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*House* BILL NO. *674*  
INTRODUCED BY *Frates Palmer Anderson Vincent*  
*Hammond Keller*

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A TWO-MEMBER QUORUM OF THE BOARD OF HEARING AID DISPENSERS; FOR DESIGNATION OF A VICE-CHAIRMAN; REQUIREMENTS FOR ALL HEARING AID DISPENSER SALES; FOR REFUNDS IN CASE OF UNSATISFACTORY PERFORMANCE OF HEARING AIDS; FOR ADDITIONAL WRITTEN INFORMATION ON BILL OF SALE; FOR IMMEDIATE SUSPENSION OF LICENSE UNDER CERTAIN CONDITIONS; FOR RENTAL AGREEMENTS, EXAMINATION AND TESTING CHARGES BY HEARING AID DISPENSER, DELAY IN ISSUANCE OF FULL LICENSURE TO A TEMPORARY LICENSE HOLDER; FOR ADDITIONAL CAUSES FOR REVOCATION OR SUSPENSION OF LICENSE; THAT THE ATTORNEY GENERAL SHALL REPRESENT THE BOARD; THAT THE BOARD MAY REQUIRE A BOND OR IN LIEU THEREOF AN ANNUAL FEE FOR DEPOSIT IN THE CITIZENS' GRIEVANCE FUND; AND THAT THE HARD-OF-HEARING MAY USE ANOTHER INFORMED PARTY TO REPRESENT THEM; AMENDING SECTIONS 66-3006, 66-3008, 66-3014, AND 66-3017, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
Section 1. Section 66-3006, R.C.M. 1947, is amended to read as follows:  
"66-3006. Meeting place and time -- quorum. (1) The

board shall meet at least once each year at a place and time determined by the chairman or any two members and at other times and places specified by the chairman or any two members to carry out this act. ~~Three (3) Any two members, including either the otolaryngologist or the audiologist,~~ constitute a quorum.

(2) Members of the board shall annually designate one ~~two~~ member to serve as chairman and another member to serve as ~~secretary-treasurer vice-chairman.~~

Section 2. Section 66-3008, R.C.M. 1947, is amended to read as follows:

"66-3008. Bill of sale must be given -- contents -- examination by otolaryngologist -- examination by dispenser not medical opinion -- requirements of sale-service agreement -- immediate suspension for cause -- limited territory. (1) Any person who practices the fitting or dispensing of hearing aids shall deliver to each person supplied with a hearing aid, by him or at his order or direction, a bill of sale which shall contain the seller's signature, and show the name and address of his regular place of business and the number of his license together with a description of the make and type of the hearing aid furnished and the amount charged, with terms of guarantee, if any. The bill of sale shall also reveal the condition of the hearing device and whether it is new, used, or

*HB 674*

1 reconditioned.

2 (2) Any person practicing the fitting and sale of  
3 hearing aids shall, when dealing with a person eighteen (18)  
4 years of age and under or when the aid is to be purchased  
5 with state funds ascertain if the person has been examined  
6 by an otolaryngologist within ninety (90) days prior to the  
7 fitting and shall obtain his recommendations. If such not be  
8 the case, a recommendation to do so must be made to the  
9 purchaser and this fact be noted on the receipt.

10 (3) Such receipt must bear, in no smaller type than  
11 the largest used in the body portion, the following: Any  
12 examination(s) or representation(s) made by a licensed  
13 hearing aid dealer and fitter in connection with the fitting  
14 and selling of this hearing aid(s) is not an examination,  
15 diagnosis, or prescription by a person licensed to practice  
16 medicine in this state and therefore, must not be regarded  
17 as medical opinion or advice.

18 (4) The sale, fittings, or dispensing of all hearing  
19 aids in the state of Montana shall meet one of the following  
20 requirements:

21 (a) It is based on the written prescription, order, or  
22 recommendation of a licensed Montana medical doctor or a  
23 licensed Montana audiologist that a hearing aid will benefit  
24 or assist the hearing of the individual examined and for  
25 whom the hearing aid is prescribed. The validity of the

1 prescription, order, or recommendation is limited to 90 days  
2 from the date written to the date of delivery to the  
3 purchaser of the hearing aid.

4 (b) It is based on the written bill of sale, order,  
5 contract, or agreement providing that the purchaser has a  
6 30-day trial period after delivery of the hearing aid to  
7 become acquainted with the equipment, necessary  
8 rehabilitation, and adjustments to the hearing aid by the  
9 user and the dispenser. If mutual satisfaction is not  
10 reached in the 30-day trial period, the purchaser is  
11 entitled to refund of 90% of the purchase price if that much  
12 of the purchase price has been paid at that time. The  
13 purchaser may waive this right in writing if the parties  
14 agree to extend the trial period to 60 days from date of  
15 delivery. If mutual satisfaction is not achieved at the end  
16 of such 60-day period, the purchaser is entitled to refund  
17 of 80% of the purchase price if that much of the purchase  
18 price has been paid at that time. The purchaser must return  
19 the hearing aid within 10 days of the expiration of the  
20 30-day or 60-day trial period, whichever is applicable, in  
21 substantially good condition in person or by certified,  
22 registered, or insured mail in order to be eligible for the  
23 applicable refund.

24 (5) A licensed hearing aid dispenser may not accept  
25 over 10% of the total purchase price of the hearing aid at

1 the time of the sale or order unless the hearing aid is  
 2 actually delivered to the purchaser at the time of the sale  
 3 or order. In case the purchaser decides not to accept the  
 4 hearing aid at the time of the delivery, the 10% paid is  
 5 nonrefundable. No new hearing aid may be sold for an amount  
 6 which exceeds 110% of the factory recommended price.

7 (6) The licensee shall provide in written form to the  
 8 purchaser any agreement, promises, or commitments made  
 9 concerning hearing aid performance, service, or maintenance  
 10 and any other details that were discussed and agreed upon at  
 11 the time of the sale. Copies of this agreement shall be  
 12 retained by the licensee and the purchaser for use by the  
 13 board in case of later disputes.

14 (7) The sale of a hearing aid must meet the  
 15 requirements of either subsection (4)(a) or subsection  
 16 (4)(b), and replacement aids must meet the requirements of  
 17 subsection (4)(b) whether it is new, used, or a  
 18 reconditioned aid. Failure to comply with the requirements  
 19 of this section is cause for immediate suspension of the  
 20 license by the board which suspension may take place before  
 21 formal hearing. During the period of suspension, a  
 22 dispenser may not sell, but he may deliver aids previously  
 23 ordered or sold and provide maintenance service. At the  
 24 time of suspension, the licensee shall be notified by the  
 25 department of the action by certified mail and the reason

1 for the suspension must be stated. The licensee must make  
 2 full refund to the purchaser of all funds paid in any case  
 3 which was a cause of the suspension if requested by the  
 4 purchaser. Failure to do so within 15 days of such request  
 5 is cause for judgment by any district court and cause for  
 6 automatic revocation of the license by the board.

7 (8) A licensee may not sell hearing aids over a wider  
 8 territory than will permit him to give adequate assistance  
 9 to the purchaser during the 30-day period after delivery of  
 10 the hearing aid or provide the agreed-upon maintenance or  
 11 service work discussed at the time of the sale.

12 (9) The board shall make periodic surveys and make  
 13 immediate investigation on valid complaints which indicate  
 14 violation of laws or rules. The board or department may  
 15 require any and all necessary documents from a licensee in  
 16 the process of investigating a complaint.

17 (10) A licensee may charge for an examination and  
 18 testing of an individual's hearing providing he furnishes a  
 19 copy of the results to the individual.

20 (11) Rental agreements may be made by a licensee with a  
 21 user of hearing aid equipment. The terms of the agreement  
 22 must be in writing and available for inspection by the  
 23 department and the board."

24 Section 3. Section 66-3014, R.C.M. 1947, is amended to  
 25 read as follows:

"66-3014. Temporary license -- qualifications -- fee.

(1) An applicant who fulfills the requirements of section 66-3010 and who has not previously applied to take the examination under section 66-3011 may apply to the department for a temporary license.

(2) On receiving an application under subsection (1) of this section, accompanied by a fee of twenty-five dollars (\$25), the department shall issue a temporary license which entitles the applicant to practice the fitting and dispensing of hearing aids for a period ending thirty (30) days after the conclusion of the next examination given after the date of issue.

(3) No temporary license may be issued by the department unless the applicant shows to the satisfaction of the board that he is, or will be, supervised and trained by a person who holds a valid license issued under this act.

(4) If a person who holds a temporary license does not take the next examination given after the date of issue, the temporary license may not be renewed, except for a good cause shown to the satisfaction of the board.

(5) If a person who holds a temporary license takes and fails to pass the next examination given after the date of issue, the board may authorize the department to renew the temporary license for a period ending thirty (30) days after the results of the next examination given after the

dates of renewal are announced. In no event may more than two (2) renewals be permitted. The fee for renewal is thirty dollars (\$30).

(6) The board shall use reasonable judgment in the issuance and removal of a temporary license. It may delay for up to 1 year the issuance of a full license to an applicant who has met the requirements if in its judgment additional training time is required. Complaints against an individual with a temporary license is a cause, among others, for delay of full licensure."

Section 4. Section 66-3017, R.C.M. 1947, is amended to read as follows:

"66-3017. Revocation or suspension for cause. Any person registered under this act may have his license revoked or suspended for a fixed period to be determined by the board for any of the following causes:

(1) Being convicted of a felony. The record of the conviction or a certified copy from the clerk of the court where the conviction occurred or by the judge of the court, shall be sufficient evidence to warrant revocation or suspension, provided that the person has not been pardoned by a governor or the president of the United States.

(2) By securing a license under this act through fraud or deceit or false statements.

(3) For the personal use of a false name or alias in

1 the practice of his profession, with fraudulent intent.

2 (4) For violating any of the provisions of this act.

3 (5) For obtaining any fee or making any sale by fraud  
4 or misrepresentation, including fraud or misrepresentation  
5 relating to delivery dates, factory recommended price,  
6 repair or service agreements, or understandings with the  
7 purchaser.

8 (6) Knowingly employing directly or indirectly any  
9 suspended or unlicensed person to perform any work covered  
10 by this act.

11 (7) Using or causing or promoting the use of any  
12 advertising matter, promotional literature, testimonial,  
13 guarantee, warranty, label, brand, insignia or any other  
14 representation however disseminated or published, which is  
15 improbable, misleading, deceptive, or untruthful.

16 (8) Representing that the services or advice, of a  
17 person licensed to practice medicine, or possessing  
18 certification as an audiologist, will be used or made  
19 available in the selection, fitting, adjustment, maintenance  
20 or repair of hearing aids when that is not true, or using  
21 the terms "doctor," "clinic," "state registered," or other  
22 like words, abbreviations or symbols which tend to connote  
23 the medical profession when that use is not accurate. The  
24 term "hearing center" shall be discontinued in accordance  
25 with the code of ethics of the National Hearing Aid Society.

1 (9) Permitting another to use his license or  
2 certificate.

3 (10) To defame competitors by falsely imputing to them  
4 dishonorable conduct, inability to perform contracts,  
5 questionable credit standing, or by other false  
6 representations, or falsely to disparage the products of  
7 competitors in any respect, or their business methods,  
8 selling prices, values, credit terms, policies or services.

9 (11) To obtain information concerning the business of a  
10 competitor by bribery of an employee or agent of such  
11 competitor, by false or misleading statements or  
12 representations, by the impersonation of one in authority,  
13 or by any other ~~lawful~~ unlawful means.

14 (12) To directly or indirectly give, or offer to give,  
15 or permit or cause to be given money or anything of value to  
16 any person who advises another in a professional capacity as  
17 an inducement to influence others to purchase or contract to  
18 purchase products sold or offered for sale by a hearing aid  
19 dispenser, or to influence persons to refrain from dealing  
20 in the products of competitors.

21 (13) Unethical conduct or gross incompetence or  
22 negligence in the performance of his duties, including  
23 repeated failure to make indicated medical referrals of his  
24 customers.

25 (14) Selling a hearing aid to a person who has not been

1 given tests utilizing appropriate established procedures and  
 2 instrumentation in fitting of hearing aids, ~~except in cases~~  
 3 ~~of setting replacement hearing aids.~~

4 ~~(15) Selling a hearing aid without a prescription,~~  
 5 ~~order, or recommendation from a medical doctor or~~  
 6 ~~audiologist when, if in fact a hearing examination had been~~  
 7 ~~made by a medical doctor or audiologist, the reasonable~~  
 8 ~~decision would have been that a hearing aid would not be~~  
 9 ~~beneficial in improving the individual's hearing.~~

10 ~~(16) Any deceptive business practice covered by~~  
 11 ~~94-6-307 and 94-6-308.~~

12 ~~(17) Selling a used or reconditioned aid as a new~~  
 13 ~~hearing aid, if it is not clearly understood, verbally~~  
 14 ~~and in writing, by all parties that it is a used or~~  
 15 ~~reconditioned aid."~~

16 Section 5. There is a new R.C.M. section that reads as  
 17 follows:

18 Attorney general as attorney for board -- ex officio  
 19 member. The attorney general shall act as attorney for the  
 20 board. He or his representative may sit as an ex officio  
 21 member of the board in an advisory capacity only.

22 Section 6. There is a new R.C.M. section that reads as  
 23 follows:

24 Surety bond -- citizens' grievance fund. (1) As a  
 25 condition of licensure or renewal of an existing license,

1 the board may require a surety bond in the amount of \$2,000  
 2 taken in the name of the people of this state. A person  
 3 injured by a willful, malicious, or wrongful act of a  
 4 licensee may bring an action on the bond in his own name to  
 5 recover damages suffered by reason of such willful,  
 6 malicious, or wrongful act.

7 (2) In lieu of the surety bond, the board may require  
 8 as a condition of licensure or renewal of an existing  
 9 license that a fee, not to exceed \$40 a year, be paid to the  
 10 department for deposit to the board account in the earmarked  
 11 revenue fund to create a citizens' grievance fund for use in  
 12 paying any just claim, as determined by the board, to any  
 13 citizen who has not been reimbursed on such claim resulting  
 14 from doing business with a licensee of the board. The board  
 15 is the sole judge of disbursement from this fund, and the  
 16 aggrieved party must make an effort to resolve the problem  
 17 with the licensee. Claims may be settled by the board on a  
 18 pro rata basis, depending on the amount in the fund. The  
 19 department shall maintain separate records on the income and  
 20 expenses of the citizens' grievance fund. The fund may be  
 21 used for investigation expenses or hearing costs.

22 (3) The board may adopt necessary rules to implement  
 23 the citizens' grievance fund provisions of this section.

24 Section 7. There is a new R.C.M. section that reads as  
 25 follows:

1           Purchaser may authorize representative to speak in his  
2    behalf. Because of the hearing problems that a purchaser may  
3    have, a hearing aid purchaser may use an authorized  
4    representative to speak in his behalf or represent him in a  
5    hearing or in communication with the board or the  
6    department, whenever his particular hearing problem  
7    necessitates. Such representation is valid to the extent  
8    that it is within the scope of authority granted to the  
9    representative.

-End-

STATE OF MONTANA

REQUEST NO. 383-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 7, 19 77, there is hereby submitted a Fiscal Note for House Bill 674 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act regulating the Board of Hearing Aid Dispensers.

FISCAL IMPACT:

None - House Bill 674 is designed to provide more self-regulation by the licensees in their relationship with the public.

*Richard L. Dwyer for*

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-11-77