

HOUSE BILL 393

IN THE HOUSE

January 24, 1979

Introduced and referred to  
Committee on Business and  
Industry.

January 25, 1979

Rereferred to Committee on  
Human Services.

1 House BILL NO. 393  
 2 INTRODUCED BY Frates Ramsey

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 5 LAWS RELATING TO THE REGULATION OF HEARING AID DISPENSERS;  
 6 AMENDING SECTIONS 37-16-201, 37-16-202, 37-16-405,  
 7 37-16-411, AND 37-16-412, MCA."

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

10 Section 1. Section 37-16-201, MCA, is amended to read:  
 11 "37-16-201. Meetings -- quorum -- organization. (1)  
 12 The board shall meet at least once each year at a place and  
 13 time determined by the chairman or any two members and at  
 14 other times and places specified by the chairman or any two  
 15 members to carry out this chapter. ~~Three~~ ANY TWO members  
 16 ~~including either the otolaryngologist or the audiologist~~  
 17 constitute a quorum.

18 (2) Members of the board shall annually designate one  
 19 member to serve as chairman and another member to serve as  
 20 secretary-treasurer vice-chairman."

21 Section 2. Section 37-16-202, MCA, is amended to read:  
 22 "37-16-202. Powers and duties. The powers and duties  
 23 of the board are to:

24 (1) license persons who apply and are qualified to  
 25 practice the fitting of hearing aids;

1 (2) establish a procedure to act as a grievance board  
 2 to receive, investigate, and mediate complaints from any  
 3 source concerning the activities of persons licensed under  
 4 this chapter or their agents, whether licensed or not, and a  
 5 procedure to carry out periodic surveys for compliance with  
 6 this chapter;

7 (3) require the production of all documents from a  
 8 licensee necessary for the conduct of an investigation;

9 ~~(4)~~ (4) suspend or revoke licenses under this chapter;

10 ~~(4)~~ (5) designate the time and place for examining  
 11 applicants for license;

12 ~~(5)~~ (6) adopt rules necessary to carry out this  
 13 chapter;

14 ~~(6)~~ (7) require the periodic inspection and calibration  
 15 of audiometric testing equipment and carry out periodic  
 16 inspections of facilities of persons who practice the  
 17 fitting or selling of hearing aids;

18 ~~(7)~~ (8) prepare examinations required by the chapter;

19 ~~(8)~~ (9) initiate legal action to enjoin from operation  
 20 a person or corporation engaged in the sale and fitting of  
 21 hearing aids in this state who is not licensed under this  
 22 chapter."

23 NEW SECTION. Section 3. Role of attorney general. The  
 24 attorney general shall act as attorney for the board. He or  
 25 his representative may sit as an ex officio member of the

1 board in an advisory capacity only.

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

10 NEW SECTION. Section 5. Requirements for sale,  
11 fitting, or dispensing of hearing aids. (1) The sale,  
12 fitting, or dispensing of all hearing aids in the state must  
13 meet one of the following requirements:

14 (a) It is based on a written prescription, order, or  
15 recommendation of a licensed Montana medical doctor or a  
16 licensed Montana audiologist that a hearing aid will benefit  
17 or assist the hearing of the individual examined and for  
18 whom the hearing aid is prescribed. The validity of the  
19 prescription, order, or recommendation is limited to 90 days  
20 from the date written to the date of delivery to the  
21 purchaser of the hearing aid.

22 (b) It is based on a written bill of sale, order,  
23 contract, or agreement providing that the purchaser has a  
24 30-day trial period after delivery of the hearing aid to  
25 become acquainted with the equipment, with necessary

1 rehabilitation and adjustments to the hearing aid by the  
2 user and the dispenser. If mutual satisfaction is not  
3 reached in the 30-day trial period, the purchaser is  
4 entitled to a refund of 90% of the purchase price if that  
5 much of the purchase price has been paid at that time. The  
6 purchaser may waive this right in writing if the parties  
7 agree to extend the trial period to 60 days from the date of  
8 delivery. If mutual satisfaction is not achieved at the end  
9 of the 60-day period, the purchaser is entitled to a refund  
10 of 80% of the purchase price if that much of the purchase  
11 price has been paid at that time. The purchaser must return  
12 the hearing aid within 10 days of the expiration of the  
13 30-day or 60-day trial period, whichever is applicable, in  
14 substantially good condition in person or by certified,  
15 registered, or insured mail in order to be eligible for the  
16 applicable refund.

17 (2) The sale of a replacement hearing aid must meet  
18 the requirements of subsection (1)(b) whether it is a new,  
19 used, or reconditioned aid.

20 (3) The licensee shall provide in written form to the  
21 purchaser any agreement, promises, or commitments made  
22 concerning hearing aid performance, service, or maintenance  
23 and any other details that were discussed and agreed upon at  
24 the time of the sale. Copies of this agreement shall be  
25 retained by the licensee and the purchaser for use by the

1 board in case of later disputes.

2 NEW SECTION. Section 6. Limitation on down payments  
3 and purchase price. A licensed hearing aid dispenser may not  
4 accept over 10% of the total purchase price of the hearing  
5 aid at the time of the sale or order unless the hearing aid  
6 is actually delivered to the purchaser at the time of the  
7 sale or order. In case the purchaser decides not to accept  
8 the hearing aid at the time of the delivery, the 10% paid is  
9 nonrefundable. No new hearing aid may be sold for an amount  
10 which exceeds 110% of the factory recommended price.

11 NEW SECTION. Section 7. Limitation on sales  
12 territory. A licensee may not sell hearing aids over a wider  
13 territory than will permit him to give adequate assistance  
14 to the purchaser during the 30-day period after delivery of  
15 the hearing aid or provide the agreed-upon maintenance or  
16 service work discussed at the time of the sale.

17 NEW SECTION. Section 8. Rental agreements. Rental  
18 agreements may be made by a licensee with a user of hearing  
19 aid equipment. The terms of the agreement must be in writing  
20 and available for inspection by the department and the  
21 board.

22 NEW SECTION. Section 9. Charges for examination and  
23 testing. A licensee may charge for an examination and  
24 testing of an individual's hearing provided he furnishes a  
25 copy of the results to the individual.

1 Section 10. Section 37-16-405, MCA, is amended to  
2 read:

3 \*37-16-405. Temporary license. (1) An applicant who  
4 fulfills the requirements of 37-16-402 and who has not  
5 previously applied to take the examination under 37-16-403  
6 may apply to the department for a temporary license.

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

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

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

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

1 renewal are announced. In no event may more than two  
2 renewals be permitted. The fee for renewal is \$30.

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

10 NEW SECTION. Section 11. Surety bond -- citizens'  
11 grievance fund. (1) As a condition of licensure or renewal  
12 of an existing license, the board may require a surety bond  
13 in the amount of \$2,000 taken in the name of the people of  
14 Montana. A person injured by a willful, malicious, or  
15 wrongful act of a licensee may bring an action on the bond  
16 in his own name to recover damages suffered by reason of the  
17 willful, malicious, or wrongful act.

18 (2) In lieu of the surety bond, the board may require  
19 as a condition of licensure or renewal of an existing  
20 license that a fee, not to exceed \$40 a year, be paid to the  
21 department for deposit to the board account in the earmarked  
22 revenue fund to create a citizens' grievance fund for use in  
23 paying any just claim resulting from doing business with a  
24 licensee of the board, as determined by the board, to any  
25 citizen who has not been reimbursed on such claim. The board

1 is the sole judge of disbursement from this fund, and the  
2 aggrieved party must make an effort to resolve the problem  
3 with the licensee. Claims may be settled by the board on a  
4 pro rata basis, depending on the amount in the fund. The  
5 department shall maintain separate records on the income and  
6 expenses of the citizens' grievance fund. The fund may be  
7 used for investigation expenses or hearing costs.

8 Section 12. Section 37-16-411, MCA, is amended to  
9 read:

10 "37-16-411. Revocation or suspension of license. A  
11 person registered under this chapter may have his license  
12 revoked or suspended for a fixed period to be determined by  
13 the board for any of the following causes:

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

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

24 (3) the personal use of a false name or alias in the  
25 practice of his profession, with fraudulent intent;

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

2 (5) obtaining any fee or making any sale by fraud or  
3 ~~misrepresentation, including fraud or misrepresentation~~  
4 ~~relating to delivery dates, factory recommended prices,~~  
5 ~~repair or service agreements, or understandings with the~~  
6 ~~purchaser;~~

7 (6) knowingly employing, directly or indirectly, any  
8 suspended or unlicensed person to perform any work covered  
9 by this chapter;

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

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

1 (9) permitting another to use his license or  
2 certificate;

3 (10) defaming 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 disparaging the products of  
7 competitors in any respect or their business methods,  
8 selling prices, values, credit terms, policies, or services;

9 (11) obtaining 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 unlawful means;

14 (12) directly or indirectly giving or offering to give  
15 or permitting or causing to be given money or anything of  
16 value to any person who advises another in a professional  
17 capacity as an inducement to influence others to purchase or  
18 contract to purchase products sold or offered for sale by a  
19 hearing aid dispenser or influencing persons to refrain from  
20 dealing 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 ~~45-6-317 or 45-6-318;~~

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

16 Section 13. Section 37-16-412, MCA, is amended to  
 17 read:

18 ~~"37-16-412. Revocation, suspension, or Procedure for~~  
 19 ~~revocation, denial, or suspension -- notice-and-hearing~~  
 20 ~~consequences. (1) No license issued under this chapter may~~  
 21 ~~be suspended, revoked, or denied, or and no renewal may be~~  
 22 ~~denied without notice and opportunity for a hearing.~~

23 ~~(2) (a) A license may be temporarily suspended for a~~  
 24 ~~period not to exceed 2 weeks without a hearing if the board~~  
 25 ~~determines such suspension is needed to protect the public~~

1 ~~welfare. The board shall notify the licensee of the~~  
 2 ~~temporary suspension by certified mail and shall state the~~  
 3 ~~reason for the suspension. The suspension is not effective~~  
 4 ~~until received by the licensee or an employee at the~~  
 5 ~~licensee's place of business. A suspension for a period~~  
 6 ~~longer than 2 weeks may not be made without notice and an~~  
 7 ~~opportunity for a hearing. The board may not circumvent the~~  
 8 ~~notice and hearing requirements by imposing multiple 2-week~~  
 9 ~~suspensions.~~

10 ~~(b) During a period of suspension of license, a~~  
 11 ~~dispenser may not make any new sales but he may deliver~~  
 12 ~~hearing aids previously ordered or sold and provide~~  
 13 ~~maintenance services."~~

14 Section 14. Codification. (1) It is intended that  
 15 sections 3 and 4 be codified as an integral part of Title  
 16 37, chapter 16, part 2, and the provisions of Title 37,  
 17 chapter 16, apply to sections 3 and 4.

18 (2) It is intended that sections 5 through 9 b  
 19 codified as an integral part of Title 37, chapter 16, part  
 20 3, and the provisions of Title 37, chapter 16, apply to  
 21 sections 5 through 9.

22 (3) It is intended that section 11 be codified as an  
 23 integral part of Title 37, chapter 16, part 4, and the  
 24 provisions of Title 37, chapter 16, apply to section 11.

25 Section 15. Severability. If a part of this act is

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

-End-