



*Senate* BILL NO. *200*

INTRODUCED BY *Chapman* *Squires* *Markley*  
*Hager* *Offenberg* *Lee* *Eck*

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LICENSING, RECORDKEEPING, AND TRAINING REQUIREMENTS FOR HEARING AID DISPENSERS; PROVIDING CONSUMER PROTECTION FOR PURCHASERS OF HEARING AIDS AND RELATED DEVICES; AND AMENDING SECTIONS 37-16-301, 37-16-303, 37-16-402, 37-16-403, 37-16-405, 37-16-407, 37-16-408, AND 37-16-411, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 37-16-301, MCA, is amended to read:

"37-16-301. Permanent place of business in state necessary -- records -- notice -- designation of licensee in charge. (1) A person who is actively engaged in dispensing hearing aids and related devices as a business must have a permanent place of business in this state that will be opened to serve the public, having the necessary testing, fitting, and hearing aid accessories needed by the hard-of-hearing public in the wearing of hearing aids and related devices. All licensed hearing aid dispensers shall identify their permanent place of business in all advertising public notices and in all consumer correspondence, both written and verbal. More than one hearing aid dispenser licensee may work from a permanent

place of business.

(2) The department shall keep a record of the places of practice of persons who hold regular licenses or trainee licenses. A notice required to be given by the board or department to a person who holds a regular or trainee license may be given by mailing it to him at the address last given by him to the department.

(3) All licensed hearing aid dispensers shall notify the board of any change of address within 30 days of the change. A trainee shall notify the board of any change of address within 10 days of the change.

(4) (a) When licensed hearing aid dispensers and trainees work at the same permanent place of business, the licensed hearing aid dispenser shall designate one licensed dispenser as the person in charge. There must be one licensed dispenser in charge at a permanent place of business at all times.

(b) The licensed hearing aid dispenser in charge of a permanent place of business:

(i) is responsible and accountable under the disciplinary authority of the board for the conduct of trainees using that permanent place of business; and

(ii) has custody and control of the business records of that permanent place of business and is responsible for producing the records during an investigation conducted by



1 the board."

2 **Section 2.** Section 37-16-303, MCA, is amended to read:

3 **"37-16-303. Bill of sale -- examination by**  
4 **otolaryngologist -- notation on receipt that examination not**  
5 **medical opinion. (1) Any person who practices the selling,**  
6 **fitting, or dispensing of hearing aids and related devices**  
7 **shall deliver to each person supplied with a hearing aid or**  
8 **related device, by him or at his order or direction, a bill**  
9 **of sale ~~which shall~~ that must contain:**

10 **(a) the seller's signature, ~~and--show~~ the name and**  
11 **address of his permanent place of business, and the number**  
12 **of his license;**

13 **(b) ~~together-with~~ a description of the make and type of**  
14 **the hearing aid or related device furnished and the amount**  
15 **charged;**

16 **(c) with any warranty or guaranty and the terms of**  
17 **guarantee, ~~if any--The bill of sale shall--also--reveal~~ the**  
18 **warranty or guaranty;**

19 **(d) the condition of the hearing aid or related device**  
20 **and whether it is new, used, or reconditioned; and**

21 **(e) a provision that maintenance service for the**  
22 **hearing aid or related device is available.**

23 **(2) (a) Any person practicing the selling, dispensing,**  
24 **or fitting of hearing aids and related devices shall, ~~when~~**  
25 **if dealing with a person under 19 years of age, ascertain if**

1 **the person has been examined by an otolaryngologist within**  
2 **90 days prior to the fitting and shall obtain ~~his~~ the**  
3 **otolaryngologist's recommendations. ~~If such-not-be-the-case,~~**  
4 **~~a--recommendation-to-do-so-must-be-made-to-the-purchaser-and~~**  
5 **~~this-fact-be-noted-on-the-receipt~~ the person has not been**  
6 **examined, the licensed hearing aid dispenser shall recommend**  
7 **to the parent or guardian or to the person if emancipated**  
8 **that he have a medical examination. The licensed hearing aid**  
9 **dispenser shall issue a separate receipt, signed by the**  
10 **purchaser, indicating that the hearing aid dispenser made**  
11 **this recommendation.**

12 **(b) Any person practicing the selling, dispensing, or**  
13 **fitting of hearing aids and related devices shall, ~~when if~~**  
14 **the aid or device is to be purchased with state funds,**  
15 **ascertain if the person has been examined by a licensed**  
16 **physician within 90 days prior to the fitting and shall**  
17 **obtain ~~his~~ the licensed physician's recommendations. ~~If such~~**  
18 **~~not--be--the-case,~~ ~~a-recommendation-to-do-so-must-be-made-to~~**  
19 **~~the-purchaser-and-this-fact-be--noted--on--the--receipt~~ the**  
20 **person has not been examined, the licensed hearing aid**  
21 **dispenser shall recommend to the person being fitted that he**  
22 **have a medical examination. The licensed hearing aid**  
23 **dispenser shall issue a separate receipt, signed by the**  
24 **purchaser, indicating that the hearing aid dispenser made**  
25 **this recommendation.**

1       (3) Such A separate receipt issued under subsection (2)  
 2 must bear, in no smaller type than the largest used in the  
 3 body portion, the following: "Any examination(s) or  
 4 representation(s) made by a licensed hearing aid dispenser  
 5 in connection with the dispensing, fitting, and selling of  
 6 this hearing aid(s) or device is not an examination,  
 7 diagnosis, or prescription by a person licensed to practice  
 8 medicine in this state and, therefore, must not be regarded  
 9 as medical opinion or advice.

10       (4) The board may establish and adopt minimum  
 11 requirements for the form of bills of sale and receipts.

12       (5) All purchase agreements or bills of sale must  
 13 prominently display the following statement: "If you have  
 14 any questions regarding your consumer rights with respect to  
 15 hearing aids and related devices, please contact the  
 16 Department of Commerce -- Board of Hearing Aid Dispensers."

17       **Section 3.** Section 37-16-402, MCA, is amended to read:

18       "37-16-402. **Application -- qualifications -- fee.** An  
 19 applicant for a license shall pay a fee fixed by the board  
 20 and commensurate with the costs of processing and  
 21 administering his application and related functions of the  
 22 board and shall show to the satisfaction of the board that  
 23 he:

- 24       (1) is a person of good moral character;  
 25       (2) has an education equivalent to a 4-year course in

1 an accredited high school, ~~has continuously engaged in the~~  
 2 ~~practice of selling, fitting, or dispensing hearing aids in~~  
 3 ~~Montana during the 3 years preceding the date of~~  
 4 ~~application,~~ or holds a current license as an audiologist  
 5 under Title 37, chapter 15; and

6       (3) is free of contagious or infectious disease."

7       **Section 4.** Section 37-16-403, MCA, is amended to read:

8       "37-16-403. **Examination -- time and place -- number of**  
 9 **failures allowed.** (1) An applicant for a license who is  
 10 notified by the department that he has fulfilled the  
 11 requirements of 37-16-402 shall appear at a time and place  
 12 designated by the board to be examined by written and  
 13 practical tests in order to demonstrate that he is qualified  
 14 to practice the fitting of hearing aids and related devices.

15       (2) An applicant who fails two successive practical  
 16 examinations may apply for reexamination after 2 years of  
 17 additional experience or training."

18       **Section 5.** Section 37-16-405, MCA, is amended to read:

19       "37-16-405. **Trainee license.** (1) An applicant who  
 20 fulfills the requirements of 37-16-402 and who has not  
 21 previously applied to take the practical examination under  
 22 37-16-403 may apply to the board for a trainee license.

23       (2) On receiving an application under subsection (1) of  
 24 this section, accompanied by a fee fixed by the board and  
 25 commensurate with the cost of administering the license and

1 related functions of the board and verification that the  
2 applicant has passed the written portion of the examination  
3 with a score of at least 70%, the board shall issue a  
4 trainee license which that entitles the applicant to engage  
5 in a 12-month training period during which he shall:

6 (a) pass the practical examination administered by the  
7 board before he may be issued a hearing aid dispenser's  
8 license;

9 (b) ~~work for a period of 60 days during which he~~ at  
10 least 8 hours a week for 40 weeks under the direct  
11 supervision of the sponsoring licensed hearing aid dispenser  
12 as provided for in subsections (7) and (8). During this  
13 period, the trainee may do the testing necessary for proper  
14 selection and fitting of a hearing aid aids and related  
15 devices and make necessary impressions;--but. However, the  
16 delivery and final fitting of the hearing aid must be made  
17 by his supervisor;--and.

18 (c) work for the balance of the training period during  
19 which he may engage in all activities allowed a licensed  
20 hearing aid dispenser, ~~but--while~~ under the general  
21 supervision of a licensed hearing aid dispenser.

22 (3) The training period must consist of a continuous  
23 12-month term. Any break in training requires application  
24 for another trainee license under such rules as the board  
25 may prescribe.

1 (4) A trainee license may not be issued unless the  
2 board has on file an unrevoked statement from a qualified  
3 licensed hearing aid dealer dispenser accepting  
4 responsibility for the trainee. Every licensee licensed  
5 hearing aid dispenser supervising a trainee license holder  
6 must submit a quarterly report of the trainee's activities  
7 and training assignments, on forms furnished by the board.  
8 The supervisor is responsible for all hearing aid fittings  
9 of the trainee. A supervisor may terminate his  
10 responsibilities to the trainee by mailing by certified mail  
11 written notice to the board and the trainee.

12 (5) (a) If a person who holds a trainee license takes  
13 and fails to pass the practical examination given within his  
14 training period, the board may authorize the department to  
15 renew the trainee license for a period ending 30 days after  
16 the next examination. In no event may more than two renewals  
17 be permitted.

18 (b) The fee for renewal shall be set by the board  
19 commensurate with the cost of administering the license and  
20 related functions of the board.

21 (6) A person licensed as an audiologist under the  
22 provisions of Title 37, chapter 15, is exempt from the  
23 12-month training period but is required to pass the  
24 examinations prescribed in this chapter.

25 (7) A licensed hearing aid dispenser who sponsors a

1 trainee is directly responsible and accountable under the  
 2 disciplinary authority of the board for the conduct of the  
 3 trainee as if the conduct were the licensee's own.

4 (8) For the purposes of this section:

5 (a) "direct supervision" means the direct and regular  
 6 observation and instruction of a trainee by a licensed  
 7 hearing aid dispenser who is available in the same place of  
 8 business for prompt consultation and treatment; and

9 (b) "general supervision" means oversight by a licensed  
 10 hearing aid dispenser of those tasks and procedures that do  
 11 not require the physical presence of the licensed dispenser  
 12 on the business premises. However, the trainee remains under  
 13 the licensed hearing aid dispenser's direction, control,  
 14 responsibility, and evaluation."

15 **Section 6.** Section 37-16-407, MCA, is amended to read:

16 "37-16-407. Renewal of license -- fee -- inactive  
 17 status. (1) A person who practices the fitting of hearing  
 18 aids and related devices shall annually pay to the  
 19 department a fee as set by the board for a renewal of his  
 20 license. The fee shall ~~must~~ be fixed by the board to be  
 21 commensurate with board costs in administering licensure and  
 22 related board functions. The fee shall ~~must~~ be increased 10%  
 23 for each month or major portion thereof that the payment of  
 24 the renewal fee is delayed after the expiration date. The  
 25 maximum fee for a delayed renewal shall ~~may~~ not exceed twice

1 the normal renewal fee as set by the board. A person  
 2 applying for renewal whose license was suspended for failure  
 3 to renew is required to submit to the examinations described  
 4 in 37-16-403 as a condition of renewal for a 3-year period  
 5 after suspension.

6 (2) Each applicant for license renewal ~~must~~ shall  
 7 submit evidence showing completion of 4 hours of continuing  
 8 education completed during the preceding 12 months. The  
 9 requirements of the continuing education programs are to be  
 10 determined by the board by rule.

11 (3) (a) The board may set standards and fees for  
 12 issuing licenses that designate inactive status.

13 (b) An inactive licensee may be reinstated to active  
 14 practice if he:

15 (i) applies for reinstatement;

16 (ii) pays a fee set by the board; and

17 (iii) produces proof satisfactory to the board of  
 18 completion of the continuing education requirements  
 19 established by the board."

20 **Section 7.** Section 37-16-408, MCA, is amended to read:

21 "37-16-408. Deposit of fees, and fines, and costs.  
 22 Fees, and fines, and costs collected under this chapter,  
 23 except those collected by a justice's court, shall ~~must~~ be  
 24 deposited in the state special revenue fund for the use of  
 25 the board, subject to appropriations and 37-1-101(6)."

1       **Section 8.** Section 37-16-411, MCA, is amended to read:

2       "37-16-411. Revocation or suspension of license --  
3       **fin**es. A person **registered** licensed under this chapter may  
4       have his license revoked or suspended for a fixed period to  
5       be determined by the board or be fined not to exceed \$500  
6       per incident for any of the following causes:

7       (1) being convicted of a felony, subject to chapter 1,  
8       part 2, of this title. The record of the conviction or a  
9       certified copy from the clerk of the court where the  
10       conviction occurred or certification by the judge of the  
11       court is conclusive evidence of the conviction, except that  
12       if the person has been pardoned by a governor or the  
13       president of the United States, the conviction does not  
14       constitute grounds for revocation or suspension.

15       (2) securing a license under this chapter through fraud  
16       or deceit or false statements;

17       (3) the personal use of a false name or alias in the  
18       practice of his profession;

19       (4) violating any of the provisions of this chapter;

20       (5) obtaining any fee or making any sale by fraud or  
21       misrepresentation;

22       (6) knowingly employing, directly or indirectly, any  
23       suspended or unlicensed person to perform any work covered  
24       by this chapter;

25       (7) using or causing or promoting the use of any

1       advertising matter, promotional literature, testimonial,  
2       guarantee, warranty, label, brand, insignia, or any other  
3       representation, however disseminated or published, which is  
4       improbable, misleading, deceptive, or untruthful;

5       (8) representing that the services or advice of a  
6       person licensed to practice medicine or possessing  
7       certification as an audiologist will be used or made  
8       available in the selection, fitting, adjustment,  
9       maintenance, or repair of hearing aids when and related  
10       devices if that is not true or using the terms "doctor",  
11       "clinic", "hearing clinic", "state registered", or other  
12       like words, abbreviations, or symbols which tend to connote  
13       the medical profession when that use is not accurate;

14       (9) permitting another to use his license or  
15       certificate;

16       (10) defaming competitors by falsely imputing to them  
17       dishonorable conduct, inability to perform contracts,  
18       questionable credit standing, or by other false  
19       representations or falsely disparaging the products of  
20       competitors in any respect or their business methods,  
21       selling prices, values, credit terms, policies, or services;

22       (11) using any method of advertising prohibited by trade  
23       practice rules 1 through 17 of the Federal Trade Commission;

24       (12) obtaining information concerning the business of a  
25       competitor by bribery of an employee or agent of such

1 competitor, by false or misleading statements or  
2 representations, by the impersonation of one in authority,  
3 or by any other unlawful means;

4 (13) directly or indirectly giving or offering to give  
5 or permitting or causing to be given money or anything of  
6 value to any person who advises another in a professional  
7 capacity as an inducement to influence others to purchase or  
8 contract to purchase products sold or offered for sale by a  
9 hearing aid dispenser or influencing persons to refrain from  
10 dealing in the products of competitors;

11 (14) unethical conduct or gross incompetence or  
12 negligence in the performance of his duties, including  
13 repeated failure to make indicated medical referrals of his  
14 customers;

15 (15) selling a hearing aid or related device to a person  
16 who has not been given tests utilizing appropriate  
17 established procedures and instrumentation in fitting of  
18 hearing aids or related devices, ~~except in cases of~~ selling  
19 ~~replacement--hearing--aids-~~ for the sale of a replacement  
20 hearing aid or a related device of the same make and model  
21 within 1 year of the original sale;

22 (16) falsifying hearing test or evaluation results or  
23 any associated client records;

24 (17) refusing to cooperate with an investigation by the  
25 board by;

1 (a) failing to furnish requested records or documents;  
2 (b) failing to furnish a complete explanation of  
3 matters referred to in the complaint;

4 (c) failing to respond to a subpoena issued by the  
5 board;

6 (d) willfully misrepresenting any relevant fact to a  
7 board investigator; or

8 (e) attempting to discourage a potential witness from  
9 cooperating with a board investigator or from testifying by  
10 using threats, harassment, extortion, or bribery."

11 NEW SECTION. Section 9. Restitution. In addition to  
12 being disciplined for any of the activities described in  
13 37-16-411, a person licensed under this chapter may be  
14 ordered to make restitution to a purchaser of the purchase  
15 price of a hearing aid or related device minus the  
16 dispensing fee. For the purposes of this section, the  
17 dispensing fee may not exceed \$200.

18 NEW SECTION. Section 10. Right to cancel -- return of  
19 hearing aid or related device -- notice -- refund. (1) A  
20 purchaser of a hearing aid or related device may cancel the  
21 sale within 30 days of the date of delivery of the hearing  
22 aid or related device if:

23 (a) the hearing aid or related device is defective in  
24 fit or function; or

25 (b) a licensed hearing aid dispenser has failed to



1 correct a problem in fit or function.

2 (2) (a) If a purchaser cancels the sale of a hearing  
3 aid or related device for a reason provided in (1), he must  
4 provide written notice to the seller indicating his  
5 intention not to be bound by the sale contract. The  
6 purchaser must also return the hearing aid or related device  
7 in substantially the same condition as it was received by  
8 the purchaser.

9 (b) For the purpose of determining whether cancellation  
10 has occurred within 30 days of the date of delivery, written  
11 notice:

12 (i) given by mail is considered given on the date  
13 mailed; and

14 (ii) delivered in person is given when delivered to the  
15 hearing aid dispenser's permanent place of business.

16 (3) A licensed hearing aid dispenser shall refund to  
17 the purchaser the amount paid for the hearing aid or related  
18 device minus the dispensing fee within 30 days of receipt of  
19 written notice of cancellation. For the purposes of this  
20 section, the dispensing fee may not exceed \$200.

21 (4) All sales receipts for refunds issued by the seller  
22 of a hearing aid or related device must contain a statement  
23 of the reason for the cancellation.

24 NEW SECTION. **Section 11. Severability.** If a part of  
25 [this act] is invalid, all valid parts that are severable

1 from the invalid part remain in effect. If a part of [this  
2 act] is invalid in one or more of its applications, the part  
3 remains in effect in all valid applications that are  
4 severable from the invalid applications.

5 NEW SECTION. **Section 12. Codification instruction.**  
6 [Sections 9 and 10] are intended to be codified as an  
7 integral part of Title 37, chapter 16, and the provisions of  
8 Title 37, chapter 16, apply to [sections 9 and 10].

-End-

APPROVED BY COMMITTEE  
ON PUBLIC HEALTH, WELFARE  
& SAFETY

1 SENATE BILL NO. 200  
2 INTRODUCED BY VAUGHN, SQUIRES, DARKO, HANSEN, HAGER,  
3 HARDING, LEE, ECK  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LICENSING,  
6 RECORDKEEPING, AND TRAINING REQUIREMENTS FOR HEARING AID  
7 DISPENSERS; PROVIDING CONSUMER PROTECTION FOR PURCHASERS OF  
8 HEARING AIDS AND RELATED DEVICES; PROVIDING RULEMAKING  
9 AUTHORITY TO THE BOARD OF HEARING AID DISPENSERS; AND  
10 AMENDING SECTIONS 37-16-301, 37-16-303, 37-16-402,  
11 37-16-403, 37-16-405, 37-16-407, 37-16-408, AND 37-16-411,  
12 MCA."

13  
14 STATEMENT OF INTENT

15 A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE  
16 [SECTION 11] GRANTS THE BOARD OF HEARING AID DISPENSERS  
17 AUTHORITY TO ADOPT RULES CONSISTENT WITH THE PROVISIONS OF  
18 [SECTIONS 1 THROUGH 10].

19 IT IS THE INTENT OF THE LEGISLATURE THAT RULES ADOPTED  
20 BY THE BOARD INCLUDE RULES DEFINING "RELATED DEVICES" AND  
21 OTHER RULES NECESSARY TO IMPLEMENT [SECTIONS 1 THROUGH 10].

22 IT IS SPECIFICALLY INTENDED THAT, IN ADOPTING RULES, THE  
23 BOARD DEFINE "RELATED DEVICES" TO MEAN THOSE PARTS,  
24 ATTACHMENTS, OR ACCESSORIES, AS PROVIDED IN 37-16-102, THAT  
25 ARE SOLD FOR USE WITH A HEARING AID BY A LICENSED HEARING

1 AID DISPENSER. "RELATED DEVICES" SHOULD INCLUDE ASSISTIVE  
2 LISTENING DEVICES AND CORDLESS INFRARED SYSTEMS IF SOLD BY A  
3 HEARING AID DISPENSER. HOWEVER, THE TERM "RELATED DEVICE"  
4 SHOULD NOT INCLUDE GENERAL MERCHANDISE ITEMS, SUCH AS  
5 HEARING AID CLEANERS, CORDS, OR BATTERIES, THAT ARE COMMONLY  
6 AVAILABLE AT MOST DRUGSTORES, DISCOUNT STORES, OR BY MAIL  
7 ORDER.

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **Section 1.** Section 37-16-301, MCA, is amended to read:

11 "37-16-301. Permanent place of business in state  
12 necessary -- records -- notice -- designation of licensee in  
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14 hearing aids and related devices as a business must have a  
15 permanent place of business in this state that will be  
16 opened to serve the public, having the necessary testing,  
17 fitting, and hearing aid accessories needed by the  
18 hard-of-hearing public in the wearing of hearing aids and  
19 related devices. All licensed hearing aid dispensers shall  
20 identify their permanent place of business in all  
21 advertising public notices and in all consumer  
22 correspondence, both written and verbal. More than one  
23 hearing aid dispenser licensee may work from a permanent  
24 place of business.

25 (2) The department shall keep a record of the places of

**SECOND READING**

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1 practice of persons who hold regular licenses or trainee  
2 licenses. A notice required to be given by the board or  
3 department to a person who holds a regular or trainee  
4 license may be given by mailing it to him at the address  
5 last given by him to the department.

6 (3) All licensed hearing aid dispensers shall notify  
7 the board of any change of address within 30 days of the  
8 change. A trainee shall notify the board of any change of  
9 address within 10 days of the change.

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11 trainees work at the same permanent place of business, the  
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15 business at-all-times.

16 (b) The licensed hearing aid dispenser in charge of a  
17 permanent place of business:

18 (i) is responsible and accountable under the  
19 disciplinary authority of the board for the conduct of  
20 trainees using that permanent place of business; and

21 (ii) has custody and control of the business records of  
22 that permanent place of business and is responsible for  
23 producing the records during an investigation conducted by  
24 the board."

25 **Section 2.** Section 37-16-303, MCA, is amended to read:

1 "37-16-303. Bill of sale -- examination by  
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4 fitting, or dispensing of hearing aids and related devices  
5 shall deliver to each person supplied with a hearing aid or  
6 related device, by him or at his order or direction, a bill  
7 of sale ~~which shall~~ that must contain:

8 (a) the seller's signature, and--show the name and  
9 address of his permanent place of business, and the number  
10 of his license;

11 (b) ~~together with~~ a description of the make and type of  
12 the hearing aid or related device furnished and the amount  
13 charged;

14 (c) with any warranty or guaranty AND THE RIGHT TO  
15 CANCEL, and the terms of guarantee, if any. The bill of sale  
16 ~~shall also reveal~~ the warranty or guaranty AND THE RIGHT TO  
17 CANCEL;

18 (d) the condition of the hearing aid or related device  
19 and whether it is new, used, or reconditioned; and

20 (e) a provision that maintenance service for the  
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22 (2) (a) Any person practicing the selling, dispensing,  
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24 if dealing with a person under 19 years of age, ascertain if  
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1 90 days prior to the fitting and shall obtain his the  
 2 otolaryngologist's recommendations. If ~~such-not-be-the-case,~~  
 3 ~~a--recommendation-to-do-so-must-be-made-to-the-purchaser-and~~  
 4 ~~this-fact-be-noted-on-the-receipt~~ the person has not been  
 5 examined, the licensed hearing aid dispenser shall recommend  
 6 to the parent or guardian or to the person if emancipated  
 7 that he have a medical examination. The licensed hearing aid  
 8 dispenser shall issue a separate receipt, signed by the  
 9 purchaser, indicating that the hearing aid dispenser made  
 10 this recommendation.

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 13 the aid or device is to be purchased with state funds,  
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 22 dispenser shall issue a separate receipt, signed by the  
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25 (3) ~~Such~~ A separate receipt issued under subsection (2)

1 must bear, in no smaller type than the largest used in the  
 2 body portion, the following: "Any examination(s) or  
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 5 this hearing aid(s) or device is not an examination,  
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 7 medicine in this state and, therefore, must not be regarded  
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9 (4) The board may establish and adopt minimum  
 10 requirements for the form of bills of sale and receipts.

11 (5) All purchase agreements or bills of sale must  
 12 prominently display the following statement: "If you have  
 13 any questions regarding your consumer rights with respect to  
 14 hearing aids and related devices, please contact the  
 15 Department of Commerce -- Board of Hearing Aid Dispensers."

16 **Section 3.** Section 37-16-402, MCA, is amended to read:

17 "37-16-402. Application -- qualifications -- fee. An  
 18 applicant for a license shall pay a fee fixed by the board  
 19 and commensurate with the costs of processing and  
 20 administering his application and related functions of the  
 21 board and shall show to the satisfaction of the board that  
 22 he:

23 (1) is a person of good moral character;

24 (2) has an education equivalent to a 4-year course in  
 25 an accredited high school; ~~has continuously engaged in the~~

1 ~~practice-of-selling,-fitting,-or-dispensing-hearing-aids--in~~  
 2 ~~Montana---during---the---3---years--preceding--the--date--of~~  
 3 ~~application,~~ or holds a current license as an audiologist  
 4 under Title 37, chapter 15; and

5 (3) is free of contagious or infectious disease."

6 **Section 4.** Section 37-16-403, MCA, is amended to read:

7 "**37-16-403. Examination -- time and place -- number of**  
 8 **failures allowed.** (1) An applicant for a license who is  
 9 notified by the department that he has fulfilled the  
 10 requirements of 37-16-402 shall appear at a time and place  
 11 designated by the board to be examined by written and  
 12 practical tests in order to demonstrate that he is qualified  
 13 to practice the fitting of hearing aids and related devices.

14 (2) An applicant who fails two successive practical  
 15 examinations may apply IS ELIGIBLE for reexamination after A  
 16 PERIOD OF 2 years of AND THE COMPLETION OF additional  
 17 experience--or training OR EDUCATION RECOGNIZED BY THE  
 18 BOARD."

19 **Section 5.** Section 37-16-405, MCA, is amended to read:

20 "**37-16-405. Trainee license.** (1) An applicant who  
 21 fulfills the requirements of 37-16-402 and who has not  
 22 previously applied to take the practical examination under  
 23 37-16-403 may apply to the board for a trainee license.

24 (2) On receiving an application under subsection (1) of  
 25 ~~this-section,~~ accompanied by a fee fixed by the board and

1 commensurate with the cost of administering the license and  
 2 related functions of the board and verification that the  
 3 applicant has passed the written portion of the examination  
 4 with a score of at least 70%, the board shall issue a  
 5 trainee license ~~which~~ that entitles the applicant to engage  
 6 in a 12-month training period during which he shall:

7 (a) pass the practical examination administered by the  
 8 board before he may be issued a hearing aid dispenser's  
 9 license;

10 (b) work for ~~a-period-of-60-days--during--which--he at~~  
 11 ~~least--8--hours--a-week--for--40--weeks--under--the--direct~~  
 12 ~~supervision-of-the-sponsoring-licensed-hearing-aid-dispenser~~  
 13 ~~as--provided--for--in--subsections--(7)--and--(8)--During-this~~  
 14 ~~period,-the-trainee~~ THE FIRST 90 DAYS UNDER THE DIRECT  
 15 SUPERVISION OF THE SPONSORING LICENSED HEARING AID DISPENSER  
 16 DURING WHICH TIME HE may do the testing necessary for proper  
 17 selection and fitting of a hearing aid aids and related  
 18 devices and make necessary impressions, ~~but.~~ However, the  
 19 delivery and final fitting of the hearing aid AND RELATED  
 20 DEVICES must be made by THE TRAINEE AND his supervisor, ~~and.~~

21 (c) work for the balance of the training period during  
 22 which he may engage in all activities allowed a licensed  
 23 hearing aid dispenser, ~~but--while~~ under the general  
 24 supervision of a licensed hearing aid dispenser.

25 (3) The training period must consist of a continuous

1 12-month term. Any break in training requires application  
2 for another trainee license under such rules as the board  
3 may prescribe.

4 (4) A trainee license may not be issued unless the  
5 board has on file an unrevoked statement from a qualified  
6 licensed hearing aid dealer dispenser accepting  
7 responsibility for the trainee. Every licensee licensed  
8 hearing aid dispenser supervising a trainee license holder  
9 must submit a quarterly report of the trainee's activities  
10 and training assignments, on forms furnished by the board.  
11 The supervisor is responsible for all hearing aid fittings  
12 of the trainee. A supervisor may terminate his  
13 responsibilities to the trainee by mailing by certified mail  
14 written notice to the board and the trainee.

15 (5) (a) If a person who holds a trainee license takes  
16 and fails to pass the practical examination given within his  
17 training period, the board may authorize the department to  
18 renew the trainee license for a period ending 30 days after  
19 the next examination. In no event may more than two renewals  
20 be permitted.

21 (b) The fee for renewal shall be set by the board  
22 commensurate with the cost of administering the license and  
23 related functions of the board.

24 (6) A person licensed as an audiologist under the  
25 provisions of Title 37, chapter 15, is exempt from the

1 12-month training period but is required to pass the  
2 examinations prescribed in this chapter.

3 (7) A licensed hearing aid dispenser who sponsors a  
4 trainee is directly responsible and accountable under the  
5 disciplinary authority of the board for the conduct of the  
6 trainee as if the conduct were the licensee's own.

7 (8) For the purposes of this section:

8 (a) "direct supervision" means the direct and regular  
9 observation and instruction of a trainee by a licensed  
10 hearing aid dispenser who is available in the same place of  
11 business for prompt consultation and treatment; and

12 (b) "general supervision" means oversight by a licensed  
13 hearing aid dispenser of those tasks and procedures that do  
14 not require the physical presence of the licensed dispenser  
15 on the business premises. However, the trainee remains under  
16 the licensed hearing aid dispenser's direction, control,  
17 responsibility, and evaluation."

18 **Section 6.** Section 37-16-407, MCA, is amended to read:

19 "**37-16-407. Renewal of license -- fee -- inactive**  
20 **status.** (1) A person who practices the fitting of hearing  
21 aids and related devices shall annually pay to the  
22 department a fee as set by the board for a renewal of his  
23 license. The fee shall must be fixed by the board to be  
24 commensurate with board costs in administering licensure and  
25 related board functions. The fee shall must be increased 10%

1 for each month or major portion thereof that the payment of  
 2 the renewal fee is delayed after the expiration date. The  
 3 maximum fee for a delayed renewal ~~shall~~ may not exceed twice  
 4 the normal renewal fee as set by the board. A person  
 5 applying for renewal whose license was suspended for failure  
 6 to renew is required to submit to the examinations described  
 7 in 37-16-403 as a condition of renewal for a 3-year period  
 8 after suspension.

9 (2) Each applicant for license renewal ~~must~~ shall  
 10 submit evidence showing completion of 4 hours of continuing  
 11 education completed during the preceding 12 months. The  
 12 requirements of the continuing education programs are to be  
 13 determined by the board by rule.

14 (3) (a) The board may set standards and fees for  
 15 issuing licenses that designate inactive status.

16 (b) An inactive licensee may be reinstated to active  
 17 practice if he:

18 (i) applies for reinstatement;

19 (ii) pays a fee set by the board; and

20 (iii) produces proof satisfactory to the board of  
 21 completion of the continuing education requirements  
 22 established by the board."

23 **Section 7.** Section 37-16-408, MCA, is amended to read:

24 **"37-16-408. Deposit of fees, and fines, and costs.**  
 25 **Fees, and fines, and costs** collected under this chapter,

1 except those collected by a justice's court, ~~shall~~ must be  
 2 deposited in the state special revenue fund for the use of  
 3 the board, subject to appropriations and 37-1-101(6)."

4 **Section 8.** Section 37-16-411, MCA, is amended to read:

5 **"37-16-411. Revocation or suspension of license --**  
 6  **fines. A person registered licensed** under this chapter may  
 7 have his license revoked or suspended for a fixed period to  
 8 be determined by the board or be fined not to exceed \$500  
 9 per incident for any of the following causes:

10 (1) being convicted of a felony, subject to chapter 1,  
 11 part 2, of this title. The record of the conviction or a  
 12 certified copy from the clerk of the court where the  
 13 conviction occurred or certification by the judge of the  
 14 court is conclusive evidence of the conviction, except that  
 15 if the person has been pardoned by a governor or the  
 16 president of the United States, the conviction does not  
 17 constitute grounds for revocation or suspension.

18 (2) securing a license under this chapter through fraud  
 19 or deceit or false statements;

20 (3) the personal use of a false name or alias in the  
 21 practice of his profession;

22 (4) violating any of the provisions of this chapter;

23 (5) obtaining any fee or making any sale by fraud or  
 24 misrepresentation;

25 (6) knowingly employing, directly or indirectly, any

1 suspended or unlicensed person to perform any work covered  
2 by this chapter;

3 (7) using or causing or promoting the use of any  
4 advertising matter, promotional literature, testimonial,  
5 guarantee, warranty, label, brand, insignia, or any other  
6 representation, however disseminated or published, which is  
7 improbable, misleading, deceptive, or untruthful;

8 (8) representing that the services or advice of a  
9 person licensed to practice medicine or possessing  
10 certification as an audiologist will be used or made  
11 available in the selection, fitting, adjustment,  
12 maintenance, or repair of hearing aids when and related  
13 devices if that is not true or using the terms "doctor",  
14 "clinic", "hearing clinic", "state registered", or other  
15 like words, abbreviations, or symbols which tend to connote  
16 the medical profession when that use is not accurate;

17 (9) permitting another to use his license or  
18 certificate;

19 (10) defaming competitors by falsely imputing to them  
20 dishonorable conduct, inability to perform contracts,  
21 questionable credit standing, or by other false  
22 representations or falsely disparaging the products of  
23 competitors in any respect or their business methods,  
24 selling prices, values, credit terms, policies, or services;

25 (11) using any method of advertising prohibited by trade

1 practice rules 1 through 17 of the federal trade commission;

2 (12) obtaining information concerning the business of a  
3 competitor by bribery of an employee or agent of such  
4 competitor, by false or misleading statements or  
5 representations, by the impersonation of one in authority,  
6 or by any other unlawful means;

7 (13) directly or indirectly giving or offering to give  
8 or permitting or causing to be given money or anything of  
9 value to any person who advises another in a professional  
10 capacity as an inducement to influence others to purchase or  
11 contract to purchase products sold or offered for sale by a  
12 hearing aid dispenser or influencing persons to refrain from  
13 dealing in the products of competitors;

14 (14) unethical conduct or gross incompetence or  
15 negligence in the performance of his duties, including  
16 repeated failure to make indicated medical referrals of his  
17 customers;

18 (15) selling a hearing aid or related device to a person  
19 who has not been given tests utilizing appropriate  
20 established procedures and instrumentation in fitting of  
21 hearing aids or related devices, ~~except in cases of~~ selling  
22 replacement--hearing--aids. for the sale of a replacement  
23 hearing aid or a related device of the same make and model  
24 within 1 year of the original sale;

25 (16) falsifying hearing test or evaluation results or



1 any associated client records;

2 (17) refusing to cooperate with an investigation by the  
3 board by:

4 (a) failing to furnish requested records or documents;

5 (b) failing to furnish a complete explanation of  
6 matters referred to in the complaint;

7 (c) failing to respond to a subpoena issued by the  
8 board;

9 (d) willfully misrepresenting any relevant fact to a  
10 board investigator; or

11 (e) attempting to discourage a potential witness from  
12 cooperating with a board investigator or from testifying by  
13 using threats, harassment, extortion, or bribery."

14 NEW SECTION. Section 9. Restitution. In addition to  
15 being disciplined for any of the activities described in  
16 37-16-411, a person licensed under this chapter may be  
17 ordered to make restitution to a purchaser of the purchase  
18 price of a hearing aid or related device minus the  
19 dispensing fee. For the purposes of this section, the  
20 dispensing fee may not exceed ~~\$200~~ 20% OF THE TOTAL COST OF  
21 THE HEARING AID OR RELATED DEVICE.

22 NEW SECTION. Section 10. Right to cancel -- return of  
23 hearing aid or related device -- notice -- refund. (1) A  
24 purchaser of a hearing aid or related device may cancel the  
25 sale within 30 days of the date of delivery of the hearing

1 aid or related device if:

2 (a) the hearing aid or related device is defective in  
3 fit or function; or

4 (b) a licensed hearing aid dispenser has failed to  
5 correct a problem in fit or function.

6 (2) (a) If a purchaser cancels the sale of a hearing  
7 aid or related device for a reason provided in (1), he must  
8 provide written notice to the seller indicating his  
9 intention not to be bound by the sale contract. The  
10 purchaser must also return the hearing aid or related device  
11 in substantially the same condition as it was received by  
12 the purchaser.

13 (b) For the purpose of determining whether cancellation  
14 has occurred within 30 days of the date of delivery, written  
15 notice:

16 (i) given by mail is considered given on the date  
17 mailed; and

18 (ii) delivered in person is given when delivered to the  
19 hearing aid dispenser's permanent place of business.

20 (3) A licensed hearing aid dispenser shall refund to  
21 the purchaser the amount paid for the hearing aid or related  
22 device minus the dispensing fee within 30 days of receipt of  
23 written notice of cancellation. For the purposes of this  
24 section, the dispensing fee may not exceed ~~\$200~~ 20% OF THE  
25 TOTAL COST OF THE HEARING AID OR RELATED DEVICE.

1 (4) All sales receipts for refunds issued by the seller  
2 of a hearing aid or related device must contain a statement  
3 of the reason for the cancellation.

4 NEW SECTION. SECTION 11. RULEMAKING AUTHORITY. THE  
5 BOARD SHALL ADOPT RULES CONSISTENT WITH THE PROVISIONS OF  
6 [SECTIONS 1 THROUGH 10]. RULES ADOPTED BY THE DEPARTMENT MAY  
7 INCLUDE, BUT ARE NOT LIMITED TO, RULES DEFINING THE TERM  
8 "RELATED DEVICES" AND OTHER RULES NECESSARY TO IMPLEMENT  
9 [SECTIONS 1 THROUGH 10].

10 NEW SECTION. Section 12. Severability. If a part of  
11 [this act] is invalid, all valid parts that are severable  
12 from the invalid part remain in effect. If a part of [this  
13 act] is invalid in one or more of its applications, the part  
14 remains in effect in all valid applications that are  
15 severable from the invalid applications.

16 NEW SECTION. Section 13. Codification instruction.  
17 [Sections 9 and ~~10~~ THROUGH 11] are intended to be codified  
18 as an integral part of Title 37, chapter 16, and the  
19 provisions of Title 37, chapter 16, apply to [sections 9 and  
20 ~~10~~ THROUGH 11].

-End-

## 1 SENATE BILL NO. 200

2 INTRODUCED BY VAUGHN, SQUIRES, DARKO, HANSEN, HAGER,

3 HARDING, LEE, ECK

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LICENSING,  
6 RECORDKEEPING, AND TRAINING REQUIREMENTS FOR HEARING AID  
7 DISPENSERS; PROVIDING CONSUMER PROTECTION FOR PURCHASERS OF  
8 HEARING AIDS AND RELATED DEVICES; PROVIDING RULEMAKING  
9 AUTHORITY TO THE BOARD OF HEARING AID DISPENSERS; AND  
10 AMENDING SECTIONS 37-16-301, 37-16-303, 37-16-402,  
11 37-16-403, 37-16-405, 37-16-407, 37-16-408, AND 37-16-411,  
12 MCA."

13  
14 STATEMENT OF INTENT

15 A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE  
16 [SECTION 11] GRANTS THE BOARD OF HEARING AID DISPENSERS  
17 AUTHORITY TO ADOPT RULES CONSISTENT WITH THE PROVISIONS OF  
18 [SECTIONS 1 THROUGH 10].

19 IT IS THE INTENT OF THE LEGISLATURE THAT RULES ADOPTED  
20 BY THE BOARD INCLUDE RULES DEFINING "RELATED DEVICES" AND  
21 OTHER RULES NECESSARY TO IMPLEMENT [SECTIONS 1 THROUGH 10].

22 IT IS SPECIFICALLY INTENDED THAT, IN ADOPTING RULES, THE  
23 BOARD DEFINE "RELATED DEVICES" TO MEAN THOSE PARTS,  
24 ATTACHMENTS, OR ACCESSORIES, AS PROVIDED IN 37-16-102, THAT  
25 ARE SOLD FOR USE WITH A HEARING AID BY A LICENSED HEARING

1 AID DISPENSER. "RELATED DEVICES" SHOULD INCLUDE ASSISTIVE  
2 LISTENING DEVICES AND CORDLESS INFRARED SYSTEMS IF SOLD BY A  
3 HEARING AID DISPENSER. HOWEVER, THE TERM "RELATED DEVICE"  
4 SHOULD NOT INCLUDE GENERAL MERCHANDISE ITEMS, SUCH AS  
5 HEARING AID CLEANERS, CORDS, OR BATTERIES, THAT ARE COMMONLY  
6 AVAILABLE AT MOST DRUGSTORES, DISCOUNT STORES, OR BY MAIL  
7 ORDER.

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **Section 1.** Section 37-16-301, MCA, is amended to read:

11 "37-16-301. Permanent place of business in state  
12 necessary -- records -- notice -- designation of licensee in  
13 charge. (1) A person who is actively engaged in dispensing  
14 hearing aids and related devices as a business must have a  
15 permanent place of business in this state that will be  
16 opened to serve the public, having the necessary testing,  
17 fitting, and hearing aid accessories needed by the  
18 hard-of-hearing public in the wearing of hearing aids and  
19 related devices. All licensed hearing aid dispensers shall  
20 identify their permanent place of business in all  
21 advertising public notices and in all consumer  
22 correspondence, both written and verbal. More than one  
23 hearing aid dispenser licensee may work from a permanent  
24 place of business.

25 (2) The department shall keep a record of the places of

THIRD READING

1 practice of persons who hold regular licenses or trainee  
2 licenses. A notice required to be given by the board or  
3 department to a person who holds a regular or trainee  
4 license may be given by mailing it to him at the address  
5 last given by him to the department.

6 (3) All licensed hearing aid dispensers shall notify  
7 the board of any change of address within 30 days of the  
8 change. A trainee shall notify the board of any change of  
9 address within 10 days of the change.

10 (4) (a) When licensed hearing aid dispensers and  
11 trainees work at the same permanent place of business, the  
12 licensed hearing aid dispenser shall designate one licensed  
13 dispenser as the person in charge. There must be one  
14 licensed dispenser in charge at a permanent place of  
15 business at-all-times.

16 (b) The licensed hearing aid dispenser in charge of a  
17 permanent place of business:

18 (i) is responsible and accountable under the  
19 disciplinary authority of the board for the conduct of  
20 trainees using that permanent place of business; and

21 (ii) has custody and control of the business records of  
22 that permanent place of business and is responsible for  
23 producing the records during an investigation conducted by  
24 the board."

25 **Section 2.** Section 37-16-303, MCA, is amended to read:

1 "37-16-303. Bill of sale -- examination by  
2 otolaryngologist -- notation on receipt that examination not  
3 medical opinion. (1) Any person who practices the selling,  
4 fitting, or dispensing of hearing aids and related devices  
5 shall deliver to each person supplied with a hearing aid or  
6 related device, by him or at his order or direction, a bill  
7 of sale ~~which shall~~ that must contain:

8 (a) the seller's signature, and--show the name and  
9 address of his permanent place of business, and the number  
10 of his license;

11 (b) ~~together-with~~ a description of the make and type of  
12 the hearing aid or related device furnished and the amount  
13 charged;

14 (c) with any warranty or guaranty AND THE RIGHT TO  
15 CANCEL, and the terms of guarantee,--if-any--the bill-of-sale  
16 shall-also-reveal the warranty or guaranty AND THE RIGHT TO  
17 CANCEL;

18 (d) the condition of the hearing aid or related device  
19 and whether it is new, used, or reconditioned; and

20 (e) a provision that maintenance service for the  
21 hearing aid or related device is available.

22 (2) (a) Any person practicing the selling, dispensing,  
23 or fitting of hearing aids and related devices shall, ~~when~~  
24 if dealing with a person under 19 years of age, ascertain if  
25 the person has been examined by an otolaryngologist within

1 90 days prior to the fitting and shall obtain his the  
 2 otolaryngologist's recommendations. If such-not-be-the-case,  
 3 ~~a--recommendation-to-do-so-must-be-made-to-the-purchaser-and~~  
 4 ~~this-fact-be-noted-on-the-receipt~~ the person has not been  
 5 examined, the licensed hearing aid dispenser shall recommend  
 6 to the parent or guardian or to the person if emancipated  
 7 that he have a medical examination. The licensed hearing aid  
 8 dispenser shall issue a separate receipt, signed by the  
 9 purchaser, indicating that the hearing aid dispenser made  
 10 this recommendation.

11 (b) Any person practicing the selling, dispensing, or  
 12 fitting of hearing aids and related devices shall, when if  
 13 the aid or device is to be purchased with state funds,  
 14 ascertain if the person has been examined by a licensed  
 15 physician within 90 days prior to the fitting and shall  
 16 obtain his the licensed physician's recommendations. If such  
 17 ~~not--be--the-case,--a-recommendation-to-do-so-must-be-made-to~~  
 18 ~~the-purchaser-and-this-fact-be--noted--on--the--receipt~~ the  
 19 person has not been examined, the licensed hearing aid  
 20 dispenser shall recommend to the person being fitted that he  
 21 have a medical examination. The licensed hearing aid  
 22 dispenser shall issue a separate receipt, signed by the  
 23 purchaser, indicating that the hearing aid dispenser made  
 24 this recommendation.

25 (3) Such A separate receipt issued under subsection (2)

1 must bear, in no smaller type than the largest used in the  
 2 body portion, the following: "Any examination(s) or  
 3 representation(s) made by a licensed hearing aid dispenser  
 4 in connection with the dispensing, fitting, and selling of  
 5 this hearing aid(s) or device is not an examination,  
 6 diagnosis, or prescription by a person licensed to practice  
 7 medicine in this state and, therefore, must not be regarded  
 8 as medical opinion or advice.

9 (4) The board may establish and adopt minimum  
 10 requirements for the form of bills of sale and receipts.

11 (5) All purchase agreements or bills of sale must  
 12 prominently display the following statement: "If you have  
 13 any questions regarding your consumer rights with respect to  
 14 hearing aids and related devices, please contact the  
 15 Department of Commerce -- Board of Hearing Aid Dispensers."

16 **Section 3.** Section 37-16-402, MCA, is amended to read:

17 "37-16-402. Application -- qualifications -- fee. An  
 18 applicant for a license shall pay a fee fixed by the board  
 19 and commensurate with the costs of processing and  
 20 administering his application and related functions of the  
 21 board and shall show to the satisfaction of the board that  
 22 he:

- 23 (1) is a person of good moral character;  
 24 (2) has an education equivalent to a 4-year course in  
 25 an accredited high school, ~~has-continuously-engaged-in-the~~

1 ~~practice of selling, fitting, or dispensing hearing aids in~~  
 2 ~~Montana during the 3 years preceding the date of~~  
 3 ~~application, or holds a current license as an audiologist~~  
 4 ~~under Title 37, chapter 15; and~~

5 (3) is free of contagious or infectious disease."

6 **Section 4.** Section 37-16-403, MCA, is amended to read:

7 "**37-16-403. Examination -- time and place -- number of**  
 8 **failures allowed.** (1) An applicant for a license who is  
 9 notified by the department that he has fulfilled the  
 10 requirements of 37-16-402 shall appear at a time and place  
 11 designated by the board to be examined by written and  
 12 practical tests in order to demonstrate that he is qualified  
 13 to practice the fitting of hearing aids and related devices.

14 (2) An applicant who fails two successive practical  
 15 examinations may apply IS ELIGIBLE for reexamination after A  
 16 PERIOD OF 2 years of AND THE COMPLETION OF additional  
 17 experience--or training OR EDUCATION RECOGNIZED BY THE  
 18 BOARD."

19 **Section 5.** Section 37-16-405, MCA, is amended to read:

20 "**37-16-405. Trainee license.** (1) An applicant who  
 21 fulfills the requirements of 37-16-402 and who has not  
 22 previously applied to take the practical examination under  
 23 37-16-403 may apply to the board for a trainee license.

24 (2) On receiving an application under subsection (1) of  
 25 this section, accompanied by a fee fixed by the board and

1 commensurate with the cost of administering the license and  
 2 related functions of the board and verification that the  
 3 applicant has passed the written portion of the examination  
 4 with a score of at least 70%, the board shall issue a  
 5 trainee license which that entitles the applicant to engage  
 6 in a 12-month training period during which he shall:

7 (a) pass the practical examination administered by the  
 8 board before he may be issued a hearing aid dispenser's  
 9 license;

10 (b) work for a period of 60 days during which he at  
 11 least 8 hours a week for 40 weeks under the direct  
 12 supervision of the sponsoring licensed hearing aid dispenser  
 13 as provided for in subsections (7) and (8). During this  
 14 period, the trainee THE FIRST 90 DAYS UNDER THE DIRECT  
 15 SUPERVISION OF THE SPONSORING LICENSED HEARING AID DISPENSER  
 16 DURING WHICH TIME HE may do the testing necessary for proper  
 17 selection and fitting of a hearing aid aids and related  
 18 devices and make necessary impressions, but, However, the  
 19 delivery and final fitting of the hearing aid AND RELATED  
 20 DEVICES must be made by THE TRAINEE AND his supervisor, and,  
 21 (c) work for the balance of the training period during  
 22 which he may engage in all activities allowed a licensed  
 23 hearing aid dispenser, but--while under the general  
 24 supervision of a licensed hearing aid dispenser.

25 (3) The training period must consist of a continuous

1 12-month term. Any break in training requires application  
2 for another trainee license under such rules as the board  
3 may prescribe.

4 (4) A trainee license may not be issued unless the  
5 board has on file an unrevoked statement from a qualified  
6 licensed hearing aid dealer dispenser accepting  
7 responsibility for the trainee. Every licensee licensed  
8 hearing aid dispenser supervising a trainee license holder  
9 must submit a quarterly report of the trainee's activities  
10 and training assignments, on forms furnished by the board.  
11 The supervisor is responsible for all hearing aid fittings  
12 of the trainee. A supervisor may terminate his  
13 responsibilities to the trainee by mailing by certified mail  
14 written notice to the board and the trainee.

15 (5) (a) If a person who holds a trainee license takes  
16 and fails to pass the practical examination given within his  
17 training period, the board may authorize the department to  
18 renew the trainee license for a period ending 30 days after  
19 the next examination. In no event may more than two renewals  
20 be permitted.

21 (b) The fee for renewal shall be set by the board  
22 commensurate with the cost of administering the license and  
23 related functions of the board.

24 (6) A person licensed as an audiologist under the  
25 provisions of Title 37, chapter 15, is exempt from the

1 12-month training period but is required to pass the  
2 examinations prescribed in this chapter.

3 (7) A licensed hearing aid dispenser who sponsors a  
4 trainee is directly responsible and accountable under the  
5 disciplinary authority of the board for the conduct of the  
6 trainee as if the conduct were the licensee's own.

7 (8) For the purposes of this section:

8 (a) "direct supervision" means the direct and regular  
9 observation and instruction of a trainee by a licensed  
10 hearing aid dispenser who is available in the same place of  
11 business for prompt consultation and treatment; and

12 (b) "general supervision" means oversight by a licensed  
13 hearing aid dispenser of those tasks and procedures that do  
14 not require the physical presence of the licensed dispenser  
15 on the business premises. However, the trainee remains under  
16 the licensed hearing aid dispenser's direction, control,  
17 responsibility, and evaluation."

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19 **"37-16-407. Renewal of license -- fee -- inactive**  
20 **status.** (1) A person who practices the fitting of hearing  
21 aids and related devices shall annually pay to the  
22 department a fee as set by the board for a renewal of his  
23 license. The fee ~~shall~~ must be fixed by the board to be  
24 commensurate with board costs in administering licensure and  
25 related board functions. The fee ~~shall~~ must be increased 10%

1 for each month or major portion thereof that the payment of  
 2 the renewal fee is delayed after the expiration date. The  
 3 maximum fee for a delayed renewal shall may not exceed twice  
 4 the normal renewal fee as set by the board. A person  
 5 applying for renewal whose license was suspended for failure  
 6 to renew is required to submit to the examinations described  
 7 in 37-16-403 as a condition of renewal for a 3-year period  
 8 after suspension.

9 (2) Each applicant for license renewal must shall  
 10 submit evidence showing completion of 4 hours of continuing  
 11 education completed during the preceding 12 months. The  
 12 requirements of the continuing education programs are to be  
 13 determined by the board by rule.

14 (3) (a) The board may set standards and fees for  
 15 issuing licenses that designate inactive status.

16 (b) An inactive licensee may be reinstated to active  
 17 practice if he:

18 (i) applies for reinstatement;

19 (ii) pays a fee set by the board; and

20 (iii) produces proof satisfactory to the board of  
 21 completion of the continuing education requirements  
 22 established by the board."

23 **Section 7.** Section 37-16-408, MCA, is amended to read:

24 "**37-16-408. Deposit of fees, and fines, and costs.**  
 25 Fees, and fines, and costs collected under this chapter,

1 except those collected by a justice's court, ~~shall~~ must be  
 2 deposited in the state special revenue fund for the use of  
 3 the board, subject to appropriations and 37-1-101(6)."

4 **Section 8.** Section 37-16-411, MCA, is amended to read:

5 "**37-16-411. Revocation or suspension of license --**  
 6  **fines.** A person ~~registered~~ licensed under this chapter may  
 7 have his license revoked or suspended for a fixed period to  
 8 be determined by the board or be fined not to exceed \$500  
 9 per incident for any of the following causes:

10 (1) being convicted of a felony, subject to chapter 1,  
 11 part 2, of this title. The record of the conviction or a  
 12 certified copy from the clerk of the court where the  
 13 conviction occurred or certification by the judge of the  
 14 court is conclusive evidence of the conviction, except that  
 15 if the person has been pardoned by a governor or the  
 16 president of the United States, the conviction does not  
 17 constitute grounds for revocation or suspension.

18 (2) securing a license under this chapter through fraud  
 19 or deceit or false statements;

20 (3) the personal use of a false name or alias in the  
 21 practice of his profession;

22 (4) violating any of the provisions of this chapter;

23 (5) obtaining any fee or making any sale by fraud or  
 24 misrepresentation;

25 (6) knowingly employing, directly or indirectly, any



1 suspended or unlicensed person to perform any work covered  
2 by this chapter;

3 (7) using or causing or promoting the use of any  
4 advertising matter, promotional literature, testimonial,  
5 guarantee, warranty, label, brand, insignia, or any other  
6 representation, however disseminated or published, which is  
7 improbable, misleading, deceptive, or untruthful;

8 (8) representing that the services or advice of a  
9 person licensed to practice medicine or possessing  
10 certification as an audiologist will be used or made  
11 available in the selection, fitting, adjustment,  
12 maintenance, or repair of hearing aids when and related  
13 devices if that is not true or using the terms "doctor",  
14 "clinic", "hearing clinic", "state registered", or other  
15 like words, abbreviations, or symbols which tend to connote  
16 the medical profession when that use is not accurate;

17 (9) permitting another to use his license or  
18 certificate;

19 (10) defaming competitors by falsely imputing to them  
20 dishonorable conduct, inability to perform contracts,  
21 questionable credit standing, or by other false  
22 representations or falsely disparaging the products of  
23 competitors in any respect or their business methods,  
24 selling prices, values, credit terms, policies, or services;

25 (11) using any method of advertising prohibited by trade

1 practice rules 1 through 17 of the federal trade commission;

2 (12) obtaining information concerning the business of a  
3 competitor by bribery of an employee or agent of such  
4 competitor, by false or misleading statements or  
5 representations, by the impersonation of one in authority,  
6 or by any other unlawful means;

7 (13) directly or indirectly giving or offering to give  
8 or permitting or causing to be given money or anything of  
9 value to any person who advises another in a professional  
10 capacity as an inducement to influence others to purchase or  
11 contract to purchase products sold or offered for sale by a  
12 hearing aid dispenser or influencing persons to refrain from  
13 dealing in the products of competitors;

14 (14) unethical conduct or gross incompetence or  
15 negligence in the performance of his duties, including  
16 repeated failure to make indicated medical referrals of his  
17 customers;

18 (15) selling a hearing aid or related device to a person  
19 who has not been given tests utilizing appropriate  
20 established procedures and instrumentation in fitting of  
21 hearing aids or related devices, ~~except in-cases-of--selling~~  
22 ~~replacement--hearing--aids:~~ for the sale of a replacement  
23 hearing aid or a related device of the same make and model  
24 within 1 year of the original sale;

25 (16) falsifying hearing test or evaluation results or

1 any associated client records;

2 (17) refusing to cooperate with an investigation by the  
3 board by:

4 (a) failing to furnish requested records or documents;

5 (b) failing to furnish a complete explanation of  
6 matters referred to in the complaint;

7 (c) failing to respond to a subpoena issued by the  
8 board;

9 (d) willfully misrepresenting any relevant fact to a  
10 board investigator; or

11 (e) attempting to discourage a potential witness from  
12 cooperating with a board investigator or from testifying by  
13 using threats, harassment, extortion, or bribery."

14 NEW SECTION. Section 9. Restitution. In addition to  
15 being disciplined for any of the activities described in  
16 37-16-411, a person licensed under this chapter may be  
17 ordered to make restitution to a purchaser of the purchase  
18 price of a hearing aid or related device minus the  
19 dispensing fee. For the purposes of this section, the  
20 dispensing fee may not exceed ~~\$200~~ 20% OF THE TOTAL COST OF  
21 THE HEARING AID OR RELATED DEVICE.

22 NEW SECTION. Section 10. Right to cancel -- return of  
23 hearing aid or related device -- notice -- refund. (1) A  
24 purchaser of a hearing aid or related device may cancel the  
25 sale within 30 days of the date of delivery of the hearing

1 aid or related device if:

2 (a) the hearing aid or related device is defective in  
3 fit or function; or

4 (b) a licensed hearing aid dispenser has failed to  
5 correct a problem in fit or function.

6 (2) (a) If a purchaser cancels the sale of a hearing  
7 aid or related device for a reason provided in (1), he must  
8 provide written notice to the seller indicating his  
9 intention not to be bound by the sale contract. The  
10 purchaser must also return the hearing aid or related device  
11 in substantially the same condition as it was received by  
12 the purchaser.

13 (b) For the purpose of determining whether cancellation  
14 has occurred within 30 days of the date of delivery, written  
15 notice:

16 (i) given by mail is considered given on the date  
17 mailed; and

18 (ii) delivered in person is given when delivered to the  
19 hearing aid dispenser's permanent place of business.

20 (3) A licensed hearing aid dispenser shall refund to  
21 the purchaser the amount paid for the hearing aid or related  
22 device minus the dispensing fee within 30 days of receipt of  
23 written notice of cancellation. For the purposes of this  
24 section, the dispensing fee may not exceed ~~\$200~~ 20% OF THE  
25 TOTAL COST OF THE HEARING AID OR RELATED DEVICE.

1 (4) All sales receipts for refunds issued by the seller  
2 of a hearing aid or related device must contain a statement  
3 of the reason for the cancellation.

4 NEW SECTION. SECTION 11. RULEMAKING AUTHORITY. THE  
5 BOARD SHALL ADOPT RULES CONSISTENT WITH THE PROVISIONS OF  
6 [SECTIONS 1 THROUGH 10]. RULES ADOPTED BY THE DEPARTMENT MAY  
7 INCLUDE, BUT ARE NOT LIMITED TO, RULES DEFINING THE TERM  
8 "RELATED DEVICES" AND OTHER RULES NECESSARY TO IMPLEMENT  
9 [SECTIONS 1 THROUGH 10].

10 NEW SECTION. Section 12. Severability. If a part of  
11 [this act] is invalid, all valid parts that are severable  
12 from the invalid part remain in effect. If a part of [this  
13 act] is invalid in one or more of its applications, the part  
14 remains in effect in all valid applications that are  
15 severable from the invalid applications.

16 NEW SECTION. Section 13. Codification instruction.  
17 [Sections 9 and ~~10~~ THROUGH 11] are intended to be codified  
18 as an integral part of Title 37, chapter 16, and the  
19 provisions of Title 37, chapter 16, apply to [sections 9 and  
20 ~~10~~ THROUGH 11].

-End-

## 1 SENATE BILL NO. 200

2 INTRODUCED BY VAUGHN, SQUIRES, DARKO, HANSEN, HAGER,  
3 HARDING, LEE, ECK  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LICENSING,  
6 RECORDKEEPING, AND TRAINING REQUIREMENTS FOR HEARING AID  
7 DISPENSERS; PROVIDING CONSUMER PROTECTION FOR PURCHASERS OF  
8 HEARING AIDS AND RELATED DEVICES; PROVIDING RULEMAKING  
9 AUTHORITY TO THE BOARD OF HEARING AID DISPENSERS; AND  
10 AMENDING SECTIONS 37-16-301, 37-16-303, 37-16-402,  
11 37-16-403, 37-16-405, 37-16-407, 37-16-408, AND 37-16-411,  
12 MCA."

13  
14 STATEMENT OF INTENT

15 A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL BECAUSE  
16 [SECTION 11] GRANTS THE BOARD OF HEARING AID DISPENSERS  
17 AUTHORITY TO ADOPT RULES CONSISTENT WITH THE PROVISIONS OF  
18 [SECTIONS 1 THROUGH 10].

19 IT IS THE INTENT OF THE LEGISLATURE THAT RULES ADOPTED  
20 BY THE BOARD INCLUDE RULES DEFINING "RELATED DEVICES" AND  
21 OTHER RULES NECESSARY TO IMPLEMENT [SECTIONS 1 THROUGH 10].

22 IT IS SPECIFICALLY INTENDED THAT, IN ADOPTING RULES, THE  
23 BOARD DEFINE "RELATED DEVICES" TO MEAN THOSE PARTS,  
24 ATTACHMENTS, OR ACCESSORIES, AS PROVIDED IN 37-16-102, THAT  
25 ARE SOLD FOR USE WITH A HEARING AID BY A LICENSED HEARING

1 AID DISPENSER. "RELATED DEVICES" SHOULD INCLUDE ASSISTIVE  
2 LISTENING DEVICES AND CORDLESS INFRARED SYSTEMS IF SOLD BY A  
3 HEARING AID DISPENSER. HOWEVER, THE TERM "RELATED DEVICE"  
4 SHOULD NOT INCLUDE GENERAL MERCHANDISE ITEMS, SUCH AS  
5 HEARING AID CLEANERS, CORDS, OR BATTERIES, THAT ARE COMMONLY  
6 AVAILABLE AT MOST DRUGSTORES, DISCOUNT STORES, OR BY MAIL  
7 ORDER.

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **Section 1.** Section 37-16-301, MCA, is amended to read:

11 "37-16-301. Permanent place of business in state  
12 necessary -- records -- notice -- designation of licensee in  
13 charge. (1) A person who is actively engaged in dispensing  
14 hearing aids and related devices as a business must have a  
15 permanent place of business in this state that will be  
16 opened to serve the public, having the necessary testing,  
17 fitting, and hearing aid accessories needed by the  
18 hard-of-hearing public in the wearing of hearing aids and  
19 related devices. All licensed hearing aid dispensers shall  
20 identify their permanent place of business in all  
21 advertising public notices and in all consumer  
22 correspondence, both written and verbal. More than one  
23 hearing aid dispenser licensee may work from a permanent  
24 place of business.

25 (2) The department shall keep a record of the places of

REFERENCE BILL  
SB 200

1 practice of persons who hold regular licenses or trainee  
2 licenses. A notice required to be given by the board or  
3 department to a person who holds a regular or trainee  
4 license may be given by mailing it to him at the address  
5 last given by him to the department.

6 (3) All licensed hearing aid dispensers shall notify  
7 the board of any change of address within 30 days of the  
8 change. A trainee shall notify the board of any change of  
9 address within 10 days of the change.

10 (4) (a) When licensed hearing aid dispensers and  
11 trainees work at the same permanent place of business, the  
12 licensed hearing aid dispenser shall designate one licensed  
13 dispenser as the person in charge. There must be one  
14 licensed dispenser in charge at a permanent place of  
15 business at-all-times.

16 (b) The licensed hearing aid dispenser in charge of a  
17 permanent place of business:

18 (i) is responsible and accountable under the  
19 disciplinary authority of the board for the conduct of  
20 trainees using that permanent place of business; and

21 (ii) has custody and control of the business records of  
22 that permanent place of business and is responsible for  
23 producing the records during an investigation conducted by  
24 the board."

25 **Section 2.** Section 37-16-303, MCA, is amended to read:

1 "37-16-303. Bill of sale -- examination by  
2 otolaryngologist -- notation on receipt that examination not  
3 medical opinion. (1) Any person who practices the selling,  
4 fitting, or dispensing of hearing aids and related devices  
5 shall deliver to each person supplied with a hearing aid or  
6 related device, by him or at his order or direction, a bill  
7 of sale ~~which shall~~ that must contain:

8 (a) the seller's signature, and--show the name and  
9 address of his permanent place of business, and the number  
10 of his license;

11 (b) ~~together-with~~ a description of the make and type of  
12 the hearing aid or related device furnished and the amount  
13 charged;

14 (c) with any warranty or guaranty AND THE RIGHT TO  
15 CANCEL, and the terms of guarantee--if-any--The bill-of-sale  
16 shall-also-reveal the warranty or guaranty AND THE RIGHT TO  
17 CANCEL;

18 (d) the condition of the hearing aid or related device  
19 and whether it is new, used, or reconditioned; and

20 (e) a provision that maintenance service for the  
21 hearing aid or related device is available.

22 (2) (a) Any person practicing the selling, dispensing,  
23 or fitting of hearing aids and related devices shall, when  
24 if dealing with a person under 19 years of age, ascertain if  
25 the person has been examined by an otolaryngologist within

1 90 days prior to the fitting and shall obtain his the  
 2 otolaryngologist's recommendations. If ~~such-not-be-the-case,~~  
 3 ~~a--recommendation-to-do-so-must-be-made-to-the-purchaser-and~~  
 4 ~~this-fact-be-noted-on-the-receipt~~ the person has not been  
 5 examined, the licensed hearing aid dispenser shall recommend  
 6 to the parent or guardian or to the person if emancipated  
 7 that he have a medical examination. The licensed hearing aid  
 8 dispenser shall issue a separate receipt, signed by the  
 9 purchaser, indicating that the hearing aid dispenser made  
 10 this recommendation.

11 (b) Any person practicing the selling, dispensing, or  
 12 fitting of hearing aids and related devices shall, when if  
 13 the aid or device is to be purchased with state funds,  
 14 ascertain if the person has been examined by a licensed  
 15 physician within 90 days prior to the fitting and shall  
 16 obtain his the licensed physician's recommendations. If such  
 17 not--be--the--case--a--recommendation-to-do-so-must-be-made-to  
 18 the-purchaser-and-this-fact-be--noted--on--the--receipt the  
 19 person has not been examined, the licensed hearing aid  
 20 dispenser shall recommend to the person being fitted that he  
 21 have a medical examination. The licensed hearing aid  
 22 dispenser shall issue a separate receipt, signed by the  
 23 purchaser, indicating that the hearing aid dispenser made  
 24 this recommendation.

25 (3) Such A separate receipt issued under subsection (2)

1 must bear, in no smaller type than the largest used in the  
 2 body portion, the following: "Any examination(s) or  
 3 representation(s) made by a licensed hearing aid dispenser  
 4 in connection with the dispensing, fitting, and selling of  
 5 this hearing aid(s) or device is not an examination,  
 6 diagnosis, or prescription by a person licensed to practice  
 7 medicine in this state and, therefore, must not be regarded  
 8 as medical opinion or advice.

9 (4) The board may establish and adopt minimum  
 10 requirements for the form of bills of sale and receipts.

11 (5) All purchase agreements or bills of sale must  
 12 prominently display the following statement: "If you have  
 13 any questions regarding your consumer rights with respect to  
 14 hearing aids and related devices, please contact the  
 15 Department of Commerce -- Board of Hearing Aid Dispensers."

16 **Section 3.** Section 37-16-402, MCA, is amended to read:

17 "37-16-402. **Application** -- qualifications -- fee. An  
 18 applicant for a license shall pay a fee fixed by the board  
 19 and commensurate with the costs of processing and  
 20 administering his application and related functions of the  
 21 board and shall show to the satisfaction of the board that  
 22 he:

- 23 (1) is a person of good moral character;  
 24 (2) has an education equivalent to a 4-year course in  
 25 an accredited high school; ~~has continuously engaged in the~~

1 ~~practice-of-selling,-fitting,-or-dispensing-hearing-aids--in~~  
 2 ~~Montana---during---the---3---years---preceding---the---date---of~~  
 3 ~~application,~~ or holds a current license as an audiologist  
 4 under Title 37, chapter 15; and

5 (3) is free of contagious or infectious disease."

6 **Section 4.** Section 37-16-403, MCA, is amended to read:

7 "37-16-403. Examination -- time and place -- number of  
 8 failures allowed. (1) An applicant for a license who is  
 9 notified by the department that he has fulfilled the  
 10 requirements of 37-16-402 shall appear at a time and place  
 11 designated by the board to be examined by written and  
 12 practical tests in order to demonstrate that he is qualified  
 13 to practice the fitting of hearing aids and related devices.

14 (2) An applicant who fails two successive practical  
 15 examinations may apply IS ELIGIBLE for reexamination after A  
 16 PERIOD OF 2 years of AND THE COMPLETION OF additional  
 17 experience--or training OR EDUCATION RECOGNIZED BY THE  
 18 BOARD."

19 **Section 5.** Section 37-16-405, MCA, is amended to read:

20 "37-16-405. Trainee license. (1) An applicant who  
 21 fulfills the requirements of 37-16-402 and who has not  
 22 previously applied to take the practical examination under  
 23 37-16-403 may apply to the board for a trainee license.

24 (2) On receiving an application under subsection (1) of  
 25 ~~this-section,~~ accompanied by a fee fixed by the board and

1 commensurate with the cost of administering the license and  
 2 related functions of the board and verification that the  
 3 applicant has passed the written portion of the examination  
 4 with a score of at least 70%, the board shall issue a  
 5 trainee license which that entitles the applicant to engage  
 6 in a 12-month training period during which he shall:

7 (a) pass the practical examination administered by the  
 8 board before he may be issued a hearing aid dispenser's  
 9 license;

10 (b) work for ~~a-period-of-60-days--during--which--he at~~  
 11 ~~least--8--hours--a--week--for--40--weeks--under--the--direct~~  
 12 ~~supervision-of-the-sponsoring-licensed-hearing-aid-dispenser~~  
 13 ~~as--provided--for--in--subsections--(7)--and--(8);--During-this~~  
 14 ~~period,-the-trainee~~ THE FIRST 90 DAYS UNDER THE DIRECT  
 15 SUPERVISION OF THE SPONSORING LICENSED HEARING AID DISPENSER  
 16 DURING WHICH TIME HE may do the testing necessary for proper  
 17 selection and fitting of a hearing aid aids and related  
 18 devices and make necessary impressions; ~~but.~~ However, the  
 19 delivery and final fitting of the hearing aid AND RELATED  
 20 DEVICES must be made by THE TRAINEE AND his supervisor; ~~and.~~

21 (c) work for the balance of the training period during  
 22 which he may engage in all activities allowed a licensed  
 23 hearing aid dispenser, ~~but--while~~ under the general  
 24 supervision of a licensed hearing aid dispenser.

25 (3) The training period must consist of a continuous

1 12-month term. Any break in training requires application  
2 for another trainee license under such rules as the board  
3 may prescribe.

4 (4) A trainee license may not be issued unless the  
5 board has on file an unrevoked statement from a qualified  
6 licensed hearing aid dealer dispenser accepting  
7 responsibility for the trainee. Every licensee licensed  
8 hearing aid dispenser supervising a trainee license holder  
9 must submit a quarterly report of the trainee's activities  
10 and training assignments, on forms furnished by the board.  
11 The supervisor is responsible for all hearing aid fittings  
12 of the trainee. A supervisor may terminate his  
13 responsibilities to the trainee by mailing by certified mail  
14 written notice to the board and the trainee.

15 (5) (a) If a person who holds a trainee license takes  
16 and fails to pass the practical examination given within his  
17 training period, the board may authorize the department to  
18 renew the trainee license for a period ending 30 days after  
19 the next examination. In no event may more than two renewals  
20 be permitted.

21 (b) The fee for renewal shall be set by the board  
22 commensurate with the cost of administering the license and  
23 related functions of the board.

24 (6) A person licensed as an audiologist under the  
25 provisions of Title 37, chapter 15, is exempt from the

1 12-month training period but is required to pass the  
2 examinations prescribed in this chapter.

3 (7) A licensed hearing aid dispenser who sponsors a  
4 trainee is directly responsible and accountable under the  
5 disciplinary authority of the board for the conduct of the  
6 trainee as if the conduct were the licensee's own.

7 (8) For the purposes of this section:

8 (a) "direct supervision" means the direct and regular  
9 observation and instruction of a trainee by a licensed  
10 hearing aid dispenser who is available in the same place of  
11 business for prompt consultation and treatment; and

12 (b) "general supervision" means oversight by a licensed  
13 hearing aid dispenser of those tasks and procedures that do  
14 not require the physical presence of the licensed dispenser  
15 on the business premises. However, the trainee remains under  
16 the licensed hearing aid dispenser's direction, control,  
17 responsibility, and evaluation."

18 **Section 6.** Section 37-16-407, MCA, is amended to read:

19 "**37-16-407. Renewal of license -- fee -- inactive**  
20 **status.** (1) A person who practices the fitting of hearing  
21 aids and related devices shall annually pay to the  
22 department a fee as set by the board for a renewal of his  
23 license. The fee shall must be fixed by the board to be  
24 commensurate with board costs in administering licensure and  
25 related board functions. The fee shall must be increased 10%



1 for each month or major portion thereof that the payment of  
 2 the renewal fee is delayed after the expiration date. The  
 3 maximum fee for a delayed renewal ~~shall~~ may not exceed twice  
 4 the normal renewal fee as set by the board. A person  
 5 applying for renewal whose license was suspended for failure  
 6 to renew is required to submit to the examinations described  
 7 in 37-16-403 as a condition of renewal for a 3-year period  
 8 after suspension.

9 (2) Each applicant for license renewal ~~must~~ shall  
 10 submit evidence showing completion of 4 hours of continuing  
 11 education completed during the preceding 12 months. The  
 12 requirements of the continuing education programs are to be  
 13 determined by the board by rule.

14 (3) (a) The board may set standards and fees for  
 15 issuing licenses that designate inactive status.

16 (b) An inactive licensee may be reinstated to active  
 17 practice if he:

18 (i) applies for reinstatement;

19 (ii) pays a fee set by the board; and

20 (iii) produces proof satisfactory to the board of  
 21 completion of the continuing education requirements  
 22 established by the board."

23 **Section 7.** Section 37-16-408, MCA, is amended to read:

24 "**37-16-408. Deposit of fees, and fines, and costs.**  
 25 Fees, and fines, and costs collected under this chapter,

1 except those collected by a justice's court, ~~shall~~ must be  
 2 deposited in the state special revenue fund for the use of  
 3 the board, subject to appropriations and 37-1-101(6)."

4 **Section 8.** Section 37-16-411, MCA, is amended to read:

5 "**37-16-411. Revocation or suspension of license --**  
 6 **fin.** A person registered licensed under this chapter may  
 7 have his license revoked or suspended for a fixed period to  
 8 be determined by the board or be fined not to exceed \$500  
 9 per incident for any of the following causes:

10 (1) being convicted of a felony, subject to chapter 1,  
 11 part 2, of this title. The record of the conviction or a  
 12 certified copy from the clerk of the court where the  
 13 conviction occurred or certification by the judge of the  
 14 court is conclusive evidence of the conviction, except that  
 15 if the person has been pardoned by a governor or the  
 16 president of the United States, the conviction does not  
 17 constitute grounds for revocation or suspension.

18 (2) securing a license under this chapter through fraud  
 19 or deceit or false statements;

20 (3) the personal use of a false name or alias in the  
 21 practice of his profession;

22 (4) violating any of the provisions of this chapter;

23 (5) obtaining any fee or making any sale by fraud or  
 24 misrepresentation;

25 (6) knowingly employing, directly or indirectly, any

1 suspended or unlicensed person to perform any work covered  
2 by this chapter:

3 (7) using or causing or promoting the use of any  
4 advertising matter, promotional literature, testimonial,  
5 guarantee, warranty, label, brand, insignia, or any other  
6 representation, however disseminated or published, which is  
7 improbable, misleading, deceptive, or untruthful;

8 (8) representing that the services or advice of a  
9 person licensed to practice medicine or possessing  
10 certification as an audiologist will be used or made  
11 available in the selection, fitting, adjustment,  
12 maintenance, or repair of hearing aids when and related  
13 devices if that is not true or using the terms "doctor",  
14 "clinic", "hearing clinic", "state registered", or other  
15 like words, abbreviations, or symbols which tend to connote  
16 the medical profession when that use is not accurate;

17 (9) permitting another to use his license or  
18 certificate;

19 (10) defaming competitors by falsely imputing to them  
20 dishonorable conduct, inability to perform contracts,  
21 questionable credit standing, or by other false  
22 representations or falsely disparaging the products of  
23 competitors in any respect or their business methods,  
24 selling prices, values, credit terms, policies, or services;

25 (11) using any method of advertising prohibited by trade

1 practice rules 1 through 17 of the federal trade commission;

2 (12) obtaining information concerning the business of a  
3 competitor by bribery of an employee or agent of such  
4 competitor, by false or misleading statements or  
5 representations, by the impersonation of one in authority,  
6 or by any other unlawful means;

7 (13) directly or indirectly giving or offering to give  
8 or permitting or causing to be given money or anything of  
9 value to any person who advises another in a professional  
10 capacity as an inducement to influence others to purchase or  
11 contract to purchase products sold or offered for sale by a  
12 hearing aid dispenser or influencing persons to refrain from  
13 dealing in the products of competitors;

14 (14) unethical conduct or gross incompetence or  
15 negligence in the performance of his duties, including  
16 repeated failure to make indicated medical referrals of his  
17 customers;

18 (15) selling a hearing aid or related device to a person  
19 who has not been given tests utilizing appropriate  
20 established procedures and instrumentation in fitting of  
21 hearing aids or related devices, ~~except in cases of--selling~~  
22 ~~replacement--hearing--aids:~~ for the sale of a replacement  
23 hearing aid or a related device of the same make and model  
24 within 1 year of the original sale;

25 (16) falsifying hearing test or evaluation results or

1 any associated client records;  
 2 (17) refusing to cooperate with an investigation by the  
 3 board by:  
 4 (a) failing to furnish requested records or documents;  
 5 (b) failing to furnish a complete explanation of  
 6 matters referred to in the complaint;  
 7 (c) failing to respond to a subpoena issued by the  
 8 board;  
 9 (d) willfully misrepresenting any relevant fact to a  
 10 board investigator; or  
 11 (e) attempting to discourage a potential witness from  
 12 cooperating with a board investigator or from testifying by  
 13 using threats, harassment, extortion, or bribery."

14 **NEW SECTION. Section 9. Restitution.** In addition to  
 15 being disciplined for any of the activities described in  
 16 37-16-411, a person licensed under this chapter may be  
 17 ordered to make restitution to a purchaser of the purchase  
 18 price of a hearing aid or related device minus the  
 19 dispensing fee. For the purposes of this section, the  
 20 dispensing fee may not exceed ~~\$200~~ 20% OF THE TOTAL COST OF  
 21 THE HEARING AID OR RELATED DEVICE.

22 **NEW SECTION. Section 10. Right to cancel -- return of**  
 23 **hearing aid or related device -- notice -- refund.** (1) A  
 24 purchaser of a hearing aid or related device may cancel the  
 25 sale within 30 days of the date of delivery of the hearing

1 aid or related device if:

2 (a) the hearing aid or related device is defective in  
 3 fit or function; or  
 4 (b) a licensed hearing aid dispenser has failed to  
 5 correct a problem in fit or function.

6 (2) (a) If a purchaser cancels the sale of a hearing  
 7 aid or related device for a reason provided in (1), he must  
 8 provide written notice to the seller indicating his  
 9 intention not to be bound by the sale contract. The  
 10 purchaser must also return the hearing aid or related device  
 11 in substantially the same condition as it was received by  
 12 the purchaser.

13 (b) For the purpose of determining whether cancellation  
 14 has occurred within 30 days of the date of delivery, written  
 15 notice:

16 (i) given by mail is considered given on the date  
 17 mailed; and

18 (ii) delivered in person is given when delivered to the  
 19 hearing aid dispenser's permanent place of business.

20 (3) A licensed hearing aid dispenser shall refund to  
 21 the purchaser the amount paid for the hearing aid or related  
 22 device minus the dispensing fee within 30 days of receipt of  
 23 written notice of cancellation. For the purposes of this  
 24 section, the dispensing fee may not exceed ~~\$200~~ 20% OF THE  
 25 TOTAL COST OF THE HEARING AID OR RELATED DEVICE.

1 (4) All sales receipts for refunds issued by the seller  
2 of a hearing aid or related device must contain a statement  
3 of the reason for the cancellation.

4 NEW SECTION. SECTION 11. RULEMAKING AUTHORITY. THE  
5 BOARD SHALL ADOPT RULES CONSISTENT WITH THE PROVISIONS OF  
6 [SECTIONS 1 THROUGH 10]. RULES ADOPTED BY THE DEPARTMENT MAY  
7 INCLUDE, BUT ARE NOT LIMITED TO, RULES DEFINING THE TERM  
8 "RELATED DEVICES" AND OTHER RULES NECESSARY TO IMPLEMENT  
9 [SECTIONS 1 THROUGH 10].

10 NEW SECTION. Section 12. Severability. If a part of  
11 [this act] is invalid, all valid parts that are severable  
12 from the invalid part remain in effect. If a part of [this  
13 act] is invalid in one or more of its applications, the part  
14 remains in effect in all valid applications that are  
15 severable from the invalid applications.

16 NEW SECTION. Section 13. Codification instruction.  
17 [Sections 9 and ~~10~~ THROUGH 11] are intended to be codified  
18 as an integral part of Title 37, chapter 16, and the  
19 provisions of Title 37, chapter 16, apply to [sections 9 and  
20 ~~10~~ THROUGH 11].

-End-