194 reenacted as follows:

195 73-14-17. An applicant for a license shall pay a fee of One
196 Hundred Dollars (\$100.00) and shall show to the satisfaction of
197 the board that he:

198 (a) Is twenty-one (21) years of age or older.

199 (b) Has an education equivalent to a four-year course
200 in an accredited high school.

201 No governmental entity or agency shall be required to pay the
202 fee or fees set forth in this section.

203 Each application or filing made under this section shall
204 include the social security number(s) of the applicant in
205 accordance with Section 93-11-64, Mississippi Code of 1972.

206 **SECTION 8.** Section 73-14-19, Mississippi Code of 1972, is
207 reenacted as follows:

208 73-14-19. An applicant for a license who is notified by the
209 board that he has fulfilled the requirements of Section 73-14-17
210 and upon paying a testing fee determined by the department as
211 necessary to cover the expense of the administration of the
212 examination not to exceed One Hundred Fifty Dollars (\$150.00),
213 shall appear at a time, place and before such persons as the board
214 may designate, to be examined by written and practical test in
215 order to demonstrate that he is qualified to practice the fitting,
216 dispensing and selling of hearing aids.

217 **SECTION 9.** Section 73-14-21, Mississippi Code of 1972, is
218 reenacted as follows:

219 73-14-21. The examination provided in Section 73-14-19 shall
220 be selected by the board, with advice of the council, and may also
221 include an oral examination at the discretion of the board. The
222 tests under this section shall not include questions requiring a
223 medical or surgical education. It is the intent of this section

224 that the exams administered under this chapter be of such a level
225 as to provide that at a minimum an individual having a high school
226 education or its equivalent and with appropriate study, training
227 and supervision under the direction of a qualified hearing aid
228 specialist should be able to pass.

229 **SECTION 10.** Section 73-14-23, Mississippi Code of 1972, is
230 reenacted as follows:

231 73-14-23. The board shall register each applicant who
232 satisfactorily passes the examination and then issue such
233 applicant a license. The license shall be effective until July 1
234 next following issuance.

235 **SECTION 11.** Section 73-14-25, Mississippi Code of 1972, is
236 reenacted and as follows:

237 73-14-25. The department may license as a hearing aid
238 specialist, and furnish a certificate of licensure, to any
239 applicant who presents evidence, satisfactory to the department of
240 having passed an examination before a similar lawfully authorized
241 examining agency or board of hearing aid specialists of another
242 state or the District of Columbia, if the standards for
243 registration of hearing aid specialists or for licensure as a
244 hearing aid specialist in such state or district are determined by
245 the department to be as high as those of this state, and if that
246 jurisdiction affords licensees of this state reciprocity.

247 Any person making application for licensure under the
248 provisions of this section may, at the discretion of the board, be
249 required to pass an examination selected by the board.

250 **SECTION 12.** Section 73-14-27, Mississippi Code of 1972, is
251 reenacted as follows:

252 73-14-27. (1) An applicant who fulfills the requirements of
253 Section 73-14-17 and who has not previously applied to take the
254 examination provided under Section 73-14-19 may apply to the board
255 for a temporary license.

256 (2) Upon receiving an application provided under subsection
257 (1) of this section, the board shall issue a temporary license
258 which shall entitle the applicant to practice the fitting and
259 dispensing of hearing aids for a period ending thirty (30) days
260 after the conclusion of the next examination given after the date
261 of issue.

262 (3) No temporary license shall be issued by the board under
263 this section unless the applicant shows to the satisfaction of the
264 board that he is or will be supervised and trained by a person
265 who:

266 (a) Holds a current and valid document of being
267 National Board Certified in Hearing Instrument Sciences by the
268 International Hearing Society (IHS) or its successor; or

269 (b) Holds a current and valid Certificate of Clinical
270 Competence in Audiology from the American Speech-Language-Hearing
271 Association (ASHA); or

272 (c) Has had a minimum of three (3) years' experience in
273 the testing of hearing, fitting of hearing aids and dispensing of
274 hearing aids.

275 (4) If a person who holds a temporary license issued under
276 this section does not take the next examination given after the
277 date of issue, the temporary license shall not be renewed, except
278 for good cause shown to the satisfaction of the board.

279 (5) If a person who holds a temporary license issued under
280 this section takes and fails to pass the next examination given
281 after the date of issue, the board may renew the temporary license
282 for a period ending thirty (30) days after the date of renewal is
283 announced. In no event shall more than one (1) renewal be
284 permitted. The fee for renewal shall be Fifty Dollars (\$50.00).

285 **SECTION 13.** Section 73-14-31, Mississippi Code of 1972, is
286 reenacted as follows:

287 73-14-31. A person who practices the fitting and dispensing
288 of hearing aids shall biennially pay to the board a fee of Two

289 Hundred Dollars (\$200.00) for a renewal of his license. A grace
290 period of thirty (30) days shall be allowed after the expiration
291 of a license, during which the same may be renewed on payment of a
292 fee of Two Hundred Dollars (\$200.00) to the board. The license of
293 any person who fails to have his license renewed by the expiration
294 of the grace period of thirty (30) days shall be considered to
295 have lapsed. After the expiration of the grace period, the board
296 may reinstate a license upon payment of a fee of Two Hundred Fifty
297 Dollars (\$250.00) to the board. No person who applies for
298 reinstatement, whose license was suspended for the sole reason of
299 failure to renew, shall be required to submit to any examination
300 as a condition of reinstatement, provided such person applies for
301 reinstatement within one (1) year from the date of lapse of the
302 license.

303 The board shall require the applicant for license renewal to
304 present evidence of the satisfactory completion of continuing
305 education requirements as determined by the board.

306 In the event that any licensee shall fail to meet the annual
307 educational requirement, his license shall not be renewed by the
308 board, but the board may renew the license upon the presentation
309 of satisfactory evidence of educational study of a standard
310 approved by the board and upon the payment of all fees due. No
311 governmental entity or agency shall be required to pay the fee or
312 fees set forth in this section.

313 **SECTION 14.** Section 73-14-33, Mississippi Code of 1972, is
314 reenacted as follows:

315 73-14-33. A person who holds a license or temporary license
316 shall notify the board in writing of the address of the place or
317 places where he engages or intends to engage in the practice of
318 fitting or dispensing of hearing aids.

319 The board shall keep a record of the places of practice of
320 persons who hold licenses or temporary licenses. Any notice
321 required to be given by the board to a person who holds a license

322 or temporary license may be given by mailing it to him at the
323 address given by him to the board.

324 A person who holds a license or temporary license to practice
325 as a hearing aid specialist in this state but whose principal
326 place of business is not in this state shall certify to the board
327 that they will:

328 (a) Display their Mississippi license while conducting
329 business in Mississippi; and

330 (b) Shall make all records regarding clients who are
331 residents of Mississippi available to the licensing authority
332 within seventy-two (72) hours of receiving such a request in
333 writing.

334 Failure to comply with the requirements of (a) or (b) above
335 shall constitute grounds for disciplinary action under the
336 provisions of this chapter and/or rules and regulations
337 promulgated pursuant to this chapter.

338 **SECTION 15.** Section 73-14-35, Mississippi Code of 1972, is
339 reenacted as follows:

340 73-14-35. (1) Any person registered under this chapter may
341 have his license or certificate revoked or suspended for a fixed
342 period to be determined by the board for any of the following
343 causes:

344 (a) Being convicted of an offense involving moral
345 turpitude. The record of such conviction, or certified copy
346 thereof from the clerk of the court where such conviction occurred
347 or by the judge of that court, shall be sufficient evidence to
348 warrant revocation or suspension.

349 (b) By securing a license or certificate under this
350 chapter through fraud or deceit.

351 (c) For unethical conduct or for gross ignorance or
352 inefficiency in the conduct of his practice.

353 (d) For knowingly practicing while suffering with a
354 contagious or infectious disease.

355 (e) For the use of a false name or alias in the
356 practice of his profession.

357 (f) For violating any of the provisions of this chapter
358 or any rules or regulations promulgated pursuant to this chapter.

359 (g) For violating the provisions of any applicable
360 federal laws or regulations.

361 (h) Discipline by another jurisdiction if at least one
362 (1) of the grounds for the discipline is the same or substantially
363 equivalent to those set forth in this chapter or rules and
364 regulations promulgated pursuant to this chapter.

365 (2) In addition to the causes specified in subsection (1) of
366 this section, the board shall be authorized to suspend the license
367 of any licensee for being out of compliance with an order for
368 support, as defined in Section 93-11-153. The procedure for
369 suspension of a license for being out of compliance with an order
370 for support, and the procedure for the reissuance or reinstatement
371 of a license suspended for that purpose, and the payment of any
372 fees for the reissuance or reinstatement of a license suspended
373 for that purpose, shall be governed by Section 93-11-157 or
374 93-11-163, as the case may be. If there is any conflict between
375 any provision of Section 93-11-157 or 93-11-163 and any provision
376 of this chapter, the provisions of Section 93-11-157 or 93-11-163,
377 as the case may be, shall control.

378 **SECTION 16.** Section 73-14-37, Mississippi Code of 1972, is
379 reenacted as follows:

380 73-14-37. (1) Any person, whose license is sought to be
381 revoked under the provisions of this chapter, shall be given
382 thirty (30) days' notice, in writing, enumerating the charges and
383 specifying a date for public hearing thereon. The hearing shall
384 be held in the county where the person's business is conducted.
385 The board may issue subpoenas, compel the attendance and testimony
386 of witnesses, and place them under oath, the same as any court of
387 competent jurisdiction where the hearing takes place.

388 (2) At all hearings the board may designate in writing one
389 or more persons deemed competent by the board to conduct the
390 hearing as trial examiner or trial committee, with the decision to
391 be rendered in accordance with the provisions of subsection (3) of
392 this section.

393 (3) After a hearing has been completed the trial examiner or
394 trial committee who conducted the hearing shall proceed to
395 consider the case and, as soon as practicable, shall render a
396 decision. In any case, the decision must be rendered within sixty
397 (60) days after the hearing. The decision shall contain:

398 (a) The findings of fact made by the trial examiner or
399 trial committee;

400 (b) Conclusions of law reached by the trial examiner or
401 trial committee; and

402 (c) The order based upon these findings of fact and
403 conclusions of law.

404 **SECTION 17.** Section 73-14-39, Mississippi Code of 1972, is
405 reenacted as follows:

406 73-14-39. (1) From any revocation, the person charged may,
407 within thirty (30) days thereof, appeal to the chancery court of
408 the county of the residence of the licensee.

409 (2) Notice of appeals shall be filed in the office of the
410 clerk of the court, who shall issue a writ of certiorari directed
411 to the board, commanding it within ten (10) days after service
412 thereof to certify to such court its entire record in the matter
413 in which the appeal has been taken. The appeal shall thereupon be
414 heard in the due course by said court without a jury, and the
415 court shall review the record and make its determination of the
416 cause between the parties.

417 (3) Any order, rule or decision of the board shall not take
418 effect until after the time of appeal in the said court shall have
419 expired. If there is an appeal, such appeal may, in the
420 discretion of and on motion to the chancery court, act as a

421 supersedeas. The chancery court shall dispose of the appeal and
422 enter its decision promptly. The hearing on the appeal may, in
423 the discretion of the chancellor, be tried in vacation.

424 (4) Any person taking an appeal shall post a satisfactory
425 bond in the amount of Two Hundred Dollars (\$200.00) for payment of
426 any costs which may be adjudged against him.

427 (5) Actions taken by the board in suspending a certificate
428 of registration when required by Section 93-11-157 or 93-11-163
429 are not actions from which an appeal may be taken under this
430 section. Any appeal of a suspension of a certificate that is
431 required by Section 93-11-157 or 93-11-163 shall be taken in
432 accordance with the appeal procedure specified in Section
433 93-11-157 or 93-11-163, as the case may be, rather than the
434 procedure specified in this section.

435 **SECTION 18.** Section 73-14-41, Mississippi Code of 1972, is
436 reenacted as follows:

437 73-14-41. No person may:

438 (a) Sell, barter or offer to sell or barter a license.

439 (b) Purchase or procure by barter a license with intent
440 to use it as evidence of the holder's qualifications to practice
441 the fitting and dispensing of hearing aids.

442 (c) Alter materially a license with fraudulent intent.

443 (d) Use or attempt to use as a valid license one which
444 has been purchased, fraudulently obtained, counterfeited or
445 materially altered.

446 (e) Willfully make a false material statement in an
447 application for registration or for renewal of a license.

448 **SECTION 19.** Section 73-14-43, Mississippi Code of 1972, is
449 reenacted as follows:

450 73-14-43. Violation of any provision of this chapter is a
451 misdemeanor punishable upon conviction by a fine of not less than
452 One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars

453 (\$500.00), or by imprisonment for not more than ninety (90) days
454 in the county jail, or by both.

455 **SECTION 20.** Section 73-14-45, Mississippi Code of 1972, is
456 reenacted as follows:

457 73-14-45. The board may enforce any provisions of this
458 chapter by injunction or by any other appropriate proceeding. No
459 such proceeding shall be barred by any proceeding had or pending
460 pursuant to any other section of this chapter, and the authority
461 conferred in this chapter is in addition to and supplementary to
462 any other statute, civil or criminal, dealing with the subject
463 matters herein and the institution and prosecution of any action
464 shall not preclude the institution and prosecution under other
465 appropriate civil or criminal statutes dealing therewith.

466 **SECTION 21.** Section 73-14-47, Mississippi Code of 1972, is
467 reenacted as follows:

468 73-14-47. All fees and monies received by the board under
469 this chapter shall be deposited in a special fund hereby created
470 in the State Treasury and shall be used for the implementation and
471 administration of this chapter when appropriated by the
472 Legislature for such purpose.

473 **SECTION 22.** Section 73-14-49, Mississippi Code of 1972, is
474 amended as follows:

475 73-14-49. Sections 73-14-1 through 73-14-47, Mississippi
476 Code of 1972, which provide for the licensure and regulation of
477 hearing aid specialists by the State Board of Health, shall stand
478 repealed as of July 1, 2007.

479 **SECTION 23.** This act shall take effect and be in force from
480 and after June 30, 2005.