

Senate Bill 453

In The Senate

February 12, 1981

Introduced and referred  
to Committee on Public  
Health, Welfare and Safety.

February 21, 1981

Committee recommend bill  
do not pass.

1 *Senate* BILL NO. *453*  
 2 INTRODUCED BY *Steve Brown*  
 3 BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE  
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A BOARD OF  
 6 SPEECH PATHOLOGISTS, AUDIOLOGISTS, AND HEARING AID  
 7 TECHNOLOGISTS TO REPLACE THE EXISTING BOARDS OF HEARING AID  
 8 DISPENSERS AND SPEECH PATHOLOGISTS AND AUDIOLOGISTS, WHICH  
 9 ARE TERMINATED; PROVIDING FOR THE MAKEUP OF THE BOARD;  
 10 CHANGING THE LICENSEE TITLE FROM "HEARING AID DISPENSER" TO  
 11 "HEARING AID TECHNOLOGIST"; REQUIRING LICENSEES USING  
 12 AUDIOMETERS TO ALLOW BOARD INSPECTION OR SHOW PROOF OF  
 13 CERTIFICATION OF CALIBRATION; DELETING FELONY CONVICTION AS  
 14 GROUNDS FOR SUSPENSION OR REVOCATION OF A LICENSE; AMENDING  
 15 SECTIONS 2-8-103, 37-15-102, 37-15-103, 37-15-201,  
 16 37-15-202, 37-15-321, 37-16-102, 37-16-301, 37-16-303, MCA;  
 17 REPEALING SECTIONS 2-15-1615, 2-15-1616, 37-16-201, AND  
 18 37-16-203, MCA; AND PROVIDING EFFECTIVE DATES."

19  
 20 WHEREAS, the sunset laws, sections 2-8-103 and 2-8-112,  
 21 terminate the Board of Speech Pathologists and Audiologists  
 22 and the Board of Hearing Aid Dispensers and require a  
 23 performance evaluation of the boards by the Legislative  
 24 Audit Committee; and

25 WHEREAS, as a result of the performance evaluations,

1 the Legislative Audit Committee recommends that the Board of  
 2 Speech Pathologists and Audiologists and the Board of  
 3 Hearing Aid Dispensers be abolished and that regulation of  
 4 speech pathologists, audiologists, and hearing aid  
 5 dispensers be transferred to a newly created Board of Speech  
 6 Pathologists, Audiologists, and Hearing Aid Technologists.  
 7

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

9 NEW SECTION. Section 1. Board of speech pathologists,  
 10 audiologists, and hearing aid technologists. (1) There is a  
 11 board of speech pathologists, audiologists, and hearing aid  
 12 technologists.

13 (2) The board consists of five members appointed by  
 14 the governor and confirmed by the senate. The members are:

- 15 (a) one licensed speech pathologist;
- 16 (b) one licensed audiologist;
- 17 (c) one licensed hearing aid technologist;
- 18 (d) one licensed otolaryngologist; and
- 19 (e) one public member who is not engaged in the

20 practice of speech pathology, audiology, hearing aid  
 21 technology, or otolaryngology.

22 (3) Members shall serve staggered 3-year terms. A  
 23 vacancy on the board shall be filled by the governor for the  
 24 remainder of the unexpired term by a person with the same  
 25 required qualifications as the vacating board member.

1 (4) The board is allocated to the department for  
2 administrative purposes only as prescribed in 2-15-121.

3 Section 2. Section 2-8-103, MCA, is amended to read:  
4 "2-8-103. Agencies to terminate. (1) The following  
5 agencies shall terminate on July 1, 1979:

6 (a) board of abstracters, department of professional  
7 and occupational licensing, created by 2-15-1643;

8 (b) board of real estate, department of professional  
9 and occupational licensing, created by 2-15-1642;

10 (c) state board of warm air heating, ventilation, and  
11 air conditioning, department of professional and  
12 occupational licensing, created by 2-15-1656;

13 (d) board of institutions, department of institutions,  
14 created by 2-15-2303.

15 (2) The following agencies shall terminate on July 1,  
16 1981:

17 (a) commission for human rights, department of labor  
18 and industry, created by 2-15-1706;

19 (b) board of athletics, department of professional and  
20 occupational licensing, created by 2-15-1661;

21 (c) board of barbers, department of professional and  
22 occupational licensing, created by 2-15-1625;

23 (d) board of chiropractors, department of professional  
24 and occupational licensing, created by 2-15-1613;

25 (e) board of cosmetologists, department of

1 professional and occupational licensing, created by  
2 2-15-1626;

3 (f) board of dentists, department of professional and  
4 occupational licensing, created by 2-15-1606;

5 (g) board of hearing aid dispensers, department of  
6 professional and occupational licensing, created by  
7 2-15-1616;

8 (h) board of massage therapists, department of  
9 professional and occupational licensing, created by  
10 2-15-1627;

11 (i) Montana state board of medical examiners,  
12 department of professional and occupational licensing,  
13 created by 2-15-1605;

14 (j) board of morticians, department of professional  
15 and occupational licensing, created by 2-15-1619;

16 (k) board of nursing, department of professional and  
17 occupational licensing, created by 2-15-1610;

18 (l) board of nursing home administrators, department  
19 of professional and occupational licensing, created by  
20 2-15-1611;

21 (m) board of optometrists, department of professional  
22 and occupational licensing, created by 2-15-1612;

23 (n) board of osteopathic physicians, department of  
24 professional and occupational licensing, created by  
25 2-15-1607;

1 (o) board of pharmacists, department of professional  
2 and occupational licensing, created by 2-15-1609;

3 (p) board of podiatry examiners, department of  
4 professional and occupational licensing, created by  
5 2-15-1608;

6 (q) board of psychologists, department of professional  
7 and occupational licensing, created by 2-15-1617;

8 (r) board of radiologic technologists, department of  
9 professional and occupational licensing, created by  
10 2-15-1614;

11 (s) board of speech pathologists and audiologists,  
12 department of professional and occupational licensing,  
13 created by 2-15-1615;

14 (t) board of veterinarians, department of professional  
15 and occupational licensing, created by 2-15-1618;

16 (u) board of veterans' affairs, department of social  
17 and rehabilitation services, created by 2-15-2202;

18 (v) board of sanitarians, department of professional  
19 and occupational licensing, created by 2-15-1631.

20 (3) The following units of state government shall  
21 terminate on July 1, 1983:

22 (a) board of aeronautics, department of community  
23 affairs, created by 2-15-1103;

24 (b) state board of hail insurance, department of  
25 agriculture, created by 2-15-3003;

1 (c) board of horse racing, department of professional  
2 and occupational licensing, created by 2-15-1662;

3 (d) board of livestock, department of livestock,  
4 created by 2-15-3102;

5 (e) board of milk control, department of business  
6 regulation, created by 2-15-1802;

7 (f) board of oil and gas conservation, department of  
8 natural resources and conservation, created by 2-15-3303;

9 (g) Montana outfitters council, department of fish,  
10 wildlife, and parks, created by 2-15-3403;

11 (h) public service commission, department of public  
12 service regulation, created by 69-1-102;

13 (i) board of water and wastewater operators,  
14 department of health and environmental sciences, created by  
15 2-15-2105;

16 (j) board of water well contractors, department of  
17 professional and occupational licensing, created by  
18 2-15-1632.

19 (4) The following agencies terminate on July 1, 1985:

20 (a) the board of public accountants, created by  
21 2-15-1641;

22 (b) the board of architects, created by 2-15-1651;

23 (c) state banking board, department of business  
24 regulation, created by 2-15-1803;

25 (d) the state electrical board, created by 2-15-1654;

1 (e) the board of professional engineers and land  
2 surveyors, created by 2-15-1653;

3 (f) office of commissioner of insurance and the  
4 insurance department, state auditor's office, created by  
5 2-15-1902 and 2-15-1903;

6 (g) office of the securities commissioner, state  
7 auditor's office, created by 2-15-1901;

8 (h) the board of landscape architects, created by  
9 2-15-1652;

10 (i) the board of county printing, created by  
11 2-15-1102;

12 (j) the board of plumbers, created by 2-15-1655;

13 (k) board of physical therapy examiners, created by  
14 2-15-1628.

15 ~~(l) The following agency terminates on July 1, 1987:~~  
16 ~~board of speech pathologists, audiologists, and hearing aid~~  
17 ~~technologists, department of professional and occupational~~  
18 ~~licensing, created by [section 1].~~

19 Section 3. Section 37-15-102, MCA, is amended to read:  
20 "37-15-102. Definitions. As used in this chapter, the  
21 following definitions apply:

22 (1) "Board" means the board of speech pathologists,  
23 ~~and audiologists, and hearing aid technologists~~ provided for  
24 in ~~2-15-1615~~ [section 1].

25 (2) "Department" means the department of professional

1 and occupational licensing provided for in Title 2, chapter  
2 15, part 16.

3 (3) "Speech pathologist" means one who practices  
4 speech pathology and who presents himself to the public by  
5 any title or description of services incorporating the words  
6 "speech pathologist", "speech correctionist", "speech  
7 therapist", "speech clinician", "language pathologist",  
8 "language therapist", "language clinician", or any similar  
9 title or description of services.

10 (4) "Speech pathology aide" means any person meeting  
11 the minimum requirements established by the board of speech  
12 pathologists and audiologists who works directly under the  
13 supervision of a licensed speech pathologist.

14 (5) "Audiologist" means a person who practices  
15 audiology and who presents himself to the public by any  
16 title or description of services incorporating the words  
17 "audiologist", "hearing clinician", "hearing therapist", or  
18 any similar title or description of services.

19 (6) "Audiology aide" means any person meeting the  
20 minimum requirements established by the board of speech  
21 pathologists and audiologists who works directly under the  
22 supervision of a licensed audiologist.

23 (7) "Practice of speech pathology" means the  
24 application of principles, methods, and procedures for the  
25 measurement, testing, evaluation, prediction, counseling, or

1 instruction related to the development and disorders of  
 2 speech, voice, or language for the purpose of evaluating,  
 3 preventing, habilitating, rehabilitating, or modifying such  
 4 disorders and conditions in individuals or groups of  
 5 individuals.

6 (8) "Practice of audiology" means the application of  
 7 principles, methods, and procedures of measurement, testing,  
 8 appraisal, prediction, consultation, counseling, and  
 9 instruction related to hearing and hearing impairment for  
 10 the purpose of modifying communicative disorders involving  
 11 speech, language, or auditory function, including auditory  
 12 behavior related to hearing impairment.

13 (9) "Association" means the Montana speech and hearing  
 14 association.

15 (10) "ASHA" means the American speech and hearing  
 16 association.

17 (11) "Unethical conduct" means:

18 (a) the obtaining of any fee by fraud or  
 19 misrepresentation;

20 (b) employing, directly or indirectly, any suspended  
 21 or unlicensed person to perform any work covered by this  
 22 chapter unless that person assumes the legal status of a  
 23 supervised aide;

24 (c) using or causing or promoting the use of any  
 25 advertising matter, promotional literature, testimonial,

1 guarantee, warranty, label, brand, insignia, or any other  
 2 representation, however disseminated or published, which is  
 3 misleading, deceiving, improbable, or untruthful.

4 (12) "Provisionally licensed speech pathologist or  
 5 audiologist" means those speech pathologists or audiologists  
 6 currently practicing the profession in the state who do not  
 7 meet the minimum requirements for licensure as defined in  
 8 this chapter and who are eligible for provisional licensure  
 9 conditioned on biennial evidence of satisfactory progress  
 10 toward meeting the requirements for licensure as provided in  
 11 this chapter. This provisional licensure, as defined in this  
 12 chapter, may exist for no longer than 6 years from July 1,  
 13 1975, under any circumstance."

14 Section 4. Section 37-15-103, MCA, is amended to read:

15 "37-15-103. Exemptions. (1) Nothing in this chapter  
 16 shall prevent a person licensed in this state under any  
 17 other law from engaging in the profession or business for  
 18 which he is licensed.

19 (2) Nothing in this chapter shall restrict or prevent  
 20 activities of a speech pathology or audiology nature or the  
 21 use of the official title of the position for which they  
 22 were employed on the part of a speech pathologist or  
 23 audiologist employed by federal agencies.

24 (3) Those persons performing activities described in  
 25 subsection (2) of this section who are not licensed under

1 this chapter must do so solely within the confines of or  
 2 under the jurisdiction of the organization in which they are  
 3 employed and shall not offer speech pathology or audiology  
 4 services to the public for compensation over and above the  
 5 salary they receive for performance of their official duties  
 6 with organizations by which they are employed. However,  
 7 without obtaining a license under this chapter, such persons  
 8 may consult or disseminate their research findings and  
 9 scientific information to other accredited academic  
 10 institutions or governmental agencies. They also may offer  
 11 lectures to the public for a fee without being licensed  
 12 under this chapter.

13 (4) Nothing in this chapter shall restrict activities  
 14 and services of a student in speech pathology or audiology  
 15 from pursuing a course of study in speech pathology or  
 16 audiology at an accredited or approved college or university  
 17 or an approved clinical training facility. However, these  
 18 activities and services must constitute a part of his  
 19 supervised course of study, and no fee shall accrue directly  
 20 or indirectly to the student. These persons shall be  
 21 designated by the title "speech pathology (or audiology)  
 22 intern", "speech pathology (or audiology) trainee", or a  
 23 title clearly indicating the training status appropriate to  
 24 his level of training.

25 (5) Nothing in this chapter shall restrict a person

1 from another state from offering speech pathology or  
 2 audiology services in this state if such services are  
 3 performed for no more than 5 days in any calendar year and  
 4 if the services are performed in cooperation with a speech  
 5 pathologist or audiologist licensed under this chapter.  
 6 However, by securing a temporary license from the board  
 7 subject to such limitations as the board may impose, a  
 8 person not a resident of this state who is not licensed  
 9 under this chapter but who is licensed under the law of  
 10 another state which has established licensure requirements  
 11 at least equivalent to those established by this chapter or  
 12 who is the holder of the ASHA certificate of clinical  
 13 competency in speech pathology or audiology or its  
 14 equivalent may offer speech pathology or audiology services  
 15 in this state for no more than 30 days in any calendar year  
 16 if such services are performed in cooperation with a speech  
 17 pathologist or audiologist licensed under this chapter.

18 (6) Nothing in this chapter shall restrict any person  
 19 holding a class A certificate issued by the conference of  
 20 executives of American schools of the deaf from performing  
 21 the functions for which he qualifies.

22 (7) Nothing in this chapter shall restrict any person  
 23 who holds a certificate of registration in this state as a  
 24 hearing aid ~~dealer~~ technologist from performing those  
 25 functions for which he qualifies and which are described in

1 Title 37, chapter 16."

2 Section 5. Section 37-15-201, MCA, is amended to read:

3 "37-15-201. Meetings. (1) The board shall meet at  
4 least once a year at a place, day, and hour determined by  
5 the board. The board shall also meet at other times and  
6 places as the bylaws of the board may provide or by call of  
7 the chairman or a majority of the members of the board. A  
8 quorum of the board shall consist of the majority of its  
9 members, ~~but in no instance may a meeting of three board~~  
10 ~~members who are exclusively speech pathologists or~~  
11 ~~exclusively audiologists be considered a quorum.~~

12 (2) All meetings of the board for the consideration of  
13 and action on matters coming before the board are open to  
14 the public except:

15 (a) matters involving the management of internal  
16 affairs of the board may be considered and acted upon by the  
17 board in executive meetings under rules prescribed by the  
18 board;

19 (b) sessions to prepare, approve, grade, or administer  
20 examinations;

21 (c) upon request of a person who has failed the  
22 licensing examinations and who is appearing to appeal the  
23 failure."

24 Section 6. Section 37-15-202, MCA, is amended to read:

25 "37-15-202. Powers and duties of board and department.

1 (1) The board shall:

2 (a) administer, coordinate, and enforce the provisions  
3 of ~~this chapter chapters 15 and 16 of this title;~~

4 (b) evaluate the qualifications of each applicant for  
5 a license as issued under ~~this chapter chapters 15 and 16 of~~  
6 ~~this title~~ and supervise the examination of such applicants;

7 (c) investigate persons engaging in practices which  
8 allegedly violate the provisions of ~~this chapter chapters 15~~  
9 ~~and 16 of this title;~~

10 (d) conduct hearings and keep records and minutes as  
11 the board considers necessary to an orderly dispatch of  
12 business;

13 (e) adopt rules, including but not limited to those  
14 governing ethical standards of practice under ~~this chapter~~  
15 ~~chapters 15 and 16 of this title;~~

16 (f) make recommendations to the governor and other  
17 state officials regarding new and revised programs and  
18 legislation related to speech pathology, ~~or~~ audiology, ~~and~~  
19 ~~hearing aid technology~~ which could be beneficial to the  
20 citizens of the state of Montana;

21 (g) cause the prosecution and enjoinder of all persons  
22 violating ~~this chapter chapters 15 and 16 of this title~~, by  
23 the complaints of its secretary filed with the county  
24 attorney in the county where the violation took place, and  
25 incur necessary expenses therefor;



1 (h) adopt a seal by which the board shall authenticate  
2 its proceedings;

3 ~~(1) inspect or require proof of certification of~~  
4 ~~calibration of each audiotape used by a speech pathologist,~~  
5 ~~audiologist, or hearing aid technologist prior to each~~  
6 ~~license renewal for a speech pathologist, audiologist, or~~  
7 ~~hearing aid technologist.~~

8 (2) Copies of the proceedings, records, and acts of  
9 the board, signed by the chairman or secretary of the board  
10 and stamped with the seal, shall be prima facie evidence of  
11 the validity of such documents.

12 (3) The board may make rules which are reasonable or  
13 necessary for the proper performance of its duties and for  
14 the regulation of proceedings before it.

15 (4) The department may employ persons it considers  
16 necessary to carry out the provisions of ~~this chapter~~  
17 ~~chapters 15 and 16 of this title.~~

18 (5) The department shall prepare a report to the  
19 governor as required by law."

20 Section 7. Section 37-15-321, MCA, is amended to read:

21 "37-15-321. Denial, suspension, or revocation of  
22 license -- reinstatement. (1) The board may refuse to issue  
23 or renew a license or may suspend or revoke the license of  
24 any licensee if he has been guilty of unprofessional conduct  
25 which has endangered or is likely to endanger the health,

1 welfare, or safety of the public. Such unprofessional  
2 conduct includes but is not limited to:

3 (a) obtaining a license by means of fraud,  
4 misrepresentation, or concealment of material facts;

5 (b) being found guilty of unprofessional conduct or  
6 having violated ethical standards of practice established  
7 pursuant to this chapter;

8 (c) violating any lawful order or rule of the board;

9 (d) violating any provision of this chapter.

10 ~~(2) Where an applicant or licensee has been convicted~~  
11 ~~of a felony or a crime involving moral turpitude, the board~~  
12 ~~may suspend or revoke his license or may decline to issue a~~  
13 ~~license when~~

14 ~~(a) the time for appeal has elapsed;~~

15 ~~(b) the judgment of conviction has been affirmed on~~  
16 ~~appeal;~~

17 ~~(c) an order granting probation is made suspending the~~  
18 ~~imposition of sentence.~~

19 ~~(3)(2) Denial, suspension, or revocation of a license~~  
20 ~~is permissible only after a hearing and procedures which~~  
21 ~~comply with all applicable requirements of the Montana~~  
22 ~~Administrative Procedure Act.~~

23 ~~(4)(3) One year after denial, suspension, or~~  
24 ~~revocation of a license, a person may reapply for a license.~~  
25 ~~The board may in its discretion require an examination for~~

1 reinstatement."

2 Section 8. Section 37-16-102, MCA, is amended to read:

3 "37-16-102. Definitions. Unless the context requires  
4 otherwise, in this chapter the following definitions apply:

5 (1) "Board" means the board of speech pathologists,  
6 audiologists, and hearing aid dispensers technologists  
7 provided for in ~~2-15-1616~~ [section 1].

8 (2) "Department" means the department of professional  
9 and occupational licensing provided for in Title 2, chapter  
10 15, part 16.

11 (3) "License" means a regular or temporary license.

12 (4) "Hearing aid" means an instrument or device  
13 designed for or represented as aiding or improving defective  
14 human hearing and parts, attachments, or accessories of the  
15 instrument or device.

16 (5) "Practice of dispensing and fitting hearing aids"  
17 means the evaluation or measurement of the powers or range  
18 of human hearing by means of an audiometer and a visual  
19 examination of the ear and canal or by any other means  
20 devised and the consequent selection, adaption, or sale of  
21 hearing aids intended to compensate for hearing loss,  
22 including eyeglass hearing aids and their fittings, and the  
23 making of an impression of the ear but does not include  
24 batteries, cords, or accessories.

25 (6) "Hearing aid technologist" means a person licensed

1 to practice the dispensing and fitting of hearing aids under  
2 the provisions of this chapter."

3 Section 9. Section 37-16-301, MCA, is amended to read:

4 "37-16-301. Permanent place of business in state  
5 necessary -- exception -- records -- notice. (1) A person  
6 who obtains a license to dispense hearing aids as a business  
7 must have a permanent place of business in this state that  
8 will be opened to serve the public, having the necessary  
9 testing, fitting, and hearing aid accessories needed by the  
10 hard-of-hearing public in the wearing of hearing aids.

11 (2) Subsection (1) of this section does not apply to  
12 persons who obtain a license as salespeople representing a  
13 licensed hearing aid dispenser technologist.

14 (3) The department shall keep a record of the places  
15 of practice of persons who hold regular licenses or  
16 temporary licenses. A notice required to be given by the  
17 board or department to a person who holds a regular or  
18 temporary license may be given by mailing it to him at the  
19 address last given by him to the department."

20 Section 10. Section 37-16-303, MCA, is amended to  
21 read:

22 "37-16-303. Bill of sale -- examination by  
23 otolaryngologist -- notation on receipt that examination not  
24 medical opinion. (1) Any person who practices the fitting or  
25 dispensing of hearing aids shall deliver to each person

1 supplied with a hearing aid, by him or at his order or  
 2 direction, a bill of sale which shall contain the seller's  
 3 signature and show the name and address of his regular place  
 4 of business and the number of his license, together with a  
 5 description of the make and type of the hearing aid  
 6 furnished and the amount charged, with terms of guarantee,  
 7 if any. The bill of sale shall also reveal the condition of  
 8 the hearing device and whether it is new, used, or  
 9 reconditioned.

10 (2) Any person practicing the fitting and sale of  
 11 hearing aids shall, when dealing with a person 18 years of  
 12 age and under or when the aid is to be purchased with state  
 13 funds, ascertain if the person has been examined by an  
 14 otolaryngologist within 90 days prior to the fitting and  
 15 shall obtain his recommendations. If such not be the case, a  
 16 recommendation to do so must be made to the purchaser and  
 17 this fact be noted on the receipt.

18 (3) Such receipt must bear, in no smaller type than  
 19 the largest used in the body portion, the following: "Any  
 20 examination(s) or representation(s) made by a licensed  
 21 hearing aid ~~dealer--and--fitter~~ technologist in connection  
 22 with the fitting and selling of this hearing aid(s) is not  
 23 an examination, diagnosis, or prescription by a person  
 24 licensed to practice medicine in this state and, therefore,  
 25 must not be regarded as medical opinion or advice."

1 Section 11. Repealer. Sections 2-15-1615, 2-15-1616,  
 2 37-16-201, and 37-16-203, MCA, are repealed.

3 Section 12. Transfer of funds and records. All funds  
 4 and records of the board of speech pathologists and  
 5 audiologists and the board of hearing aid dispensers shall  
 6 be transferred to the board of speech pathologists,  
 7 audiologists, and hearing aid technologists, created by  
 8 section 1, by July 1, 1981.

9 Section 13. Existing rules to continue in effect. The  
 10 existing rules of the board of speech pathologists and  
 11 audiologists and the board of hearing aid dispensers  
 12 continue in effect unless modified or repealed by the board  
 13 of speech pathologists, audiologists, and hearing aid  
 14 technologists.

15 Section 14. Codification instruction. Section 1 is  
 16 intended to be codified as an integral part of Title 2,  
 17 chapter 15, part 16, and the provisions of Title 2, chapter  
 18 15, part 16, apply to section 1.

19 Section 15. Effective dates. (1) Except for sections 1  
 20 and 12, this act is effective July 1, 1981, and the  
 21 provisions of 2-8-121 do not apply to the board of speech  
 22 pathologists and audiologists and the board of hearing aid  
 23 dispensers.

24 (2) Sections 1 and 12 are effective on passage and  
 25 approval.