

Senate Amendments to House Bill No. 246

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

8 **SECTION 1.** Section 73-14-1, Mississippi Code of 1972, is
9 brought forward as follows:

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

16 **SECTION 2.** Section 73-14-3, Mississippi Code of 1972, is
17 brought forward as follows:

18 73-14-3. The following definitions apply as used in this
19 chapter, unless the context otherwise requires:

20 (a) The "board" means the Mississippi State Board of
21 Health.

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

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

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

31 (e) "Practice of dispensing and fitting hearing aids"
32 means the evaluation or measurement of powers or range of human
33 hearing by means of an audiometer and the consequent selection or

34 adaptation or sale of hearing aids intended to compensate for
35 hearing loss, including the making of an impression of the ear.

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

39 (g) "Unethical conduct" means:

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

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

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

53 (iv) Permitting another to use his license or
54 certificate or endorsement.

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

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

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

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

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

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

79 **SECTION 3.** Section 73-14-5, Mississippi Code of 1972, is
80 brought forward as follows:

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

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

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

96 **SECTION 4.** Section 73-14-7, Mississippi Code of 1972, is
97 brought forward as follows:

98 73-14-7. (1) The powers and duties of the Mississippi State
99 Board of Health under this chapter are as follows:

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

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

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

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

110 (e) To issue and renew licenses.

111 (f) To suspend or revoke licenses pursuant to this
112 chapter.

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

115 (h) To designate the time and place for examining
116 applicants for license.

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

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

126 (k) To establish minimum requirements of test
127 procedures and test equipment to be used in the fitting of hearing
128 aids pursuant to this chapter, also the retention of all fittings
129 and records of fittings by the dealer.

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

132 The council shall consist of seven (7) members, four (4) of
133 whom are licensed hearing aid specialists who do not currently
134 hold any other professional license regulated by the State Board
135 of Health, one (1) of whom is a licensed audiologist, one (1) of
136 whom is a licensed physician, board certified in otolaryngology,
137 and one (1) of whom is a person of the board's own choosing from
138 the state at large, and said person shall be hearing impaired.

139 The person of the board's choosing shall not be a member of nor
140 have personal interest in any organization associated with hearing
141 aid specialists.

142 No person shall serve more than two (2) full consecutive
143 terms. No more than three (3) members shall be appointed to said
144 council from any one (1) Supreme Court district. The hearing aid
145 specialist appointments may be made from a list of at least three
146 (3) licensed hearing aid specialists furnished by the Mississippi
147 Hearing Aid Dealer Association, or its successor, for each vacancy
148 on the council, who have practiced and resided for three (3) years
149 in the state. The audiologist appointment may be made from a list
150 of at least three (3) licensed audiologists furnished by the
151 Mississippi Speech and Hearing Association, who has practiced and
152 resided for three (3) years in the state. The licensed physician
153 appointment may be made from a list of at least three (3) board
154 certified otolaryngologists furnished by the Mississippi Eye, Ear,
155 Nose and Throat Association, who has practiced and resided for
156 three (3) years in the state. Appointments to the council to fill
157 a vacancy occurring for other than expiration of a term shall only
158 be made for the remainder of the expired term. The council shall
159 promulgate such rules and regulations by which it shall conduct
160 its business. Members of the council shall receive no salary for
161 services performed on the council but may be reimbursed for their
162 reasonable and necessary actual expenses incurred in the
163 performance of the same, from funds provided for such purpose.
164 The council shall assist and advise the board in the development
165 of regulations and standards governing the licensure of hearing
166 aid dealers. Council members may be removed from office if found
167 guilty of any violation of any provision of this chapter. A
168 council member subject to formal disciplinary proceedings shall
169 disqualify himself from any council business until the charge is
170 resolved. A member must also disqualify himself from any council
171 business on which he may not make an objective evaluation and/or
172 decision.

173 **SECTION 5.** Section 73-14-13, Mississippi Code of 1972, is
174 brought forward as follows:

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

185 **SECTION 6.** Section 73-14-15, Mississippi Code of 1972, is
186 brought forward as follows:

187 73-14-15. No person shall engage in the sale or practice of
188 dispensing and fitting hearing aids or display a sign or in any
189 other way advertise or hold himself out as a person who practices
190 the dispensing and fitting of hearing aids unless he holds a
191 current, unsuspended, unrevoked license by the board as provided
192 in this chapter. The license required by this section shall be
193 kept conspicuously posted in his office or place of business at
194 all times.

195 **SECTION 7.** Section 73-14-17, Mississippi Code of 1972, is
196 brought forward as follows:

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

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

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

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

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

208 **SECTION 8.** Section 73-14-19, Mississippi Code of 1972, is
209 brought forward as follows:

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

219 **SECTION 9.** Section 73-14-21, Mississippi Code of 1972, is
220 brought forward as follows:

221 73-14-21. The examination provided in Section 73-14-19 shall
222 be selected by the board, with advice of the council, and may also
223 include an oral examination at the discretion of the board. The
224 tests under this section shall not include questions requiring a
225 medical or surgical education. It is the intent of this section
226 that the exams administered under this chapter be of such a level
227 as to provide that at a minimum an individual having a high school
228 education or its equivalent and with appropriate study, training
229 and supervision under the direction of a qualified hearing aid
230 specialist should be able to pass.

231 **SECTION 10.** Section 73-14-23, Mississippi Code of 1972, is
232 brought forward as follows:

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

237 **SECTION 11.** Section 73-14-25, Mississippi Code of 1972, is
238 brought forward as follows:

239 73-14-25. The department may license as a hearing aid
240 specialist, and furnish a certificate of licensure, to any
241 applicant who presents evidence, satisfactory to the department of
242 having passed an examination before a similar lawfully authorized

243 examining agency or board of hearing aid specialists of another
244 state or the District of Columbia, if the standards for
245 registration of hearing aid specialists or for licensure as a
246 hearing aid specialist in such state or district are determined by
247 the department to be as high as those of this state, and if that
248 jurisdiction affords licensees of this state reciprocity.

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

252 **SECTION 12.** Section 73-14-27, Mississippi Code of 1972, is
253 brought forward as follows:

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

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

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

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

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

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

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

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

287 **SECTION 13.** Section 73-14-31, Mississippi Code of 1972, is
288 brought forward as follows:

289 73-14-31. A person who practices the fitting and dispensing
290 of hearing aids shall biennially pay to the board a fee of Two
291 Hundred Dollars (\$200.00) for a renewal of his license. A grace
292 period of thirty (30) days shall be allowed after the expiration
293 of a license, during which the same may be renewed on payment of a
294 fee of Two Hundred Dollars (\$200.00) to the board. The license of
295 any person who fails to have his license renewed by the expiration
296 of the grace period of thirty (30) days shall be considered to
297 have lapsed. After the expiration of the grace period, the board
298 may reinstate a license upon payment of a fee of Two Hundred Fifty
299 Dollars (\$250.00) to the board. No person who applies for
300 reinstatement, whose license was suspended for the sole reason of
301 failure to renew, shall be required to submit to any examination
302 as a condition of reinstatement, provided such person applies for
303 reinstatement within one (1) year from the date of lapse of the
304 license.

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

308 In the event that any licensee shall fail to meet the annual
309 educational requirement, his license shall not be renewed by the
310 board, but the board may renew the license upon the presentation
311 of satisfactory evidence of educational study of a standard

312 approved by the board and upon the payment of all fees due. No
313 governmental entity or agency shall be required to pay the fee or
314 fees set forth in this section.

315 **SECTION 14.** Section 73-14-33, Mississippi Code of 1972, is
316 brought forward as follows:

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

321 The board shall keep a record of the places of practice of
322 persons who hold licenses or temporary licenses. Any notice
323 required to be given by the board to a person who holds a license
324 or temporary license may be given by mailing it to him at the
325 address given by him to the board.

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

330 (a) Display their Mississippi license while conducting
331 business in Mississippi; and

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

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

340 **SECTION 15.** Section 73-14-35, Mississippi Code of 1972, is
341 brought forward as follows:

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

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

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

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

355 (d) For knowingly practicing while suffering with a
356 contagious or infectious disease.

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

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

361 (g) For violating the provisions of any applicable
362 federal laws or regulations.

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

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

380 **SECTION 16.** Section 73-14-37, Mississippi Code of 1972, is
381 brought forward as follows:

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

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

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

400 (a) The findings of fact made by the trial examiner or
401 trial committee;

402 (b) Conclusions of law reached by the trial examiner or
403 trial committee; and

404 (c) The order based upon these findings of fact and
405 conclusions of law.

406 **SECTION 17.** Section 73-14-39, Mississippi Code of 1972, is
407 brought forward as follows:

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

411 (2) Notice of appeals shall be filed in the office of the
412 clerk of the court, who shall issue a writ of certiorari directed
413 to the board, commanding it within ten (10) days after service
414 thereof to certify to such court its entire record in the matter

415 in which the appeal has been taken. The appeal shall thereupon be
416 heard in the due course by said court without a jury, and the
417 court shall review the record and make its determination of the
418 cause between the parties.

419 (3) Any order, rule or decision of the board shall not take
420 effect until after the time of appeal in the said court shall have
421 expired. If there is an appeal, such appeal may, in the
422 discretion of and on motion to the chancery court, act as a
423 supersedeas. The chancery court shall dispose of the appeal and
424 enter its decision promptly. The hearing on the appeal may, in
425 the discretion of the chancellor, be tried in vacation.

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

429 (5) Actions taken by the board in suspending a certificate
430 of registration when required by Section 93-11-157 or 93-11-163
431 are not actions from which an appeal may be taken under this
432 section. Any appeal of a suspension of a certificate that is
433 required by Section 93-11-157 or 93-11-163 shall be taken in
434 accordance with the appeal procedure specified in Section
435 93-11-157 or 93-11-163, as the case may be, rather than the
436 procedure specified in this section.

437 **SECTION 18.** Section 73-14-41, Mississippi Code of 1972, is
438 brought forward as follows:

439 73-14-41. No person may:

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

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

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

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

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

450 **SECTION 19.** Section 73-14-43, Mississippi Code of 1972, is
451 brought forward as follows:

452 73-14-43. Violation of any provision of this chapter is a
453 misdemeanor punishable upon conviction by a fine of not less than
454 One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars
455 (\$500.00), or by imprisonment for not more than ninety (90) days
456 in the county jail, or by both.

457 **SECTION 20.** Section 73-14-45, Mississippi Code of 1972, is
458 brought forward as follows:

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

468 **SECTION 21.** Section 73-14-47, Mississippi Code of 1972, is
469 brought forward as follows:

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

475 **SECTION 22.** Section 73-14-49, which provides an automatic
476 repealer on those statutes which provide for the licensure and
477 regulation of hearing aid specialists by the State Board of
478 Health, is hereby repealed.

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

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO BRING FORWARD SECTIONS 73-14-1 THROUGH 73-14-47,
2 MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE LICENSURE AND

3 REGULATION OF HEARING AID SPECIALISTS BY THE STATE BOARD OF
4 HEALTH; TO REPEAL SECTION 73-14-49, MISSISSIPPI CODE OF 1972,
5 WHICH PROVIDES AN AUTOMATIC REPEALER ON SAID STATUTES; AND FOR
6 RELATED PURPOSES.

SS02\HB246A.1J

John O. Gilbert
Secretary of the Senate