

SENATE BILL NO. 79

INTRODUCED BY CHRISTIAENS

IN THE SENATE

January 7, 1985	Introduced and referred to Committee on Public Health, Welfare and Safety.
January 8, 1985	Fiscal Note requested.
January 12, 1985	Fiscal Note returned.
January 25, 1985	Committee recommend bill do pass as amended. Report adopted. Statement of Intent attached.
January 26, 1985	Bill printed and placed on members' desks.
January 28, 1985	Second reading, do pass as amended.
January 29, 1985	Correctly engrossed.
January 30, 1985	Third reading, passed. Ayes, 40; Noes, 9. Transmitted to House.

IN THE HOUSE

February 27, 1985	Introduced and referred to Committee on Business and Labor.
March 11, 1985	Committee recommend bill be concurred in as amended. Report adopted.
March 13, 1985	Second reading, concurred in.

March 15, 1985 Third reading, concurred in.
Returned to Senate with amendments.

IN THE SENATE

March 15, 1985 Received from House.

March 19, 1985 Second reading, amendments concurred in.

March 21, 1985 Third reading, amendments concurred in. Ayes, 46; Noes, 0.

Sent to enrolling.

March 26, 1985 Correctly enrolled.

Signed by President.

Signed by Speaker.

Delivered to Governor.

March 29, 1985 Returned from Governor with recommended amendments.

April 2, 1985 Second reading, Governor's amendments concurred in.

April 4, 1985 Third reading, Governor's amendments concurred in. Ayes, 49; Noes, 0.

Governor's amendments transmitted to House.

IN THE HOUSE

April 4, 1985 Received from Senate.

April 9, 1985 Second reading, Governor's amendments concurred in.

April 10, 1985

Third reading, Governor's
amendments concurred in.

IN THE SENATE

April 15, 1985

Returned from House.

Sent to enrolling.

Reported correctly enrolled.

1 SENATE BILL NO. 79
2 INTRODUCED BY CHRISTIAENS

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
5 LICENSURE AND REGULATION OF OCCUPATIONAL THERAPISTS AND
6 OCCUPATIONAL THERAPY ASSISTANTS; CREATING A BOARD OF
7 OCCUPATIONAL THERAPY PRACTICE; PROVIDING FOR THE AUTHORITY
8 OF THE BOARD; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

11 Section 1. Short title. [This act] may be cited as the
12 "Occupational Therapy Practice Act".

13 Section 2. Purpose. The legislature declares that it
14 is the purpose of [this act] to provide for the regulation
15 of persons offering occupational therapy services in order
16 to:

- 17 (1) safeguard the public health, safety, and welfare;
- 18 (2) protect the public from incompetent, unscrupulous,
19 and unauthorized persons;
- 20 (3) assure the highest degree of professional conduct
21 on the part of occupational therapists and occupational
22 therapy assistants; and
- 23 (4) assure the availability of occupational therapy
24 services of high quality to persons in need of such
25 services.

1 Section 3. Definitions. As used in [this act], unless
2 the context requires otherwise, the following definitions
3 apply:

4 (1) "Board" means the board of occupational therapy
5 practice established by [section 5].

6 (2) "Department" means the department of commerce
7 provided for in Title 2, chapter 15, part 18.

8 (3) "Occupational therapist" means a person licensed
9 to practice occupational therapy under [this act].

10 (4) "Occupational therapy" means the use of purposeful
11 activity with an individual who is limited by physical
12 injury or illness, psychosocial dysfunction, developmental
13 or learning disability, or the aging process in order to
14 maximize independence, prevent disability, and maintain
15 health. The practice encompasses evaluation, treatment, and
16 consultation. Occupational therapy services may be provided
17 individually, in groups, or through social systems. Specific
18 occupational therapy services include but are not limited
19 to:

- 20 (a) teaching daily living skills;
- 21 (b) developing perceptual-motor skills and sensory
22 integrative functioning;
- 23 (c) developing play skills and prevocational and
24 leisure capacities;
- 25 (d) designing, fabricating, or applying selected



1 orthotic and prosthetic devices or selective adaptive
2 equipment;

3 (e) using specifically designed crafts and exercises
4 to enhance functional performance;

5 (f) administering and interpreting tests such as
6 manual muscle and range of motion; and

7 (g) adapting environments for the handicapped.

8 (5) "Occupational therapy aide" means a person who
9 assists in the practice of occupational therapy under the
10 direct supervision of an occupational therapist or
11 occupational therapy assistant and whose activities require
12 an understanding of occupational therapy but do not require
13 professional or advanced training in the basic anatomical,
14 biological, psychological, and social sciences involved in
15 the practice of occupational therapy.

16 (6) "Occupational therapy assistant" means a person
17 licensed to assist in the practice of occupational therapy
18 under [this act], who works under the supervision of an
19 occupational therapist.

20 Section 4. Exemptions. Nothing in [this act] prevents
21 or restricts the practice, services, or activities of:

22 (1) a person licensed in this state under any other
23 law from engaging in the profession or occupation for which
24 he is licensed;

25 (2) a person employed as an occupational therapist or

1 occupational therapy assistant by an institution or agency
2 of the federal government;

3 (3) a person pursuing a supervised course of study
4 leading to a degree or certificate in occupational therapy
5 at an accredited institution or under an approved
6 educational program if the person is designated by a title
7 that clearly indicates his status as a student or trainee;

8 (4) a person fulfilling the supervised fieldwork
9 experience requirements of [section 11] if the experience
10 constitutes a part of the experience necessary to meet the
11 requirements of that section;

12 (5) a person performing occupational therapy services
13 in the state if these services are performed for no more
14 than 10 days in a calendar year in association with an
15 occupational therapist licensed under [this act], provided
16 that:

17 (a) the person is licensed under the law of another
18 state that has licensure requirements at least as stringent
19 as the requirements of [this act]; or

20 (b) the person meets the requirements for
21 certification as an occupational therapist registered (OTR)
22 or a certified occupational therapy assistant (COTA),
23 established by the American occupational therapy
24 association; or

25 (6) a person employed as an occupational therapy aide.

1 Section 5. Board of occupational therapy practice. (1)
2 There is a board of occupational therapy practice.

3 (2) The board consists of five members appointed by
4 the governor. The members are:

5 (a) three occupational therapists licensed under [this
6 act] who are actively engaged in the practice or teaching of
7 occupational therapy; and

8 (b) two members of the general public with an interest
9 in the rights of the consumers of health services.

10 (3) The Montana occupational therapy association may
11 submit names of nominees under (2)(a) of this section to the
12 governor as provided in 37-1-132.

13 (4) Each appointment is subject to confirmation by the
14 senate then meeting in regular session or next meeting in
15 regular session following appointment.

16 (5) Each member shall serve for a term of 4 years. A
17 term begins on the first day of the calendar year and ends
18 on the last day of the calendar year or when a successor is
19 appointed. A member who has served two successive complete
20 terms is not eligible for reappointment until after 1 year.

21 (6) The governor may, after hearing, remove a member
22 for neglect of duty or other just cause.

23 (7) The board is allocated to the department of
24 commerce for administrative purposes only as prescribed in
25 2-15-121.

1 Section 6. Organization -- general rulemaking power --
2 quorum. (1) The board shall meet annually and elect a
3 chairman and a secretary from its members. The board shall
4 hold other meetings when necessary to transact its business.

5 (2) The board may adopt rules for the conduct of its
6 affairs and the administration of [this act]. Rules adopted
7 by the board may include such rules as are reasonable or
8 necessary for the proper performance of its duties and the
9 regulation of proceedings before it.

10 (3) Three board members constitute a quorum for the
11 transaction of business.

12 Section 7. Powers and duties of board. (1) The board
13 shall:

14 (a) administer, coordinate, and enforce the provisions
15 of [this act];

16 (b) evaluate the qualifications of applicants for
17 licensure under [this act] and approve and supervise the
18 examination of such applicants;

19 (c) investigate persons engaging in practices that
20 allegedly violate the provisions of [this act];

21 (d) adopt rules relating to professional licensure and
22 the establishment of ethical standards of practice under
23 [this act];

24 (e) conduct hearings and keep records and minutes as
25 the board considers necessary to carry out its functions;

1 and

2 (f) adopt a seal by which the board shall authenticate
3 its proceedings.

4 (2) A copy of the proceedings, records, or acts of the
5 board, signed by the chairman or secretary of the board and
6 stamped with the seal, is prima facie evidence of the
7 validity of such document.

8 (3) The department may employ persons it considers
9 necessary to carry out the provisions of [this act].

10 Section 8. Compensation and expenses. Each board
11 member is entitled to compensation and travel expenses as
12 provided in 37-1-133.

13 Section 9. License required. (1) No person may
14 practice occupational therapy or hold himself out as an
15 occupational therapist or as being able to practice
16 occupational therapy or able to render occupational therapy
17 services in this state unless he is licensed under the
18 provisions of [this act].

19 (2) Only an individual may be licensed under [this
20 act].

21 Section 10. Application. An applicant applying for
22 licensure as an occupational therapist or as an occupational
23 therapy assistant shall file a written application on forms
24 prescribed by the board, showing that the applicant meets
25 the requirements of [section 11(1)(a) and (b)].

1 Section 11. Requirements for licensure. (1) To be
2 eligible for licensure by the board as an occupational
3 therapist or an occupational therapy assistant, the
4 applicant shall:

5 (a) present evidence of having successfully completed
6 the academic requirements of an educational program
7 recognized by the board for the license sought;

8 (b) submit evidence of having successfully completed a
9 period of supervised fieldwork experience arranged by the
10 recognized educational institution where he completed the
11 academic requirements or by a nationally recognized
12 professional association; and

13 (c) pass an examination as provided for in [section
14 12].

15 (2) The supervised fieldwork experience requirement
16 for an occupational therapist is a minimum of 6 months. The
17 supervised fieldwork experience requirement for an
18 occupational therapy assistant is a minimum of 2 months.

19 Section 12. Examination. (1) A person who satisfies
20 the educational and experience requirements of [section 11]
21 may apply for examination in the manner prescribed by the
22 board. The application must be accompanied by the
23 nonrefundable fee prescribed by the board under [section
24 18]. An unsuccessful examinee may apply for reexamination
25 upon payment of the prescribed fee.

1 (2) The board shall adopt a written examination for
2 occupational therapists and a written examination for
3 occupational therapy assistants and establish standards for
4 acceptable performance.

5 (3) Examinations shall be given at least twice each
6 year at a time and place and under such supervision as the
7 board may determine. The board shall give notice of the
8 examinations in accordance with rules adopted by the board.

9 (4) Examinees may obtain their scores and review their
10 examinations in accordance with rules established by the
11 board.

12 Section 13. Waiver of requirements for licensure. (1)
13 The board may waive the examination, education, or
14 experience requirements and grant a license to an applicant
15 who presents proof of current licensure as an occupational
16 therapist or occupational therapy assistant in another
17 state, the District of Columbia, or a territory of the
18 United States which requires standards for licensure that
19 the board considers equivalent to the requirements for
20 licensure under [this act].

21 (2) The board may waive the examination, education, or
22 experience requirements and grant a license to a person
23 certified by the American occupational therapy association
24 (AOTA) as a certified occupational therapy assistant (COTA)
25 or an occupational therapist registered (OTR) after [the

1 effective date of this act] if the board determines that the
2 requirements for such certification are equivalent to the
3 requirements for licensure under [this act].

4 (3) Occupational therapists and occupational therapy
5 assistants trained in a foreign country must satisfy the
6 examination requirements of [section 12]. The board shall
7 require foreign-trained applicants, before examination, to
8 furnish proof of educational and supervised fieldwork
9 requirements substantially equal to those required by
10 [section 11].

11 (4) The board may waive the educational requirements
12 and license an applicant as an occupational therapist if the
13 applicant has practiced as an occupational therapy assistant
14 for 4 years, has completed the experience requirement before
15 January 1, 1988, and has passed the examination for
16 occupational therapists.

17 Section 14. Issuance of license. (1) The board shall
18 issue a license to any person who meets the requirements of
19 [this act] upon payment of the prescribed license fee.

20 (2) The license must include the dates of issuance and
21 expiration.

22 Section 15. Limited permit. A limited permit may be
23 granted to a person who has completed the education and
24 experience requirements of [this act]. The permit allows the
25 person to practice occupational therapy in association with

1 a licensed occupational therapist. This permit is valid
 2 until the person is issued a license under [section 14] or
 3 until the results of the examination taken by the person are
 4 available to the board. This limited permit may be renewed
 5 only one time if the person has failed the examination.

6 Section 16. Renewal of license -- inactive status. (1)
 7 Each license issued under [this act] is subject to annual
 8 renewal upon the payment of a renewal fee and expires unless
 9 renewed in the manner prescribed by the rules of the board.
 10 The board may provide for the late renewal of a license upon
 11 the payment of a late fee in accordance with its rules, but
 12 no late renewal of a license may be granted more than 5
 13 years after its expiration.

14 (2) Upon request, the board may grant inactive status
 15 to a licensee who:

16 (a) does not practice as an occupational therapist or
 17 an occupational therapy assistant; and

18 (b) does not hold himself out as an occupational
 19 therapist or an occupational therapy assistant.

20 Section 17. Denial, suspension, or revocation of
 21 license. (1) The board may refuse to issue or renew a
 22 license or may revoke or suspend the license of any licensee
 23 or applicant if he has been found guilty of unprofessional
 24 conduct that has endangered or is likely to endanger the
 25 health, welfare, or safety of the public. Such

1 unprofessional conduct includes:

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

4 (b) being found guilty of unprofessional conduct as
 5 defined in the rules of the board or having violated ethical
 6 standards of practice established pursuant to [this act];

7 (c) being convicted of a crime considered sufficient
 8 under 37-1-203 to warrant denial, revocation, or suspension
 9 of the license;

10 (d) violating any lawful order or rule of the board;
 11 or

12 (e) violating any provision of [this act].

13 (2) Denial, suspension, or revocation of a license is
 14 permissible only after a hearing and procedures that comply
 15 with all applicable requirements of the Montana
 16 Administrative Procedure Act.

17 (3) One year after the denial, suspension, or
 18 revocation of a license, a person may apply for
 19 reinstatement and licensure. The board may in its discretion
 20 require an examination for reinstatement.

21 Section 18. Fees. The board may adopt fees in
 22 accordance with 37-1-134 for:

23 (1) applications for licensure;

24 (2) examination;

25 (3) initial license issuance;

- 1 (4) license renewal;
 2 (5) late license renewal; and
 3 (6) limited permit issuance.

4 Section 19. Penalty. A person convicted of violating
 5 [this act] is guilty of a misdemeanor and shall be fined an
 6 amount not to exceed \$5,000.

7 Section 20. Grandfather provisions. The board shall
 8 grant a license to any person certified as an occupational
 9 therapist registered (OTR) or a certified occupational
 10 therapy assistant (COTA) by the American occupational
 11 therapy association (AOTA) prior to [the effective date of
 12 this act].

13 Section 21. Initial board appointment. (1)
 14 Notwithstanding the provisions of [section 5], the governor
 15 shall within 60 days following passage and approval of [this
 16 act] appoint the initial board as follows:

17 (a) two members shall be appointed for a term of 2
 18 years;

19 (b) two members shall be appointed for a term of 3
 20 years; and

21 (c) one member shall be appointed for a term of 4
 22 years.

23 (2) Initial appointments of occupational therapist and
 24 occupational therapist assistant members shall be made from
 25 persons eligible for licensure pursuant to [section 20].

1 (3) Initial board members shall serve through December
 2 31 of the year in which they are appointed before commencing
 3 the terms prescribed by this section.

4 (4) The Montana occupational therapy association may
 5 nominate persons for initial membership on the board in
 6 compliance with 37-1-132.

7 Section 22. Severability. If a part of this act is
 8 invalid, all valid parts that are severable from the invalid
 9 part remain in effect. If a part of this act is invalid in
 10 one or more of its applications, the part remains in effect
 11 in all valid applications that are severable from the
 12 invalid applications.

13 Section 23. Codification instruction. (1) Sections 1
 14 through 4 and 6 through 19 are intended to be codified as an
 15 integral part of Title 37, and the provisions of Title 37
 16 apply to sections 1 through 4 and 6 through 19.

17 (2) Section 5 is intended to be codified as an
 18 integral part of Title 2, chapter 15, part 18, and the
 19 provisions of Title 2, chapter 15, part 18, apply to section
 20 5.

21 Section 24. Effective date. This act is effective on
 22 passage and approval.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN 035-85

Form BD-15

In compliance with a written request received January 9, 19 85, there is hereby submitted a Fiscal Note for S.B. 79 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). 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.

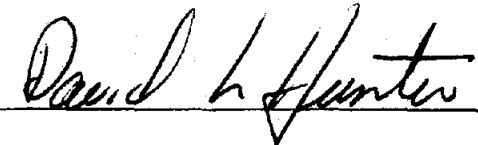
"AN ACT PROVIDING FOR THE LICENSURE AND REGULATION OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS: CREATING A BOARD OF OCCUPATIONAL THERAPY PRACTICE: PROVIDING FOR THE AUTHORITY OF THE BOARD: AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

ASSUMPTIONS:

1. Assume 75 licensed occupational therapists, 1 assistant
2. Assume 5 board members meet 2 times a year for 15 board meeting days
3. Assume use of national exam at a cost of \$75 plus \$50 board expenses per examination
4. Assume 20 pages of rules, APA notices at \$14.00 a page
5. Assume .25 FTE (Grade 11, Step 2) for administration and secretarial assistance
6. Assume license costs commensurate with costs estimated at \$10,124 per year
7. Assume license renewed annually as set by board
8. Assume 20 hours legal assistance per year at \$41.00 per hour
9. Assume computer program for license function
10. Assume no out of state travel during first board biennium.

FISCAL IMPACT ON STATE SPECIAL REVENUE FUND:

	<u>FY 86</u>	<u>FY 87</u>	<u>Total Biennium</u>
REVENUE	\$11,500	\$11,500	\$23,000
<u>EXPENDITURES:</u>	<u>\$10,124</u>	<u>\$10,124</u>	<u>\$20,248</u>
Net Change in State Special Fund	\$ 1,376	\$ 601	\$ 1,977



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Jan 12, 1985

NOTES:

- (1) A 4% inflation factor was applied to FY 84 base.
- (2) FY 85 salary figures were used for District Judges only.

FISCAL IMPACT:

SB 25
 FISCAL NOTE

State Impact:	<u>FY 1986</u>		<u>Increase (Decrease)</u>	<u>FY 1987</u>		<u>Increase (Decrease)</u>
	<u>Amount Under Current Law</u>	<u>Amount Under Proposed Law</u>		<u>Amount Under Current Law</u>	<u>Amount Under Proposed Law</u>	
Expenditures:						
Personal Services	2,005,255	2,713,310	708,055	2,005,255	2,713,310	708,055
Operation Expenses	150,636	2,457,954	2,307,318	150,636	2,457,954	2,307,318
Capital Outlay	-0-	17,760	17,760	-0-	-0-	-0-
Grants to Counties	<u>1,701,213</u>	<u>340,242</u>	<u>(1,360,971)</u>	<u>1,701,213</u>	<u>340,242</u>	<u>(1,360,971)</u>
Net Effect (State General Fund)	3,857,104	5,529,266	1,672,162	3,857,104	5,511,506	1,654,402

Local Impact:

County expenses statewide will decrease by approximately \$1,672,162 in FY 86 and \$1,654,402 in FY 87.

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN 035-85

Form BD-15

In compliance with a written request received January 9, 19 85, there is hereby submitted a Fiscal Note for S.B. 79/corrected pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). 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.

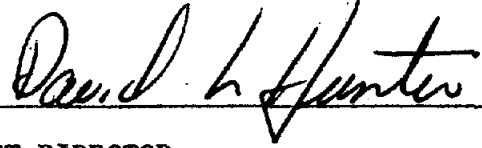
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7. Assume license renewed annually as set by board
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9. Assume computer program for license function
10. Assume no out of state travel during first board biennium.

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	<u>FY 86</u>	<u>FY 87</u>	<u>Total Biennium</u>
<u>REVENUE</u>	\$11,500	\$11,500	\$23,000
<u>EXPENDITURES:</u>	<u>\$10,124</u>	<u>\$10,124</u>	<u>\$20,248</u>
Net Change in State Special Fund	\$ 1,376	\$ 601	\$ 1,977


BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Jan 12, 1985

CORRECTED VERSION

Request No. FNN035-85
Form BD-15 page 2
(continued)

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

1. No provision for disposition of fees collected by the board.
2. No provision for termination date of Grandfather Clause.

APPROVED BY COMMITTEE
ON PUBLIC HEALTH, WELFARE
& SAFETY

1 STATEMENT OF INTENT

2 SENATE BILL 79

3 Senate Public Health, Welfare and Safety Committee
4

5 A statement of intent is required for this act because
6 it delegates rulemaking authority to the board of
7 occupational therapy practice. It is the intent of the
8 legislature that in adopting its rules the board should look
9 to standards promulgated by the American occupational
10 therapy association and the committee on allied health,
11 education, and accreditation of the American medical
12 association. These standards should provide guidance to the
13 board for rules regarding recognition of educational
14 programs and the type of examination to be given for
15 licensure. The legislature intends that rules adopted by
16 board governing licensure and conduct of members of the
17 profession be aimed at ensuring the public that
18 practitioners are competent and are providing quality health
19 care services within the scope of this act.

SENATE BILL NO. 79

INTRODUCED BY CHRISTIAENS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE LICENSURE AND REGULATION OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS; CREATING A BOARD OF OCCUPATIONAL THERAPY PRACTICE; PROVIDING FOR THE AUTHORITY OF THE BOARD; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Short title. [This act] may be cited as the "Occupational Therapy Practice Act".

Section 2. Purpose. The legislature declares that it is the purpose of [this act] to provide for the regulation of persons offering occupational therapy services in order to:

- (1) safeguard the public health, safety, and welfare;
(2) protect the public from incompetent, unscrupulous, and unauthorized persons;
(3) assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants; and
(4) assure the availability of occupational therapy services of high quality to persons in need of such services.

Section 3. Definitions. As used in [this act], unless the context requires otherwise, the following definitions apply:

- (1) "Board" means the board of occupational therapy practice established by [section 5].
(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.
(3) "Occupational therapist" means a person licensed to practice occupational therapy under [this act].
(4) "Occupational therapy" means the use of purposeful activity with an individual who is limited by physical injury or illness, psychosocial dysfunction, developmental or learning disability, or the aging process in order to maximize independence, prevent disability, and maintain health. The practice encompasses evaluation, treatment, and consultation. Occupational therapy services may be provided individually, in groups, or through social systems. Specific occupational therapy services include but are not limited to:
(a) teaching daily living skills;
(b) developing perceptual-motor skills and sensory integrative functioning;
(c) developing play skills and prevocational and leisure capacities;
(d) designing, fabricating, or applying selected



1 ~~orthotic--and--prosthetic--devices~~ SPLINTS or selective
 2 adaptive equipment AND TRAINING IN THE USE OF UPPER
 3 EXTREMITY PROSTHETICS OR UPPER AND LOWER EXTREMITIES
 4 ORTHOTIC DEVICES;

5 (e) using specifically designed crafts and exercises
 6 to enhance functional performance;

7 (f) administering and interpreting tests such as
 8 manual muscle and range of motion; and

9 (g) adapting environments for the handicapped.

10 (5) "Occupational therapy aide" means a person who
 11 assists in the practice of occupational therapy under the
 12 direct supervision of an occupational therapist or
 13 occupational therapy assistant and whose activities require
 14 an understanding of occupational therapy but do not require
 15 professional or advanced training in the basic anatomical,
 16 biological, psychological, and social sciences involved in
 17 the practice of occupational therapy.

18 (6) "Occupational therapy assistant" means a person
 19 licensed to assist in the practice of occupational therapy
 20 under [this act], who works under the supervision of an
 21 occupational therapist.

22 Section 4. Exemptions. Nothing in [this act] prevents
 23 or restricts the practice, services, or activities of:

24 (1) a person licensed in this state under any other
 25 law OR CERTIFIED OR REGISTERED AS A MEMBER OF AN

1 OCCUPATIONAL OR PROFESSIONAL GROUP OTHER THAN OCCUPATIONAL
 2 THERAPY from engaging in the profession or occupation for
 3 which he is licensed, CERTIFIED, OR REGISTERED;

4 (2) A PERSON WHO PROVIDES TREATMENT, TEACHES LIVING
 5 SKILLS, DESIGNS ORTHOTIC OR PROSTHETIC DEVICES, ADMINISTERS
 6 TESTS, OR ENGAGES IN OTHER ACTIVITIES DESCRIBED IN [SECTION
 7 3] BUT DOES NOT REPRESENT HIMSELF AS AN OCCUPATIONAL
 8 THERAPIST;

9 (3) a person employed as an occupational therapist
 10 or occupational therapy assistant by an institution or
 11 agency of the federal government;

12 (4) a person pursuing a supervised course of study
 13 leading to a degree or certificate in occupational therapy
 14 at an accredited institution or under an approved
 15 educational program if the person is designated by a title
 16 that clearly indicates his status as a student or trainee;

17 (5) a person fulfilling the supervised fieldwork
 18 experience requirements of [section 11] if the experience
 19 constitutes a part of the experience necessary to meet the
 20 requirements of that section;

21 (6) a person performing occupational therapy
 22 services in the state if these services are performed for no
 23 more than 10 days in a calendar year in association with an
 24 occupational therapist licensed under [this act], provided
 25 that:

1 (a) the person is licensed under the law of another
2 state that has licensure requirements at least as stringent
3 as the requirements of [this act]; or

4 (b) the person meets the requirements for
5 certification as an occupational therapist registered (OTR)
6 or a certified occupational therapy assistant (COTA),
7 established by the American occupational therapy
8 association; or

9 ~~(6)~~(7) a person employed as an occupational therapy
10 aide.

11 Section 5. Board of occupational therapy practice. (1)
12 There is a board of occupational therapy practice.

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

15 (a) three occupational therapists licensed under [this
16 act] who are actively engaged in the practice or teaching of
17 occupational therapy; and

18 (b) two members of the general public with an interest
19 in the rights of the consumers of health services.

20 (3) The Montana occupational therapy association may
21 submit names of nominees under (2)(a) of this section to the
22 governor as provided in 37-1-132.

23 (4) Each appointment is subject to confirmation by the
24 senate then meeting in regular session or next meeting in
25 regular session following appointment.

1 (5) ~~Each--member~~ MEMBERS shall serve ~~for-a-term-of-4~~
2 years STAGGERED 4-YEAR TERMS. A term begins on the first day
3 of the calendar year and ends on the last day of the
4 calendar year or when a successor is appointed. A member who
5 has served two successive complete terms is not eligible for
6 reappointment until after 1 year.

7 (6) The governor may, after hearing, remove a member
8 for neglect of duty or other just cause.

9 (7) The board is allocated to the department of
10 commerce for administrative purposes only as prescribed in
11 2-15-121.

12 Section 6. Organization -- general rulemaking power --
13 quorum. (1) The board shall meet annually and elect a
14 chairman and a secretary from its members. The board shall
15 hold other meetings when necessary to transact its business.

16 (2) The board may adopt rules for the conduct of its
17 affairs and the administration of [this act]. Rules adopted
18 by the board may include such rules as are reasonable or
19 necessary for the proper performance of its duties and the
20 regulation of proceedings before it.

21 (3) Three board members constitute a quorum for the
22 transaction of business.

23 Section 7. Powers and duties of board. (1) The board
24 shall:

25 (a) administer, coordinate, and enforce the provisions

1 of [this act];

2 (b) evaluate the qualifications of applicants for
3 licensure under [this act] and approve and supervise the
4 examination of such applicants;

5 (c) investigate persons engaging in practices that
6 allegedly violate the provisions of [this act];

7 (d) adopt rules relating to professional licensure and
8 the establishment of ethical standards of practice under
9 [this act];

10 (e) conduct hearings and keep records and minutes as
11 the board considers necessary to carry out its functions;
12 and

13 (f) adopt a seal by which the board shall authenticate
14 its proceedings.

15 (2) A copy of the proceedings, records, or acts of the
16 board, signed by the chairman or secretary of the board and
17 stamped with the seal, is prima facie evidence of the
18 validity of such document.

19 (3) The department may employ persons it considers
20 necessary to carry out the provisions of [this act].

21 Section 8. Compensation and expenses. Each board
22 member is entitled to compensation and travel expenses as
23 provided in 37-1-133.

24 Section 9. License required. (1) No person may
25 practice occupational therapy or hold himself out as an

1 occupational therapist or as being able to practice
2 occupational therapy or able to render occupational therapy
3 services in this state unless he is licensed under the
4 provisions of [this act].

5 (2) Only an individual may be licensed under [this
6 act].

7 Section 10. Application. An applicant applying for
8 licensure as an occupational therapist or as an occupational
9 therapy assistant shall file a written application on forms
10 prescribed by the board, showing that the applicant meets
11 the requirements of [section 11(1)(a) and (b)].

12 Section 11. Requirements for licensure. (1) To be
13 eligible for licensure by the board as an occupational
14 therapist or an occupational therapy assistant, the
15 applicant shall:

16 (a) present evidence of having successfully completed
17 the academic requirements of an educational program
18 recognized by the board for the license sought;

19 (b) submit evidence of having successfully completed a
20 period of supervised fieldwork experience arranged by the
21 recognized educational institution where he completed the
22 academic requirements or by a nationally recognized
23 professional association; and

24 (c) pass an examination as provided for in [section
25 12].

1 (2) The supervised fieldwork experience requirement
 2 for an occupational therapist is a minimum of 6 months. The
 3 supervised fieldwork experience requirement for an
 4 occupational therapy assistant is a minimum of 2 months.

5 Section 12. Examination. (1) A person who satisfies
 6 the educational and experience requirements of [section 11]
 7 may apply for examination in the manner prescribed by the
 8 board. The application must be accompanied by the
 9 nonrefundable fee prescribed by the board under [section
 10 18]. An unsuccessful examinee may apply for reexamination
 11 upon payment of the prescribed fee.

12 (2) The board shall adopt a written examination for
 13 occupational therapists and a written examination for
 14 occupational therapy assistants and establish standards for
 15 acceptable performance.

16 (3) Examinations shall be given at least twice each
 17 year at a time and place and under such supervision as the
 18 board may determine. The board shall give notice of the
 19 examinations in accordance with rules adopted by the board.

20 (4) Examinees may obtain their scores and review their
 21 examinations in accordance with rules established by the
 22 board.

23 Section 13. Waiver of requirements for licensure. (1)
 24 The board may waive the examination, education, or
 25 experience requirements and grant a license to an applicant

1 who presents proof of current licensure as an occupational
 2 therapist or occupational therapy assistant in another
 3 state, the District of Columbia, or a territory of the
 4 United States which requires standards for licensure that
 5 the board considers equivalent to the requirements for
 6 licensure under [this act].

7 (2) The board may waive the examination, education, or
 8 experience requirements and grant a license to a person
 9 certified by the American occupational therapy association
 10 (AOTA) as a certified occupational therapy assistant (COTA)
 11 or an occupational therapist registered (OTR) after [the
 12 effective date of this act] if the board determines that the
 13 requirements for such certification are equivalent to the
 14 requirements for licensure under [this act].

15 (3) Occupational therapists and occupational therapy
 16 assistants trained in a foreign country must satisfy the
 17 examination requirements of [section 12]. The board shall
 18 require foreign-trained applicants, before examination, to
 19 furnish proof of educational and supervised fieldwork
 20 requirements substantially equal to those required by
 21 [section 11].

22 (4) The board may waive the educational requirements
 23 and license an applicant as an occupational therapist if the
 24 applicant has practiced as an occupational therapy assistant
 25 for 4 years, has completed the experience requirement before

1 January 1, 1988, and has passed the examination for
2 occupational therapists.

3 Section 14. Issuance of license. (1) The board shall
4 issue a license to any person who meets the requirements of
5 [this act] upon payment of the prescribed license fee.

6 (2) The license must include the dates of issuance and
7 expiration.

8 Section 15. Limited permit. A limited permit may be
9 granted to a person who has completed the education and
10 experience requirements of [this act]. The permit allows the
11 person to practice occupational therapy in association with
12 a licensed occupational therapist. This permit is valid
13 until the person is issued a license under [section 14] or
14 until the results of the examination taken by the person are
15 available to the board. This limited permit may be renewed
16 only one time if the person has failed the examination.

17 Section 16. Renewal of license -- inactive status. (1)
18 Each license issued under [this act] is subject to annual
19 renewal upon the payment of a renewal fee and expires unless
20 renewed in the manner prescribed by the rules of the board.
21 The board may provide for the late renewal of a license upon
22 the payment of a late fee in accordance with its rules, but
23 no late renewal of a license may be granted more than 5
24 years after its expiration.

25 (2) Upon request, the board may grant inactive status

1 to a licensee who:

2 (a) does not practice as an occupational therapist or
3 an occupational therapy assistant; and

4 (b) does not hold himself out as an occupational
5 therapist or an occupational therapy assistant.

6 Section 17. Denial, suspension, or revocation of
7 license. (1) The board may refuse to issue or renew a
8 license or may revoke or suspend the license of any licensee
9 or applicant if he has ~~been found guilty of unprofessional~~
10 ~~conduct that has endangered or is likely to endanger the~~
11 ~~health, welfare, or safety of the public.~~ Such
12 ~~unprofessional conduct includes:~~

13 (a) ~~obtaining~~ OBTAINED a license by means of fraud,
14 misrepresentation, or concealment of material facts;

15 (b) ~~being found guilty of unprofessional conduct as~~
16 ~~defined in the rules of the board or having~~ violated ethical
17 standards of practice established pursuant to [this act];

18 (c) being BEEN convicted of a crime considered
19 sufficient under 37-1-203 to warrant denial, revocation, or
20 suspension of the license;

21 (d) ~~violating~~ VIOLATED any lawful order or rule of the
22 board; or

23 (e) ~~violating~~ VIOLATED any provision of [this act].

24 (2) Denial, suspension, or revocation of a license is
25 permissible only after a hearing and procedures that comply

1 with all applicable requirements of the Montana
2 Administrative Procedure Act.

3 (3) One year after the denial, suspension, or
4 revocation of a license, a person may apply for
5 reinstatement and licensure. The board may in its discretion
6 require an examination for reinstatement.

7 Section 18. Fees. (1) The board may adopt fees in
8 accordance with 37-1-134 for:

9 †1) (A) applications for licensure;

10 †2) (B) examination;

11 †3) (C) initial license issuance;

12 †4) (D) license renewal;

13 †5) (E) late license renewal; and

14 †6) (F) limited permit issuance.

15 (2) ALL FEES COLLECTED BY THE BOARD UNDER THIS SECTION
16 MUST BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND FOR THE
17 USE OF THE BOARD IN ADMINISTERING THIS ACT, SUBJECT TO
18 37-1-101(6).

19 Section 19. Penalty. A person convicted of violating
20 [this act] is guilty of a misdemeanor and shall be fined an
21 amount not to exceed \$5,000.

22 Section 20. Grandfather provisions. The board shall
23 grant a license to any person certified as an occupational
24 therapist registered (OTR) or a certified occupational
25 therapy assistant (COTA) by the American occupational

1 therapy association (AOTA) prior to [the effective date of
2 this act].

3 Section 21. Initial board appointment. (1)
4 Notwithstanding the provisions of [section 5], the governor
5 shall within 60 days following passage and approval of [this
6 act] appoint the initial board as follows:

7 (a) two members shall be appointed for a term of 2
8 years;

9 (b) two members shall be appointed for a term of 3
10 years; and

11 (c) one member shall be appointed for a term of 4
12 years.

13 (2) Initial appointments of occupational therapist and
14 occupational therapist assistant members shall be made from
15 persons eligible for licensure pursuant to [section 20].

16 (3) Initial board members shall serve through December
17 31 of the year in which they are appointed before commencing
18 the terms prescribed by this section.

19 (4) The Montana occupational therapy association may
20 nominate persons for initial membership on the board in
21 compliance with 37-1-132.

22 Section 22. Severability. If a part of this act is
23 invalid, all valid parts that are severable from the invalid
24 part remain in effect. If a part of this act is invalid in
25 one or more of its applications, the part remains in effect

1 in all valid applications that are severable from the
2 invalid applications.

3 Section 23. Codification instruction. (1) Sections 1
4 through 4 and 6 through 19 are intended to be codified as an
5 integral part of Title 37, and the provisions of Title 37
6 apply to sections 1 through 4 and 6 through 19.

7 (2) Section 5 is intended to be codified as an
8 integral part of Title 2, chapter 15, part 18, and the
9 provisions of Title 2, chapter 15, part 18, apply to section
10 5.

11 Section 24. Effective date. This act is effective on
12 passage and approval.

-End-

1 STATEMENT OF INTENT

2 SENATE BILL 79

3 Senate Public Health, Welfare and Safety Committee
4

5 A statement of intent is required for this act because
6 it delegates rulemaking authority to the board of
7 occupational therapy practice. It is the intent of the
8 legislature that in adopting its rules the board should look
9 to standards promulgated by the American occupational
10 therapy association and the committee on allied health,
11 education, and accreditation of the American medical
12 association. These standards should provide guidance to the
13 board for rules regarding recognition of educational
14 programs and the type of examination to be given for
15 licensure. The legislature intends that rules adopted by
16 board governing licensure and conduct of members of the
17 profession be aimed at ensuring the public that
18 practitioners are competent and are providing quality health
19 care services within the scope of this act.

1 SENATE BILL NO. 79

2 INTRODUCED BY CHRISTIAENS

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
5 LICENSURE AND REGULATION OF OCCUPATIONAL THERAPISTS AND
6 OCCUPATIONAL THERAPY ASSISTANTS; CREATING A BOARD OF
7 OCCUPATIONAL THERAPY PRACTICE; PROVIDING FOR THE AUTHORITY
8 OF THE BOARD; ~~AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:11 Section 1. Short title. [This act] may be cited as the
12 "Occupational Therapy Practice Act".13 Section 2. Purpose. The legislature declares that it
14 is the purpose of [this act] to provide for the regulation
15 of persons offering occupational therapy services in order
16 to:

- 17 (1) safeguard the public health, safety, and welfare;
18 (2) protect the public from incompetent, unscrupulous,
19 and unauthorized persons;
20 (3) assure the highest degree of professional conduct
21 on the part of occupational therapists and occupational
22 therapy assistants; and
23 (4) assure the availability of occupational therapy
24 services of high quality to persons in need of such
25 services.

1 Section 3. Definitions. As used in [this act], unless
2 the context requires otherwise, the following definitions
3 apply:

4 (1) "Board" means the board of occupational therapy
5 practice established by [section 5].

6 (2) "Department" means the department of commerce
7 provided for in Title 2, chapter 15, part 18.

8 (3) "Occupational therapist" means a person licensed
9 to practice occupational therapy under [this act].

10 (4) "Occupational therapy" means the use of purposeful
11 activity with an individual who is limited by physical
12 injury or illness, psychosocial dysfunction, developmental
13 or learning disability, or the aging process in order to
14 maximize independence, prevent disability, and maintain
15 health. The practice encompasses evaluation, treatment, and
16 consultation. Occupational therapy services may be provided
17 individually, in groups, or through social systems. Specific
18 occupational therapy services include but are not limited
19 to:

- 20 (a) teaching daily living skills;
21 (b) developing perceptual-motor skills and sensory
22 integrative functioning;
23 (c) developing play skills and prevocational and
24 leisure capacities;
25 (d) designing, fabricating, or applying selected

1 ~~orthotic--and--prosthetic--devices~~ SPLINTS or selective
 2 adaptive equipment AND TRAINING IN THE USE OF UPPER
 3 EXTREMITY PROSTHETICS OR UPPER AND LOWER EXTREMITIES
 4 ORTHOTIC DEVICES;

5 (e) using specifically designed crafts and exercises
 6 to enhance functional performance;

7 (f) administering and interpreting tests such as
 8 manual muscle and range of motion; and

9 (g) adapting environments for the handicapped.

10 (5) "Occupational therapy aide" means a person who
 11 assists in the practice of occupational therapy under the
 12 direct supervision of an occupational therapist or
 13 occupational therapy assistant and whose activities require
 14 an understanding of occupational therapy but do not require
 15 professional or advanced training in the basic anatomical,
 16 biological, psychological, and social sciences involved in
 17 the practice of occupational therapy.

18 (6) "Occupational therapy assistant" means a person
 19 licensed to assist in the practice of occupational therapy
 20 under [this act], who works under the supervision of an
 21 occupational therapist.

22 Section 4. Exemptions. Nothing in [this act] prevents
 23 or restricts the practice, services, or activities of:

24 (1) a person licensed in this state under any other
 25 law OR CERTIFIED OR REGISTERED AS A MEMBER OF AN

1 OCCUPATIONAL OR PROFESSIONAL GROUP OTHER THAN OCCUPATIONAL
 2 THERAPY from engaging in the profession or occupation for
 3 which he is licensed, CERTIFIED, OR REGISTERED;

4 (2) A PERSON WHO PROVIDES TREATMENT, TEACHES LIVING
 5 SKILLS, DESIGNS ORTHOTIC OR PROSTHETIC DEVICES, ADMINISTERS
 6 TESTS, OR ENGAGES IN OTHER ACTIVITIES DESCRIBED IN [SECTION
 7 3] BUT DOES NOT REPRESENT HIMSELF AS AN OCCUPATIONAL
 8 THERAPIST;

9 (3) a person employed as an occupational therapist
 10 or occupational therapy assistant by an institution or
 11 agency of the federal government;

12 (4) a person pursuing a supervised course of study
 13 leading to a degree or certificate in occupational therapy
 14 at an accredited institution or under an approved
 15 educational program if the person is designated by a title
 16 that clearly indicates his status as a student or trainee;

17 (5) a person fulfilling the supervised fieldwork
 18 experience requirements of [section 11] if the experience
 19 constitutes a part of the experience necessary to meet the
 20 requirements of that section;

21 (6) a person performing occupational therapy
 22 services in the state if these services are performed for no
 23 more than 10 days in a calendar year in association with an
 24 occupational therapist licensed under [this act], provided
 25 that:

1 (a) the person is licensed under the law of another
 2 state that has licensure requirements at least as stringent
 3 as the requirements of [this act]; or

4 (b) the person meets the requirements for
 5 certification as an occupational therapist registered (OTR)
 6 or a certified occupational therapy assistant (COTA),
 7 established by the American occupational therapy
 8 association; or

9 ~~{6}~~{7} a person employed as an occupational therapy
 10 aide.

11 Section 5. Board of occupational therapy practice. (1)
 12 There is a board of occupational therapy practice.

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

15 (a) three occupational therapists licensed under [this
 16 act] who are actively engaged in the practice or teaching of
 17 occupational therapy; and

18 (b) two members of the general public with an interest
 19 in the rights of the consumers of health services.

20 (3) The Montana occupational therapy association may
 21 submit names of nominees under (2)(a) of this section to the
 22 governor as provided in 37-1-132.

23 (4) Each appointment is subject to confirmation by the
 24 senate then meeting in regular session or next meeting in
 25 regular session following appointment.

1 (5) ~~Each--member~~ MEMBERS shall serve ~~for-a-term-of-4~~
 2 years STAGGERED 4-YEAR TERMS. A term begins on the first day
 3 of the calendar year and ends on the last day of the
 4 calendar year or when a successor is appointed. A member who
 5 has served two successive complete terms is not eligible for
 6 reappointment until after 1 year.

7 (6) The governor may, after hearing, remove a member
 8 for neglect of duty or other just cause.

9 (7) The board is allocated to the department of
 10 commerce for administrative purposes only as prescribed in
 11 2-15-121.

12 Section 6. Organization -- general rulemaking power --
 13 quorum. (1) The board shall meet annually and elect a
 14 chairman and a secretary from its members. The board shall
 15 hold other meetings when necessary to transact its business.

16 (2) The board may adopt rules for the conduct of its
 17 affairs and the administration of [this act]. Rules adopted
 18 by the board may include such rules as are reasonable or
 19 necessary for the proper performance of its duties and the
 20 regulation of proceedings before it.

21 (3) Three board members constitute a quorum for the
 22 transaction of business.

23 Section 7. Powers and duties of board. (1) The board
 24 shall:

25 (a) administer, coordinate, and enforce the provisions

1 of [this act];

2 (b) evaluate the qualifications of applicants for
3 licensure under [this act] and approve and supervise the
4 examination of such applicants;

5 (c) investigate persons engaging in practices that
6 allegedly violate the provisions of [this act];

7 (d) adopt rules relating to professional licensure and
8 the establishment of ethical standards of practice under
9 [this act];

10 (e) conduct hearings and keep records and minutes as
11 the board considers necessary to carry out its functions;
12 and

13 (f) adopt a seal by which the board shall authenticate
14 its proceedings.

15 (2) A copy of the proceedings, records, or acts of the
16 board, signed by the chairman or secretary of the board and
17 stamped with the seal, is prima facie evidence of the
18 validity of such document.

19 (3) The department may employ persons it considers
20 necessary to carry out the provisions of [this act].

21 Section 8. Compensation and expenses. Each board
22 member is entitled to compensation and travel expenses as
23 provided in 37-1-133.

24 Section 9. License required. (1) No person may
25 practice occupational therapy or hold himself out as an

1 occupational therapist or as being able to practice
2 occupational therapy or able to render occupational therapy
3 services in this state unless he is licensed under the
4 provisions of [this act].

5 (2) Only an individual may be licensed under [this
6 act].

7 Section 10. Application. An applicant applying for
8 licensure as an occupational therapist or as an occupational
9 therapy assistant shall file a written application on forms
10 prescribed by the board, showing that the applicant meets
11 the requirements of [section 11(1)(a) and (b)].

12 Section 11. Requirements for licensure. (1) To be
13 eligible for licensure by the board as an occupational
14 therapist or an occupational therapy assistant, the
15 applicant shall:

16 (a) present evidence of having successfully completed
17 the academic requirements of an educational program
18 recognized by the board for the license sought;

19 (b) submit evidence of having successfully completed a
20 period of supervised fieldwork experience arranged by the
21 recognized educational institution where he completed the
22 academic requirements or by a nationally recognized
23 professional association; and

24 (c) pass an examination as provided for in [section
25 12].

1 (2) The supervised fieldwork experience requirement
2 for an occupational therapist is a minimum of 6 months. The
3 supervised fieldwork experience requirement for an
4 occupational therapy assistant is a minimum of 2 months.

5 Section 12. Examination. (1) A person who satisfies
6 the educational and experience requirements of [section 11]
7 may apply for examination in the manner prescribed by the
8 board. The application must be accompanied by the
9 nonrefundable fee prescribed by the board under [section
10 18]. An unsuccessful examinee may apply for reexamination
11 upon payment of the prescribed fee.

12 (2) The board shall adopt a written examination for
13 occupational therapists and a written examination for
14 occupational therapy assistants and establish standards for
15 acceptable performance.

16 (3) Examinations shall be given at least twice each
17 year at a time and place and under such supervision as the
18 board may determine. The board shall give notice of the
19 examinations in accordance with rules adopted by the board.

20 (4) Examinees may obtain their scores and review their
21 examinations in accordance with rules established by the
22 board.

23 Section 13. Waiver of requirements for licensure. (1)
24 The board may waive the examination, education, or
25 experience requirements and grant a license to an applicant

1 who presents proof of current licensure as an occupational
2 therapist or occupational therapy assistant in another
3 state, the District of Columbia, or a territory of the
4 United States which requires standards for licensure that
5 the board considers equivalent to the requirements for
6 licensure under [this act].

7 (2) The board may waive the examination, education, or
8 experience requirements and grant a license to a person
9 certified by the American occupational therapy association
10 (AOTA) as a certified occupational therapy assistant (COTA)
11 or an occupational therapist registered (OTR) after [the
12 effective date of this act] if the board determines that the
13 requirements for such certification are equivalent to the
14 requirements for licensure under [this act].

15 (3) Occupational therapists and occupational therapy
16 assistants trained in a foreign country must satisfy the
17 examination requirements of [section 12]. The board shall
18 require foreign-trained applicants, before examination, to
19 furnish proof of educational and supervised fieldwork
20 requirements substantially equal to those required by
21 [section 11].

22 (4) The board may waive the educational requirements
23 and license an applicant as an occupational therapist if the
24 applicant has practiced as an occupational therapy assistant
25 for 4 years, has completed the experience requirement before

1 January 1, 1988, and has passed the examination for
2 occupational therapists.

3 Section 14. Issuance of license. (1) The board shall
4 issue a license to any person who meets the requirements of
5 [this act] upon payment of the prescribed license fee.

6 (2) The license must include the dates of issuance and
7 expiration.

8 Section 15. Limited permit. A limited permit may be
9 granted to a person who has completed the education and
10 experience requirements of [this act]. The permit allows the
11 person to practice occupational therapy in association with
12 a licensed occupational therapist. This permit is valid
13 until the person is issued a license under [section 14] or
14 until the results of the examination taken by the person are
15 available to the board. This limited permit may be renewed
16 only one time if the person has failed the examination.

17 Section 16. Renewal of license -- inactive status. (1)
18 Each license issued under [this act] is subject to annual
19 renewal upon the payment of a renewal fee and expires unless
20 renewed in the manner prescribed by the rules of the board.
21 The board may provide for the late renewal of a license upon
22 the payment of a late fee in accordance with its rules, but
23 no late renewal of a license may be granted more than 5
24 years after its expiration.

25 (2) Upon request, the board may grant inactive status

1 to a licensee who:

2 (a) does not practice as an occupational therapist or
3 an occupational therapy assistant; and

4 (b) does not hold himself out as an occupational
5 therapist or an occupational therapy assistant.

6 Section 17. Denial, suspension, or revocation of
7 license. (1) The board may refuse to issue or renew a
8 license or may revoke or suspend the license of any licensee
9 or applicant if he has ~~been found guilty of unprofessional~~
10 ~~conduct that has endangered or is likely to endanger the~~
11 ~~health, welfare, or safety of the public. Such~~
12 ~~unprofessional conduct includes:~~

13 (a) ~~obtaining~~ OBTAINED a license by means of fraud,
14 misrepresentation, or concealment of material facts;

15 (b) ~~being found guilty of unprofessional conduct as~~
16 ~~defined in the rules of the board or having~~ violated ethical
17 standards of practice established pursuant to [this act];

18 (c) being BEEN convicted of a crime considered
19 sufficient under 37-1-203 to warrant denial, revocation, or
20 suspension of the license;

21 (d) ~~violating~~ VIOLATED any lawful order or rule of the
22 board; or

23 (e) ~~violating~~ VIOLATED any provision of [this act].

24 (2) Denial, suspension, or revocation of a license is
25 permissible only after a hearing and procedures that comply

1 with all applicable requirements of the Montana
2 Administrative Procedure Act.

3 (3) One year after the denial, suspension, or
4 revocation of a license, a person may apply for
5 reinstatement and licensure. The board may in its discretion
6 require an examination for reinstatement.

7 Section 18. Fees. (1) The board may adopt fees in
8 accordance with 37-1-134 for:

9 ~~(1)~~(A) applications for licensure;

10 ~~(2)~~(B) examination;

11 ~~(3)~~(C) initial license issuance;

12 ~~(4)~~(D) license renewal;

13 ~~(5)~~(E) late license renewal; and

14 ~~(6)~~(F) limited permit issuance.

15 (2) ALL FEES COLLECTED BY THE BOARD UNDER THIS SECTION
16 MUST BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND FOR THE
17 USE OF THE BOARD IN ADMINISTERING THIS ACT, SUBJECT TO
18 37-1-101(6).

19 Section 19. Penalty. A person convicted of violating
20 [this act] is guilty of a misdemeanor and shall be fined an
21 amount not to exceed ~~\$5,000~~ \$500.

22 Section 20. Grandfather provisions. The board shall
23 grant a license to any person certified as an occupational
24 therapist registered (OTR) or a certified occupational
25 therapy assistant (COTA) by the American occupational

1 therapy association (AOTA) prior to [the effective date of
2 this act].

3 Section 21. Initial board appointment. (1)
4 Notwithstanding the provisions of [section 5], the governor
5 shall within 60 days following passage and approval of [this
6 act] appoint the initial board as follows:

7 (a) two members shall be appointed for a term of 2
8 years;

9 (b) two members shall be appointed for a term of 3
10 years; and

11 (c) one member shall be appointed for a term of 4
12 years.

13 (2) Initial appointments of occupational therapist and
14 occupational therapist assistant members shall be made from
15 persons eligible for licensure pursuant to [section 20].

16 (3) Initial board members shall serve through December
17 31 of the year in which they are appointed before commencing
18 the terms prescribed by this section.

19 (4) The Montana occupational therapy association may
20 nominate persons for initial membership on the board in
21 compliance with 37-1-132.

22 Section 22. Severability. If a part of this act is
23 invalid, all valid parts that are severable from the invalid
24 part remain in effect. If a part of this act is invalid in
25 one or more of its applications, the part remains in effect

1 in all valid applications that are severable from the
2 invalid applications.

3 Section 23. Codification instruction. (1) Sections 1
4 through 4 and 6 through 19 are intended to be codified as an
5 integral part of Title 37, and the provisions of Title 37
6 apply to sections 1 through 4 and 6 through 19.

7 (2) Section 5 is intended to be codified as an
8 integral part of Title 2, chapter 15, part 18, and the
9 provisions of Title 2, chapter 15, part 18, apply to section
10 5.

11 ~~Section 24.--Effective--date.--This--act--is--effective--on~~
12 ~~passage--and--approval--~~

-End-

March 11 19 85

MR. SPEAKER

We, your committee on BUSINESS AND LABOR

Senate

having had under consideration Bill No. 79

third reading copy (blue color)

LICENSURE AND REGULATION OF OCCUPATIONAL THERAPISTS

Respectfully report as follows: That Senate Bill No. 79

BE AMENDED AS FOLLOWS:

- 1. Page 3, line 3
Following: "UPPER"
Strike: "AND LOWER"
- 2. Page 3, line 20
Following: "the"
Insert: "general"
- 3. Page 3, line 21
Following: "therapist"
Insert: "in accordance with the provisions of the Essentials for an Approved Educational Program for the Occupational Therapy Assistant, published by the American Occupational Therapy Association, as it reads on October 1, 1985"

K

SL 3/11

AND AS AMENDED, BE CONCURRED IN

Rep. Robert Pavlovich, Chairman.

1 STATEMENT OF INTENT

2 SENATE BILL 79

3 Senate Public Health, Welfare and Safety Committee

4
5 A statement of intent is required for this act because
6 it delegates rulemaking authority to the board of
7 occupational therapy practice. It is the intent of the
8 legislature that in adopting its rules the board should look
9 to standards promulgated by the American occupational
10 therapy association and the committee on allied health,
11 education, and accreditation of the American medical
12 association. These standards should provide guidance to the
13 board for rules regarding recognition of educational
14 programs and the type of examination to be given for
15 licensure. The legislature intends that rules adopted by
16 board governing licensure and conduct of members of the
17 profession be aimed at ensuring the public that
18 practitioners are competent and are providing quality health
19 care services within the scope of this act.

SENATE BILL NO. 79
INTRODUCED BY CHRISTIAENS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE LICENSURE AND REGULATION OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS; CREATING A BOARD OF OCCUPATIONAL THERAPY PRACTICE; PROVIDING FOR THE AUTHORITY OF THE BOARD;--AND-PROVIDING-AN-IMMEDIATE-EFFECTIVE-DATE."

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

Section 1. Short title. [This act] may be cited as the "Occupational Therapy Practice Act".

Section 2. Purpose. The legislature declares that it is the purpose of [this act] to provide for the regulation of persons offering occupational therapy services in order to:

- (1) safeguard the public health, safety, and welfare;
- (2) protect the public from incompetent, unscrupulous, and unauthorized persons;
- (3) assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants; and
- (4) assure the availability of occupational therapy services of high quality to persons in need of such services.

Section 3. Definitions. As used in [this act], unless the context requires otherwise, the following definitions apply:

- (1) "Board" means the board of occupational therapy practice established by [section 5].
- (2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.
- (3) "Occupational therapist" means a person licensed to practice occupational therapy under [this act].
- (4) "Occupational therapy" means the use of purposeful activity with an individual who is limited by physical injury or illness, psychosocial dysfunction, developmental or learning disability, or the aging process in order to maximize independence, prevent disability, and maintain health. The practice encompasses evaluation, treatment, and consultation. Occupational therapy services may be provided individually, in groups, or through social systems. Specific occupational therapy services include but are not limited to:
 - (a) teaching daily living skills;
 - (b) developing perceptual-motor skills and sensory integrative functioning;
 - (c) developing play skills and prevocational and leisure capacities;
 - (d) designing, fabricating, or applying selected

1 ~~orthotic--and--prosthetic--devices~~ SPLINTS or selective
2 adaptive equipment AND TRAINING IN THE USE OF UPPER
3 EXTREMITY PROSTHETICS OR UPPER AND---LOWER EXTREMITIES
4 ORTHOTIC DEVICES;

5 (e) using specifically designed crafts and exercises
6 to enhance functional performance;

7 (f) administering and interpreting tests such as
8 manual muscle and range of motion; and

9 (g) adapting environments for the handicapped.

10 (5) "Occupational therapy aide" means a person who
11 assists in the practice of occupational therapy under the
12 direct supervision of an occupational therapist or
13 occupational therapy assistant and whose activities require
14 an understanding of occupational therapy but do not require
15 professional or advanced training in the basic anatomical,
16 biological, psychological, and social sciences involved in
17 the practice of occupational therapy.

18 (6) "Occupational therapy assistant" means a person
19 licensed to assist in the practice of occupational therapy
20 under [this act], who works under the GENERAL supervision of
21 an occupational therapist IN ACCORDANCE WITH THE PROVISIONS
22 OF THE ESSENTIALS FOR AN APPROVED EDUCATIONAL PROGRAM FOR
23 THE OCCUPATIONAL THERAPY ASSISTANT, PUBLISHED BY THE
24 AMERICAN OCCUPATIONAL THERAPY ASSOCIATION, AS IT READS ON
25 OCTOBER 1, 1985.

1 Section 4. Exemptions. Nothing in [this act] prevents
2 or restricts the practice, services, or activities of:

3 (1) a person licensed in this state under any other
4 law OR CERTIFIED OR REGISTERED AS A MEMBER OF AN
5 OCCUPATIONAL OR PROFESSIONAL GROUP OTHER THAN OCCUPATIONAL
6 THERAPY from engaging in the profession or occupation for
7 which he is licensed, CERTIFIED, OR REGISTERED;

8 (2) A PERSON WHO PROVIDES TREATMENT, TEACHES LIVING
9 SKILLS, DESIGNS ORTHOTIC OR PROSTHETIC DEVICES, ADMINISTERS
10 TESTS, OR ENGAGES IN OTHER ACTIVITIES DESCRIBED IN [SECTION
11 3] BUT DOES NOT REPRESENT HIMSELF AS AN OCCUPATIONAL
12 THERAPIST;

13 ~~(3)~~(3) a person employed as an occupational therapist
14 or occupational therapy assistant by an institution or
15 agency of the federal government;

16 ~~(3)~~(4) a person pursuing a supervised course of study
17 leading to a degree or certificate in occupational therapy
18 at an accredited institution or under an approved
19 educational program if the person is designated by a title
20 that clearly indicates his status as a student or trainee;

21 ~~(4)~~(5) a person fulfilling the supervised fieldwork
22 experience requirements of [section 11] if the experience
23 constitutes a part of the experience necessary to meet the
24 requirements of that section;

25 ~~(5)~~(6) a person performing occupational therapy

1 services in the state if these services are performed for no
 2 more than 10 days in a calendar year in association with an
 3 occupational therapist licensed under [this act], provided
 4 that:

5 (a) the person is licensed under the law of another
 6 state that has licensure requirements at least as stringent
 7 as the requirements of [this act]; or

8 (b) the person meets the requirements for
 9 certification as an occupational therapist registered (OTR)
 10 or a certified occupational therapy assistant (COTA),
 11 established by the American occupational therapy
 12 association; or

13 ~~(6)~~(7) a person employed as an occupational therapy
 14 aide.

15 Section 5. Board of occupational therapy practice. (1)
 16 There is a board of occupational therapy practice.

17 (2) The board consists of five members appointed by
 18 the governor. The members are:

19 (a) three occupational therapists licensed under [this
 20 act] who are actively engaged in the practice or teaching of
 21 occupational therapy; and

22 (b) two members of the general public with an interest
 23 in the rights of the consumers of health services.

24 (3) The Montana occupational therapy association may
 25 submit names of nominees under (2)(a) of this section to the

1 governor as provided in 37-1-132.

2 (4) Each appointment is subject to confirmation by the
 3 senate then meeting in regular session or next meeting in
 4 regular session following appointment.

5 (5) ~~Each member~~ MEMBERS shall serve ~~for a term of 4~~
 6 years STAGGERED 4-YEAR TERMS. A term begins on the first day
 7 of the calendar year and ends on the last day of the
 8 calendar year or when a successor is appointed. A member who
 9 has served two successive complete terms is not eligible for
 10 reappointment until after 1 year.

11 (6) The governor may, after hearing, remove a member
 12 for neglect of duty or other just cause.

13 (7) The board is allocated to the department of
 14 commerce for administrative purposes only as prescribed in
 15 2-15-121.

16 Section 6. Organization -- general rulemaking power --
 17 quorum. (1) The board shall meet annually and elect a
 18 chairman and a secretary from its members. The board shall
 19 hold other meetings when necessary to transact its business.

20 (2) The board may adopt rules for the conduct of its
 21 affairs and the administration of [this act]. Rules adopted
 22 by the board may include such rules as are reasonable or
 23 necessary for the proper performance of its duties and the
 24 regulation of proceedings before it.

25 (3) Three board members constitute a quorum for the

1 transaction of business.

2 Section 7. Powers and duties of board. (1) The board
3 shall:

4 (a) administer, coordinate, and enforce the provisions
5 of [this act];

6 (b) evaluate the qualifications of applicants for
7 licensure under [this act] and approve and supervise the
8 examination of such applicants;

9 (c) investigate persons engaging in practices that
10 allegedly violate the provisions of [this act];

11 (d) adopt rules relating to professional licensure and
12 the establishment of ethical standards of practice under
13 [this act];

14 (e) conduct hearings and keep records and minutes as
15 the board considers necessary to carry out its functions;
16 and

17 (f) adopt a seal by which the board shall authenticate
18 its proceedings.

19 (2) A copy of the proceedings, records, or acts of the
20 board, signed by the chairman or secretary of the board and
21 stamped with the seal, is prima facie evidence of the
22 validity of such document.

23 (3) The department may employ persons it considers
24 necessary to carry out the provisions of [this act].

25 Section 8. Compensation and expenses. Each board

1 member is entitled to compensation and travel expenses as
2 provided in 37-1-133.

3 Section 9. License required. (1) No person may
4 practice occupational therapy or hold himself out as an
5 occupational therapist or as being able to practice
6 occupational therapy or able to render occupational therapy
7 services in this state unless he is licensed under the
8 provisions of [this act].

9 (2) Only an individual may be licensed under [this
10 act].

11 Section 10. Application. An applicant applying for
12 licensure as an occupational therapist or as an occupational
13 therapy assistant shall file a written application on forms
14 prescribed by the board, showing that the applicant meets
15 the requirements of [section 11(1)(a) and (b)].

16 Section 11. Requirements for licensure. (1) To be
17 eligible for licensure by the board as an occupational
18 therapist or an occupational therapy assistant, the
19 applicant shall:

20 (a) present evidence of having successfully completed
21 the academic requirements of an educational program
22 recognized by the board for the license sought;

23 (b) submit evidence of having successfully completed a
24 period of supervised fieldwork experience arranged by the
25 recognized educational institution where he completed the

1 academic requirements or by a nationally recognized
2 professional association; and

3 (c) pass an examination as provided for in [section
4 12].

5 (2) The supervised fieldwork experience requirement
6 for an occupational therapist is a minimum of 6 months. The
7 supervised fieldwork experience requirement for an
8 occupational therapy assistant is a minimum of 2 months.

9 Section 12. Examination. (1) A person who satisfies
10 the educational and experience requirements of [section 11]
11 may apply for examination in the manner prescribed by the
12 board. The application must be accompanied by the
13 nonrefundable fee prescribed by the board under [section
14 18]. An unsuccessful examinee may apply for reexamination
15 upon payment of the prescribed fee.

16 (2) The board shall adopt a written examination for
17 occupational therapists and a written examination for
18 occupational therapy assistants and establish standards for
19 acceptable performance.

20 (3) Examinations shall be given at least twice each
21 year at a time and place and under such supervision as the
22 board may determine. The board shall give notice of the
23 examinations in accordance with rules adopted by the board.

24 (4) Examinees may obtain their scores and review their
25 examinations in accordance with rules established by the

1 board.

2 Section 13. Waiver of requirements for licensure. (1)
3 The board may waive the examination, education, or
4 experience requirements and grant a license to an applicant
5 who presents proof of current licensure as an occupational
6 therapist or occupational therapy assistant in another
7 state, the District of Columbia, or a territory of the
8 United States which requires standards for licensure that
9 the board considers equivalent to the requirements for
10 licensure under [this act].

11 (2) The board may waive the examination, education, or
12 experience requirements and grant a license to a person
13 certified by the American occupational therapy association
14 (AOTA) as a certified occupational therapy assistant (COTA)
15 or an occupational therapist registered (OTR) after [the
16 effective date of this act] if the board determines that the
17 requirements for such certification are equivalent to the
18 requirements for licensure under [this act].

19 (3) Occupational therapists and occupational therapy
20 assistants trained in a foreign country must satisfy the
21 examination requirements of [section 12]. The board shall
22 require foreign-trained applicants, before examination, to
23 furnish proof of educational and supervised fieldwork
24 requirements substantially equal to those required by
25 [section 11].

1 (4) The board may waive the educational requirements
2 and license an applicant as an occupational therapist if the
3 applicant has practiced as an occupational therapy assistant
4 for 4 years, has completed the experience requirement before
5 January 1, 1988, and has passed the examination for
6 occupational therapists.

7 Section 14. Issuance of license. (1) The board shall
8 issue a license to any person who meets the requirements of
9 [this act] upon payment of the prescribed license fee.

10 (2) The license must include the dates of issuance and
11 expiration.

12 Section 15. Limited permit. A limited permit may be
13 granted to a person who has completed the education and
14 experience requirements of [this act]. The permit allows the
15 person to practice occupational therapy in association with
16 a licensed occupational therapist. This permit is valid
17 until the person is issued a license under [section 14] or
18 until the results of the examination taken by the person are
19 available to the board. This limited permit may be renewed
20 only one time if the person has failed the examination.

21 Section 16. Renewal of license -- inactive status. (1)
22 Each license issued under [this act] is subject to annual
23 renewal upon the payment of a renewal fee and expires unless
24 renewed in the manner prescribed by the rules of the board.
25 The board may provide for the late renewal of a license upon

1 the payment of a late fee in accordance with its rules, but
2 no late renewal of a license may be granted more than 5
3 years after its expiration.

4 (2) Upon request, the board may grant inactive status
5 to a licensee who:

6 (a) does not practice as an occupational therapist or
7 an occupational therapy assistant; and

8 (b) does not hold himself out as an occupational
9 therapist or an occupational therapy assistant.

10 Section 17. Denial, suspension, or revocation of
11 license. (1) The board may refuse to issue or renew a
12 license or may revoke or suspend the license of any licensee
13 or applicant if he has ~~been found guilty of unprofessional~~
14 ~~conduct that has endangered or is likely to endanger the~~
15 ~~health, welfare, or safety of the public. Such~~
16 ~~unprofessional conduct includes:~~

17 (a) obtaining OBTAINED a license by means of fraud,
18 misrepresentation, or concealment of material facts;

19 (b) ~~being found guilty of unprofessional conduct as~~
20 ~~defined in the rules of the board or having~~ violated ethical
21 standards of practice established pursuant to [this act];

22 (c) being BEEN convicted of a crime considered
23 sufficient under 37-1-203 to warrant denial, revocation, or
24 suspension of the license;

25 (d) violating VIOLATED any lawful order or rule of the

1 board; or

2 (e) ~~violating~~ VIOLATED any provision of [this act].

3 (2) Denial, suspension, or revocation of a license is
4 permissible only after a hearing and procedures that comply
5 with all applicable requirements of the Montana
6 Administrative Procedure Act.

7 (3) One year after the denial, suspension, or
8 revocation of a license, a person may apply for
9 reinstatement and licensure. The board may in its discretion
10 require an examination for reinstatement.

11 Section 18. Fees. (1) The board may adopt fees in
12 accordance with 37-1-134 for:

13 ~~(1)~~(A) applications for licensure;

14 ~~(2)~~(B) examination;

15 ~~(3)~~(C) initial license issuance;

16 ~~(4)~~(D) license renewal;

17 ~~(5)~~(E) late license renewal; and

18 ~~(6)~~(F) limited permit issuance.

19 (2) ALL FEES COLLECTED BY THE BOARD UNDER THIS SECTION
20 MUST BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND FOR THE
21 USE OF THE BOARD IN ADMINISTERING THIS ACT, SUBJECT TO
22 37-1-101(6).

23 Section 19. Penalty. A person convicted of violating
24 [this act] is guilty of a misdemeanor and shall be fined an
25 amount not to exceed ~~\$5,000~~ \$500.

1 Section 20. Grandfather provisions. The board shall
2 grant a license to any person certified as an occupational
3 therapist registered (OTR) or a certified occupational
4 therapy assistant (COTA) by the American occupational
5 therapy association (AOTA) prior to [the effective date of
6 this act].

7 Section 21. Initial board appointment. (1)
8 Notwithstanding the provisions of [section 5], the governor
9 shall within 60 days following passage and approval of [this
10 act] appoint the initial board as follows:

11 (a) two members shall be appointed for a term of 2
12 years;

13 (b) two members shall be appointed for a term of 3
14 years; and

15 (c) one member shall be appointed for a term of 4
16 years.

17 (2) Initial appointments of occupational therapist and
18 occupational therapist assistant members shall be made from
19 persons eligible for licensure pursuant to [section 20].

20 (3) Initial board members shall serve through December
21 31 of the year in which they are appointed before commencing
22 the terms prescribed by this section.

23 (4) The Montana occupational therapy association may
24 nominate persons for initial membership on the board in
25 compliance with 37-1-132.

1 Section 22. Severability. If a part of this act is
2 invalid, all valid parts that are severable from the invalid
3 part remain in effect. If a part of this act is invalid in
4 one or more of its applications, the part remains in effect
5 in all valid applications that are severable from the
6 invalid applications.

7 Section 23. Codification instruction. (1) Sections 1
8 through 4 and 6 through 19 are intended to be codified as an
9 integral part of Title 37, and the provisions of Title 37
10 apply to sections 1 through 4 and 6 through 19.

11 (2) Section 5 is intended to be codified as an
12 integral part of Title 2, chapter 15, part 18, and the
13 provisions of Title 2, chapter 15, part 18, apply to section
14 5.

15 ~~Section 24. --Effective date. --This act is effective--on~~
16 ~~passage-and-approval--~~

-End-

GOVERNOR'S PROPOSED AMENDMENTS
TO
SENATE BILL 79,
REFERENCE COPY

1. Page 8, line 4.
Following: line 3
Strike: "practice occupational therapy or"
2. Page 8, line 3.
Following: "(1)"
Insert: "(a)"
3. Page 8, line 7.
Following: "licensed"
Insert: "as an occupational therapist"
4. Page 8.
Following: line 8
Insert: "(b) No person may practice or hold himself out as an occupational therapy assistant in this state unless he is licensed as an occupational therapist or as an occupational therapy assistant."
5. Page 14, line 9.
Following: "following"
Strike: "passage and approval"
Insert: "the effective date"

1 STATEMENT OF INTENT

2 SENATE BILL 79

3 Senate Public Health, Welfare and Safety Committee
4

5 A statement of intent is required for this act because
6 it delegates rulemaking authority to the board of
7 occupational therapy practice. It is the intent of the
8 legislature that in adopting its rules the board should look
9 to standards promulgated by the American occupational
10 therapy association and the committee on allied health,
11 education, and accreditation of the American medical
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16 board governing licensure and conduct of members of the
17 profession be aimed at ensuring the public that
18 practitioners are competent and are providing quality health
19 care services within the scope of this act.

1 SENATE BILL NO. 79
 2 INTRODUCED BY CHRISTIAENS
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
 5 LICENSURE AND REGULATION OF OCCUPATIONAL THERAPISTS AND
 6 OCCUPATIONAL THERAPY ASSISTANTS; CREATING A BOARD OF
 7 OCCUPATIONAL THERAPY PRACTICE; PROVIDING FOR THE AUTHORITY
 8 OF THE BOARD;~~AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Short title. [This act] may be cited as the
 12 "Occupational Therapy Practice Act".

13 Section 2. Purpose. The legislature declares that it
 14 is the purpose of [this act] to provide for the regulation
 15 of persons offering occupational therapy services in order
 16 to:

- 17 (1) safeguard the public health, safety, and welfare;
- 18 (2) protect the public from incompetent, unscrupulous,
- 19 and unauthorized persons;
- 20 (3) assure the highest degree of professional conduct
- 21 on the part of occupational therapists and occupational
- 22 therapy assistants; and
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- 24 services of high quality to persons in need of such
- 25 services.

1 Section 3. Definitions. As used in [this act], unless
 2 the context requires otherwise, the following definitions
 3 apply:

4 (1) "Board" means the board of occupational therapy
 5 practice established by [section 5].

6 (2) "Department" means the department of commerce
 7 provided for in Title 2, chapter 15, part 18.

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 9 to practice occupational therapy under [this act].

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 11 activity with an individual who is limited by physical
 12 injury or illness, psychosocial dysfunction, developmental
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 14 maximize independence, prevent disability, and maintain
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 8 manual muscle and range of motion; and

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10 (5) "Occupational therapy aide" means a person who
 11 assists in the practice of occupational therapy under the
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 13 occupational therapy assistant and whose activities require
 14 an understanding of occupational therapy but do not require
 15 professional or advanced training in the basic anatomical,
 16 biological, psychological, and social sciences involved in
 17 the practice of occupational therapy.

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 19 licensed to assist in the practice of occupational therapy
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 21 an occupational therapist IN ACCORDANCE WITH THE PROVISIONS
 22 OF THE ESSENTIALS FOR AN APPROVED EDUCATIONAL PROGRAM FOR
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 24 AMERICAN OCCUPATIONAL THERAPY ASSOCIATION, AS IT READS ON
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 11 3] BUT DOES NOT REPRESENT HIMSELF AS AN OCCUPATIONAL
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13 {2}{3} a person employed as an occupational therapist
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 15 agency of the federal government;

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 17 leading to a degree or certificate in occupational therapy
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 22 experience requirements of [section 11] if the experience
 23 constitutes a part of the experience necessary to meet the
 24 requirements of that section;

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6 state that has licensure requirements at least as stringent
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9 certification as an occupational therapist registered (OTR)
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16 There is a board of occupational therapy practice.

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18 the governor. The members are:

19 (a) three occupational therapists licensed under [this
20 act] who are actively engaged in the practice or teaching of
21 occupational therapy; and

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23 in the rights of the consumers of health services.

24 (3) The Montana occupational therapy association may
25 submit names of nominees under (2)(a) of this section to the

1 governor as provided in 37-1-132.

2 (4) Each appointment is subject to confirmation by the
3 senate then meeting in regular session or next meeting in
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6 occupational therapy or able to render occupational therapy
7 services in this state unless he is licensed AS AN
8 OCCUPATIONAL THERAPIST under the provisions of [this act].

9 (B) NO PERSON MAY PRACTICE OR HOLD HIMSELF OUT AS AN
10 OCCUPATIONAL THERAPY ASSISTANT IN THIS STATE UNLESS HE IS
11 LICENSED AS AN OCCUPATIONAL THERAPIST OR AS AN OCCUPATIONAL
12 THERAPY ASSISTANT.

13 (2) Only an individual may be licensed under [this
14 act].

15 Section 10. Application. An applicant applying for
16 licensure as an occupational therapist or as an occupational
17 therapy assistant shall file a written application on forms
18 prescribed by the board, showing that the applicant meets
19 the requirements of [section 11(1)(a) and (b)].

20 Section 11. Requirements for licensure. (1) To be
21 eligible for licensure by the board as an occupational
22 therapist or an occupational therapy assistant, the
23 applicant shall:

24 (a) present evidence of having successfully completed
25 the academic requirements of an educational program

1 recognized by the board for the license sought;

2 (b) submit evidence of having successfully completed a
3 period of supervised fieldwork experience arranged by the
4 recognized educational institution where he completed the
5 academic requirements or by a nationally recognized
6 professional association; and

7 (c) pass an examination as provided for in [section
8 12].

9 (2) The supervised fieldwork experience requirement
10 for an occupational therapist is a minimum of 6 months. The
11 supervised fieldwork experience requirement for an
12 occupational therapy assistant is a minimum of 2 months.

13 Section 12. Examination. (1) A person who satisfies
14 the educational and experience requirements of [section 11]
15 may apply for examination in the manner prescribed by the
16 board. The application must be accompanied by the
17 nonrefundable fee prescribed by the board under [section
18 18]. An unsuccessful examinee may apply for reexamination
19 upon payment of the prescribed fee.

20 (2) The board shall adopt a written examination for
21 occupational therapists and a written examination for
22 occupational therapy assistants and establish standards for
23 acceptable performance.

24 (3) Examinations shall be given at least twice each
25 year at a time and place and under such supervision as the

1 board may determine. The board shall give notice of the
2 examinations in accordance with rules adopted by the board.

3 (4) Examinees may obtain their scores and review their
4 examinations in accordance with rules established by the
5 board.

6 Section 13. Waiver of requirements for licensure. (1)
7 The board may waive the examination, education, or
8 experience requirements and grant a license to an applicant
9 who presents proof of current licensure as an occupational
10 therapist or occupational therapy assistant in another
11 state, the District of Columbia, or a territory of the
12 United States which requires standards for licensure that
13 the board considers equivalent to the requirements for
14 licensure under [this act].

15 (2) The board may waive the examination, education, or
16 experience requirements and grant a license to a person
17 certified by the American occupational therapy association
18 (AOTA) as a certified occupational therapy assistant (COTA)
19 or an occupational therapist registered (OTR) after [the
20 effective date of this act] if the board determines that the
21 requirements for such certification are equivalent to the
22 requirements for licensure under [this act].

23 (3) Occupational therapists and occupational therapy
24 assistants trained in a foreign country must satisfy the
25 examination requirements of [section 12]. The board shall

1 require foreign-trained applicants, before examination, to
2 furnish proof of educational and supervised fieldwork
3 requirements substantially equal to those required by
4 [section 11].

5 (4) The board may waive the educational requirements
6 and license an applicant as an occupational therapist if the
7 applicant has practiced as an occupational therapy assistant
8 for 4 years, has completed the experience requirement before
9 January 1, 1988, and has passed the examination for
10 occupational therapists.

11 Section 14. Issuance of license. (1) The board shall
12 issue a license to any person who meets the requirements of
13 [this act] upon payment of the prescribed license fee.

14 (2) The license must include the dates of issuance and
15 expiration.

16 Section 15. Limited permit. A limited permit may be
17 granted to a person who has completed the education and
18 experience requirements of [this act]. The permit allows the
19 person to practice occupational therapy in association with
20 a licensed occupational therapist. This permit is valid
21 until the person is issued a license under [section 14] or
22 until the results of the examination taken by the person are
23 available to the board. This limited permit may be renewed
24 only one time if the person has failed the examination.

25 Section 16. Renewal of license -- inactive status. (1)

1 Each license issued under [this act] is subject to annual
2 renewal upon the payment of a renewal fee and expires unless
3 renewed in the manner prescribed by the rules of the board.
4 The board may provide for the late renewal of a license upon
5 the payment of a late fee in accordance with its rules, but
6 no late renewal of a license may be granted more than 5
7 years after its expiration.

8 (2) Upon request, the board may grant inactive status
9 to a licensee who:

10 (a) does not practice as an occupational therapist or
11 an occupational therapy assistant; and

12 (b) does not hold himself out as an occupational
13 therapist or an occupational therapy assistant.

14 Section 17. Denial, suspension, or revocation of
15 license. (1) The board may refuse to issue or renew a
16 license or may revoke or suspend the license of any licensee
17 or applicant if he has ~~been found guilty of unprofessional~~
18 ~~conduct that has endangered or is likely to endanger the~~
19 ~~health, welfare, or safety of the public. Such~~
20 ~~unprofessional conduct includes:~~

21 (a) ~~obtaining~~ OBTAINED a license by means of fraud,
22 misrepresentation, or concealment of material facts;

23 (b) ~~being found guilty of unprofessional conduct as~~
24 ~~defined in the rules of the board or having~~ violated ethical
25 standards of practice established pursuant to [this act];

1 (c) being BEEN convicted of a crime considered
2 sufficient under 37-1-203 to warrant denial, revocation, or
3 suspension of the license;

4 (d) ~~violating~~ VIOLATED any lawful order or rule of the
5 board; or

6 (e) ~~violating~~ VIOLATED any provision of [this act].

7 (2) Denial, suspension, or revocation of a license is
8 permissible only after a hearing and procedures that comply
9 with all applicable requirements of the Montana
10 Administrative Procedure Act.

11 (3) One year after the denial, suspension, or
12 revocation of a license, a person may apply for
13 reinstatement and licensure. The board may in its discretion
14 require an examination for reinstatement.

15 Section 18. Fees. (1) The board may adopt fees in
16 accordance with 37-1-134 for:

17 ~~(1)~~ (A) applications for licensure;

18 ~~(2)~~ (B) examination;

19 ~~(3)~~ (C) initial license issuance;

20 ~~(4)~~ (D) license renewal;

21 ~~(5)~~ (E) late license renewal; and

22 ~~(6)~~ (F) limited permit issuance.

23 (2) ALL FEES COLLECTED BY THE BOARD UNDER THIS SECTION
24 MUST BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND FOR THE
25 USE OF THE BOARD IN ADMINISTERING THIS ACT, SUBJECT TO

1 37-1-101(6).

2 Section 19. Penalty. A person convicted of violating
3 [this act] is guilty of a misdemeanor and shall be fined an
4 amount not to exceed ~~\$5,000~~ \$500.

5 Section 20. Grandfather provisions. The board shall
6 grant a license to any person certified as an occupational
7 therapist registered (OTR) or a certified occupational
8 therapy assistant (COTA) by the American occupational
9 therapy association (AOTA) prior to [the effective date of
10 this act].

11 Section 21. Initial board appointment. (1)
12 Notwithstanding the provisions of [section 5], the governor
13 shall within 60 days following ~~passage-and-approval-of~~ [THE
14 EFFECTIVE DATE OF this act] appoint the initial board as
15 follows:

16 (a) two members shall be appointed for a term of 2
17 years;

18 (b) two members shall be appointed for a term of 3
19 years; and

20 (c) one member shall be appointed for a term of 4
21 years.

22 (2) Initial appointments of occupational therapist and
23 occupational therapist assistant members shall be made from
24 persons eligible for licensure pursuant to [section 20].

25 (3) Initial board members shall serve through December

1 31 of the year in which they are appointed before commencing
2 the terms prescribed by this section.

3 (4) The Montana occupational therapy association may
4 nominate persons for initial membership on the board in
5 compliance with 37-1-132.

6 Section 22. Severability. If a part of this act is
7 invalid, all valid parts that are severable from the invalid
8 part remain in effect. If a part of this act is invalid in
9 one or more of its applications, the part remains in effect
10 in all valid applications that are severable from the
11 invalid applications.

12 Section 23. Codification instruction. (1) Sections 1
13 through 4 and 6 through 19 are intended to be codified as an
14 integral part of Title 37, and the provisions of Title 37
15 apply to sections 1 through 4 and 6 through 19.

16 (2) Section 5 is intended to be codified as an
17 integral part of Title 2, chapter 15, part 18, and the
18 provisions of Title 2, chapter 15, part 18, apply to section
19 5.

20 ~~Section 24. --Effective date.--This act is effective--on~~
21 ~~passage--and--approval--~~

-End-