

SENATE BILL NO. 226
INTRODUCED BY JACOBSON

IN THE SENATE

January 23, 1985	Introduced and referred to Committee on Public Health, Welfare and Safety.
January 28, 1985	Fiscal Note requested.
February 1, 1985	Fiscal Note returned.
February 7, 1985	Committee recommend bill do pass as amended. Report adopted.
February 8, 1985	Bill printed and placed on members' desks.
February 11, 1985	Second reading, do pass.
February 12, 1985	Considered correctly engrossed.
February 13, 1985	Third reading, passed. Ayes, 50; Noes, 0.
	Transmitted to House.

IN THE HOUSE

February 27, 1985	Introduced and referred to Committee on Business and Labor.
March 8, 1985	Rereferred to Committee on Human Services and Aging.
March 18, 1985	Committee recommend bill be concurred in as amended. Report adopted.
March 20, 1985	Second reading, concurred in.
March 22, 1985	Third reading, concurred in. Returned to Senate with amendments.

IN THE SENATE

March 22, 1985

Received from House.

March 27, 1985

Second reading, amendments
concurrent in.

March 29, 1985

Third reading, amendments
concurrent in.
Ayes, 49; Noes, 0.

Sent to enrolling.

Reported correctly enrolled.

Senate BILL NO. 226

INTRODUCED BY J. Jackson

BY REQUEST OF THE BOARD OF HEARING AID DISPENSERS

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAW RELATING TO THE BOARD OF HEARING AID DISPENSERS; PROVIDING A CONTINUING EDUCATION REQUIREMENT; REVISING THE TRAINEE LICENSE LAW; AND GIVING THE BOARD AUTHORITY TO FINE LICENSEES."

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

Section 1. Section 37-16-101, MCA, is amended to read:

"37-16-101. Declaration of policy. The selling, dispensing, and fitting of hearing aids is hereby declared to affect the public health and welfare and is subject to regulation and control in the public interest. This chapter shall be liberally construed to carry out the objects and purposes hereinafter described in accordance with this declaration of policy."

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

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

(1) "Board" means the board of hearing aid dispensers provided for in 2-15-1850.

(2) "Department" means the department of commerce

provided for in Title 2, chapter 15, part 18.

(3) "License" means a regular or trainee license.

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

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

Section 3. Section 37-16-103, MCA, is amended to read:

"37-16-103. Exemptions. (1) This chapter does not apply to a person who is a physician licensed to practice by the state board of medical examiners.

(2) This chapter does not apply to a person while he is engaged in the practice of fitting hearing aids if his practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public agency or-by-a-charitable-or-nonprofit

1 ~~organization--which--is--primarily--supported--by--voluntary~~
2 ~~contributions,--unless--they--sell--hearing--aids."~~

3 Section 4. Section 37-16-202, MCA, is amended to read:

4 "37-16-202. Powers and duties. The powers and duties
5 of the board are to:

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

8 (2) establish a procedure to act as a grievance board
9 to receive, investigate, and mediate complaints from any
10 source concerning the activities of persons licensed under
11 this chapter or their agents, whether licensed or not;

12 (3) suspend or revoke licenses under this chapter;

13 (4) designate the time and place for examining
14 applicants for license and supervise and administer the
15 examination;

16 (5) adopt rules necessary to carry out this chapter;

17 (6) require the periodic inspection and calibration of
18 audiometric testing equipment and carry out periodic
19 inspections of facilities of persons who practice the
20 fitting or selling of hearing aids;

21 (7) prepare examinations required by the chapter;

22 (8) initiate legal action to enjoin from operation a
23 person or corporation engaged in the sale, and dispensing,
24 or fitting of hearing aids in this state who is not licensed
25 under this chapter."

1 Section 5. Section 37-16-301, MCA, is amended to read:

2 "37-16-301. Permanent place of business in state
3 necessary ~~---exception~~ -- records -- notice. (1) A person
4 ~~who obtains-a-license-to-dispense~~ is actively engaged in
5 dispensing hearing aids as a business must have a permanent
6 place of business in this state that will be opened to serve
7 the public, having the necessary testing, fitting, and
8 hearing aid accessories needed by the hard-of-hearing public
9 in the wearing of hearing aids. More than one licensee may
10 work from a permanent place of business.

11 ~~{2}--Subsection-{1}-of-this-section-does-not--apply--to~~
12 ~~persons--who--obtain-a-license-as-salespeople-representing-a~~
13 ~~licensed-hearing-aid-dispenser-~~

14 {3}{2} The department shall keep a record of the
15 places of practice of persons who hold regular licenses or
16 trainee licenses. A notice required to be given by the board
17 or department to a person who holds a regular or trainee
18 license may be given by mailing it to him at the address
19 last given by him to the department.

20 {4}{3} All licensed dispensers shall notify the board
21 of any change of address within 30 days of the change. A
22 trainee shall notify the board of any change of address
23 within 10 days of the change."

24 Section 6. Section 37-16-302, MCA, is amended to read:

25 "37-16-302. Sale of dispensing business. A business

1 selling, dispensing, or fitting hearing aids may be sold
 2 provided the new owners comply with all the provisions of
 3 this chapter."

4 Section 7. Section 37-16-303, MCA, is amended to read:

5 "37-16-303. Bill of sale -- examination by
 6 otolaryngologist -- notation on receipt that examination not
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 8 fitting, or dispensing of hearing aids shall deliver to each
 9 person supplied with a hearing aid, by him or at his order
 10 or direction, a bill of sale which shall contain the
 11 seller's signature and show the name and address of his
 12 regular permanent place of business and the number of his
 13 license, together with a description of the make and type of
 14 the hearing aid furnished and the amount charged, with terms
 15 of guarantee, if any. The bill of sale shall also reveal the
 16 condition of the hearing device and whether it is new, used,
 17 or reconditioned.

18 (2) Any person practicing the selling, dispensing, or
 19 fitting and-sale of hearing aids shall, when dealing with a
 20 person 18 years of age and under or when the aid is to be
 21 purchased with state funds, ascertain if the person has been
 22 examined by an otolaryngologist within 90 days prior to the
 23 fitting and shall obtain his recommendations. If such not be
 24 the case, a recommendation to do so must be made to the
 25 purchaser and this fact be noted on the receipt. If a

1 medical recommendation is not obtained, a waiver of such
 2 recommendation signed by the patient must accompany all
 3 final sales.

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

13 Section 8. Section 37-16-401, MCA, is amended to read:

14 "37-16-401. License required. A person may not engage
 15 in ~~the--sale--or--practice--of~~ selling, dispensing, and or
 16 fitting hearing aids or display a sign or in any other way
 17 advertise or hold himself out as a person who practices the
 18 selling, dispensing, and or fitting of hearing aids in
 19 Montana unless he holds a current regular or temporary
 20 license issued by the department."

21 Section 9. Section 37-16-402, MCA, is amended to read:

22 "37-16-402. Application -- qualifications -- fee. An
 23 applicant for a license shall pay a fee fixed by the board
 24 and commensurate with the costs of processing and
 25 administering his application and related functions of the

1 board and shall show to the satisfaction of the board that
2 he:

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

4 (2) has an education equivalent to a 4-year course in
5 an accredited high school, has continuously engaged in the
6 practice of selling, fitting, or and dispensing hearing aids
7 in Montana during the 3 years preceding the date of
8 application, or holds a current license as an audiologist
9 under Title 37, chapter 15;

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

11 Section 10. Section 37-16-403, MCA, is amended to
12 read:

13 "37-16-403. Examination -- time and place. ~~{1}~~ An
14 applicant for a license who is notified by the department
15 that he has fulfilled the requirements of 37-16-402 shall
16 appear at a time and place designated by the board to be
17 examined by written and practical tests in order to
18 demonstrate that he is qualified to practice the fitting of
19 hearing aids.

20 ~~{2}--The department shall, subject to 37-1-101, give~~
21 ~~examinations--required--to--permit applicants to be examined~~
22 ~~within--30--days--following--the--board's--approval--of--the~~
23 ~~application--for--examination--Examination may be delayed on~~
24 ~~notice to the department under this section."~~

25 Section 11. Section 37-16-405, MCA, is amended to

1 read:

2 "37-16-405. Trainee license. (1) An applicant who
3 fulfills the requirements of 37-16-402 and who has not
4 previously applied to take the practical examination under
5 37-16-403 may apply to the board for a trainee license.

6 (2) On receiving an application under subsection (1)
7 of this section, accompanied by a fee fixed by the board and
8 commensurate with the cost of administering the license and
9 related functions of the board and verification that the
10 applicant has passed the written portion of the examination
11 with a score of at least 70%, the board shall issue a
12 trainee license which entitles the applicant to engage in a
13 6-month 12-month training period during which he shall:

14 (a) ~~work-for-a-period-of--30--days--under--the--direct~~
15 ~~control--of--a--hearing-aid-dispenser--during--which--the--trainee~~
16 ~~may-not-in-any-way-fit-a-hearing-aid-or-test-a-customer~~ pass
17 the practical examination administered by the board;

18 (b) ~~after-the-completion-of-the-period-provided-for-in~~
19 ~~subsection--{2}{a},~~ work for a period of 60 days during which
20 he may do the testing necessary for proper selection and
21 fitting of a hearing aid and make necessary impressions, but
22 the delivery and final fitting of the hearing aid must be
23 made by his supervisor; and

24 (c) work for the balance of the training period during
25 which he may engage in all activities allowed a licensed

1 hearing aid dispenser, but while under supervision of a
2 licensed hearing aid dispenser.

3 (3) The training period must consist of a continuous
4 ~~6-month~~ 12-month term. Any break in training requires
5 application for another trainee license under such rules as
6 the board may prescribe.

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

18 ~~(4) No trainee license may be issued by the board~~
19 ~~unless the applicant shows to the satisfaction of the board~~
20 ~~that he is or will be supervised and trained by a person who~~
21 ~~holds a valid license issued under this chapter.~~

22 ~~(5) If a person who holds a trainee license does not~~
23 ~~take the next examination given after the completion of his~~
24 ~~training period, the trainee license may not be renewed~~
25 ~~except for a good cause shown to the satisfaction of the~~

1 board.

2 ~~(6)(5) If a person who holds a trainee license takes~~
3 ~~and fails to pass the next practical examination given after~~
4 ~~the completion of within his training period, the board may~~
5 ~~authorize the department to renew the trainee license for a~~
6 ~~period ending 30 days after the results of the next~~
7 ~~examination given after the dates of renewal are announced.~~
8 In no event may more than two renewals be permitted. The fee
9 for renewal shall be set by the board commensurate with the
10 cost of administering the license and related functions of
11 the board.

12 ~~(7)(6) A person licensed as an audiologist under the~~
13 ~~provisions of Title 37, chapter 15, is exempt from the~~
14 ~~trainee license and examination requirements of 12-month~~
15 ~~training period but is required to pass the examinations~~
16 ~~prescribed in this chapter."~~

17 Section 12. Section 37-16-406, MCA, is amended to
18 read:

19 "37-16-406. Admission of licensees from other states.
20 When the board determines that another state or jurisdiction
21 has requirements equivalent to or higher than those in
22 effect under this chapter for the practice of dispensing,
23 fitting, and selling hearing aids and that the state or
24 jurisdiction has a program equivalent to or stricter than
25 the program for determining whether applicants under this

1 chapter are qualified to sell, dispense, and fit hearing
 2 aids, the board may authorize the department to issue a
 3 license to applicants who hold current, unsuspended, and
 4 unrevoked licenses to fit, dispense, and sell hearing aids
 5 in the other state or jurisdiction. ~~No such applicants for a
 6 license under this section are required to submit to or
 7 undergo a qualifying examination or the like, other than the
 8 payment of fees, if the person complies with all other
 9 requirements of this chapter."~~

10 Section 13. Section 37-16-407, MCA, is amended to
 11 read:

12 "37-16-407. Renewal of license -- fee. (1) A person
 13 who practices the fitting of hearing aids shall annually pay
 14 to the department a fee as set by the board for a renewal of
 15 his license. The fee shall be fixed by the board to be
 16 commensurate with board costs in administering licensure and
 17 related board functions. The fee shall be increased 10% for
 18 each month or major portion thereof that the payment of the
 19 renewal fee is delayed after the expiration date. The
 20 maximum fee for a delayed renewal shall not exceed twice the
 21 normal renewal fee as set by the board. A person applying
 22 for renewal whose license was suspended for failure to renew
 23 is ~~not~~ required to submit to ~~an examination~~ the examinations
 24 described in 37-16-403 as a condition of renewal for a
 25 3-year period after suspension.

1 (2) Each applicant for license renewal must submit
 2 evidence showing completion of 4 hours of continuing
 3 education completed during the preceding 12 months. The
 4 requirements of the continuing education programs are to be
 5 determined by the board by rule."

6 Section 14. Section 37-16-408, MCA, is amended to
 7 read:

8 "37-16-408. Deposit of fees and fines. Fees and fines
 9 collected under this chapter shall be deposited in the state
 10 special revenue fund for the use of the board, subject to
 11 appropriations and 37-1-101(6)."

12 Section 15. Section 37-16-411, MCA, is amended to
 13 read:

14 "37-16-411. Revocation or suspension of license --
 15 fines. A person registered under this chapter may have his
 16 license revoked or suspended for a fixed period to be
 17 determined by the board or be fined not to exceed \$500 per
 18 incident for any of the following causes:

19 (1) being convicted of a felony, subject to chapter 1,
 20 part 2 of this title. The record of the conviction or a
 21 certified copy from the clerk of the court where the
 22 conviction occurred or certification by the judge of the
 23 court is conclusive evidence of the conviction, except that
 24 if the person has been pardoned by a governor or the
 25 president of the United States, the conviction does not

1 constitute grounds for revocation or suspension.

2 (2) securing a license under this chapter through

3 fraud or deceit or false statements;

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

5 practice of his profession;~~with-fraudulent-intent;~~

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

7 (5) obtaining any fee or making any sale by fraud or

8 misrepresentation;

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

10 suspended or unlicensed person to perform any work covered

11 by this chapter;

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

13 advertising matter, promotional literature, testimonial,

14 guarantee, warranty, label, brand, insignia, or any other

15 representation, however disseminated or published, which is

16 improbable, misleading, deceptive, or untruthful;

17 (8) representing that the services or advice of a

18 person licensed to practice medicine or possessing

19 certification as an audiologist will be used or made

20 available in the selection, fitting, adjustment,

21 maintenance, or repair of hearing aids when that is not true

22 or using the terms "doctor", "clinic", "hearing clinic",

23 "state registered", or other like words, abbreviations, or

24 symbols which tend to connote the medical profession when

25 that use is not accurate; ~~The term "hearing center" shall~~

1 ~~be discontinued in accordance with the code of ethics of the~~

2 ~~national hearing aid society;~~

3 (9) permitting another to use his license or

4 certificate;

5 (10) defaming competitors by falsely imputing to them

6 dishonorable conduct, inability to perform contracts,

7 questionable credit standing, or by other false

8 representations or falsely disparaging the products of

9 competitors in any respect or their business methods,

10 selling prices, values, credit terms, policies, or services;

11 (11) using any method of advertising prohibited by

12 trade practice rules 1 through 17 of the federal trade

13 commission;

14 ~~†††~~(12) obtaining information concerning the business

15 of a competitor by bribery of an employee or agent of such

16 competitor, by false or misleading statements or

17 representations, by the impersonation of one in authority,

18 or by any other unlawful means;

19 ~~†††~~(13) directly or indirectly giving or offering to

20 give or permitting or causing to be given money or anything

21 of value to any person who advises another in a professional

22 capacity as an inducement to influence others to purchase or

23 contract to purchase products sold or offered for sale by a

24 hearing aid dispenser or influencing persons to refrain from

25 dealing in the products of competitors;

1 ~~(13)~~(14) unethical conduct or gross incompetence or
2 negligence in the performance of his duties, including
3 repeated failure to make indicated medical referrals of his
4 customers;

5 ~~(14)~~(15) selling a hearing aid to a person who has not
6 been given tests utilizing appropriate established
7 procedures and instrumentation in fitting of hearing aids,
8 except in cases of selling replacement hearing aids."

9 Section 16. Section 37-16-413, MCA, is amended to
10 read:

11 "37-16-413. Penalty for unlawful practice --
12 injunction. (1) Any person who practices the selling,
13 fitting, or dispensing of hearing aids without a valid
14 license shall be guilty of a misdemeanor and upon conviction
15 be fined not more than \$500 or be imprisoned for not more
16 than 90 days, or both.

17 (2) The board may enforce any provision of this
18 chapter by injunction or by any other appropriate
19 proceeding."

20 Section 17. Section 2-15-1850, MCA, is amended to
21 read:

22 "2-15-1850. Board of hearing aid dispensers. (1) There
23 is a board of hearing aid dispensers.

24 (2) The board consists of five members appointed by
25 the governor with the consent of the senate. The members

1 are:

2 (a) one member who shall hold or be eligible for a
3 certificate of qualification from the American board of
4 otolaryngology;

5 (b) three members who have been qualified licensed
6 dispensers and fitters of hearing aids for at least 5 years
7 before their appointment to the board;

8 (c) one public member who is not in the hearing health
9 care field.

10 (3) Each member shall serve for a term of 3 years. A
11 member may not be reappointed within 1 year after the
12 expiration of his second consecutive full term.

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

15 NEW SECTION. Section 18. Extension of authority. Any
16 existing authority of the board of hearing aid dispensers to
17 make rules on the subject of the provisions of this act is
18 extended to the provisions of this act.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN 253-85

Form BD-15

In compliance with a written request received January 28, 19 85, there is hereby submitted a Fiscal Note for S.B. 226 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.

DESCRIPTION OF PROPOSED LEGISLATION:

Generally revise the law relating to the Board of Hearing Aid Dispensers, providing a continuing education requirement, revising the trainee license law, and giving the board authority to find licensees.

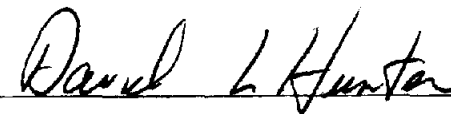
ASSUMPTIONS:

1. Language changes and clarification on traineeship provisions are administrative recommendations and will have no fiscal impact.
2. Continuing education records currently maintained in office on the 66 licensees.
3. Provides fines for violations of Hearing Aid Dispensers Act as a disciplinary tool affecting the licensees.
4. Current complaints average 40 per year, fines could apply to all or only several as determined by the board.
5. Will require rule provisions on fines, approximately 10 pages in FY 86.

FISCAL IMPACT ON STATE SPECIAL REVENUES:

Ten pages rules and notices X \$14.00 a page = \$140 in FY 86.

Additional revenue will be generated for the earmarked special revenue account from any fines levied by the board. The amount of additional revenue cannot be estimated until the board establishes the amount of fines.



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 1, 1985

SB226

APPROVED BY COMMITTEE
ON PUBLIC HEALTH, WELFARE
& SAFETY

SENATE BILL NO. 226

INTRODUCED BY JACOBSON

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designed for or represented as aiding or improving defective
human hearing and parts, attachments, or accessories of the
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hearing aids" means the evaluation or measurement of the
powers or range of human hearing by means of an audiometer
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is engaged in the practice of fitting hearing aids if his
practice is part of the academic curriculum of an accredited
institution of higher education or part of a program
conducted by a public agency ~~or-by-a-charitable-or-nonprofit~~

SECOND READING



1 organization--which--is--primarily--supported--by--voluntary
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 18 audiometric testing equipment and carry out periodic
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 7 the public, having the necessary testing, fitting, and
 8 hearing aid accessories needed by the hard-of-hearing public
 9 in the wearing of hearing aids. More than one licensee may
 10 work from a permanent place of business.

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

14 ~~(3)~~(2) The department shall keep a record of the
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12 regular permanent place of business and the number of his
13 license, together with a description of the make and type of
14 the hearing aid furnished and the amount charged, with terms
15 of guarantee, if any. The bill of sale shall also reveal the
16 condition of the hearing device and whether it is new, used,
17 or reconditioned.

18 (2) (A) Any person practicing the selling, dispensing,
19 or fitting and-sale of hearing aids shall, when dealing with
20 a person ~~18~~ UNDER 19 years of age ~~and-under-or-when-the-aid~~
21 ~~is-to-be-purchased-with-state-funds~~, ascertain if the person
22 has been examined by an otolaryngologist within 90 days
23 prior to the fitting and shall obtain his recommendations.
24 If such not be the case, a recommendation to do so must be
25 made to the purchaser and this fact be noted on the receipt.

1 ~~If-a-medical-recommendation-is-not-obtained,--a--waiver--of~~
2 ~~such-recommendation-signed-by-the-patient-must-accompany-all~~
3 ~~final-sales.~~

4 (B) ANY PERSON PRACTICING THE SELLING, DISPENSING, OR
5 FITTING OF HEARING AIDS SHALL, WHEN THE AID IS TO BE
6 PURCHASED WITH STATE FUNDS, ASCERTAIN IF THE PERSON HAS BEEN
7 EXAMINED BY A LICENSED PHYSICIAN WITHIN 90 DAYS PRIOR TO THE
8 FITTING AND SHALL OBTAIN HIS RECOMMENDATIONS. IF SUCH NOT BE
9 THE CASE, A RECOMMENDATION TO DO SO MUST BE MADE TO THE
10 PURCHASER AND THIS FACT BE NOTED ON THE RECEIPT.

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

20 Section 8. Section 37-16-401, MCA, is amended to read:

21 "37-16-401. License required. A person may not engage
22 in ~~the--sale--or--practice--of~~ selling, dispensing, and or
23 fitting hearing aids or display a sign or in any other way
24 advertise or hold himself out as a person who practices the
25 selling, dispensing, and or fitting of hearing aids in

1 Montana unless he holds a current regular or temporary
2 license issued by the department."

3 Section 9. Section 37-16-402, MCA, is amended to read:

4 "37-16-402. Application -- qualifications -- fee. An
5 applicant for a license shall pay a fee fixed by the board
6 and commensurate with the costs of processing and
7 administering his application and related functions of the
8 board and shall show to the satisfaction of the board that
9 he:

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

11 (2) has an education equivalent to a 4-year course in
12 an accredited high school, has continuously engaged in the
13 practice of selling, fitting, or and dispensing hearing aids
14 in Montana during the 3 years preceding the date of
15 application, or holds a current license as an audiologist
16 under Title 37, chapter 15;

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

18 Section 10. Section 37-16-403, MCA, is amended to
19 read:

20 "37-16-403. Examination -- time and place. (1) An
21 applicant for a license who is notified by the department
22 that he has fulfilled the requirements of 37-16-402 shall
23 appear at a time and place designated by the board to be
24 examined by written and practical tests in order to
25 demonstrate that he is qualified to practice the fitting of

1 hearing aids.

2 ~~(2) The department shall, subject to 37-1-101, give~~
3 ~~examinations required to permit applicants to be examined~~
4 ~~within 30 days following the board's approval of the~~
5 ~~application for examination. Examination may be delayed on~~
6 ~~notice to the department under this section."~~

7 Section 11. Section 37-16-405, MCA, is amended to
8 read:

9 "37-16-405. Trainee license. (1) An applicant who
10 fulfills the requirements of 37-16-402 and who has not
11 previously applied to take the practical examination under
12 37-16-403 may apply to the board for a trainee license.

13 (2) On receiving an application under subsection (1)
14 of this section, accompanied by a fee fixed by the board and
15 commensurate with the cost of administering the license and
16 related functions of the board and verification that the
17 applicant has passed the written portion of the examination
18 with a score of at least 70%, the board shall issue a
19 trainee license which entitles the applicant to engage in a
20 6-month 12-month training period during which he shall:

21 (a) ~~work for a period of 30 days under the direct~~
22 ~~control of a hearing aid dispenser during which the trainee~~
23 ~~may not in any way fit a hearing aid or test a customer~~ pass
24 the practical examination administered by the board;

25 (b) ~~after the completion of the period provided for in~~

1 ~~subsection-(2)(a)~~ work for a period of 60 days during which
 2 he may do the testing necessary for proper selection and
 3 fitting of a hearing aid and make necessary impressions, but
 4 the delivery and final fitting of the hearing aid must be
 5 made by his supervisor; and

6 (c) work for the balance of the training period during
 7 which he may engage in all activities allowed a licensed
 8 hearing aid dispenser, but while under supervision of a
 9 licensed hearing aid dispenser.

10 (3) The training period must consist of a continuous
 11 6-month 12-month term. Any break in training requires
 12 application for another trainee license under such rules as
 13 the board may prescribe.

14 (4) A trainee license may not be issued unless the
 15 board has on file an unrevoked statement from a licensed
 16 hearing aid dealer accepting responsibility for the trainee.
 17 Every licensee supervising a trainee license holder must
 18 submit a quarterly report of the trainee's activities and
 19 training assignments, on forms furnished by the board. The
 20 supervisor is responsible for the professional conduct and
 21 all hearing aid fittings of the trainee. A trainee is
 22 responsible for his own ethical conduct. A supervisor may
 23 terminate his responsibilities to the trainee by mailing by
 24 certified mail written notice to the board and the trainee.

25 ~~(4) No trainee license may be issued by the board~~

1 ~~unless the applicant shows to the satisfaction of the board~~
 2 ~~that he is or will be supervised and trained by a person who~~
 3 ~~holds a valid license issued under this chapter.~~

4 ~~(5) If a person who holds a trainee license does not~~
 5 ~~take the next examination given after the completion of his~~
 6 ~~training period, the trainee license may not be renewed~~
 7 ~~except for a good cause shown to the satisfaction of the~~
 8 ~~board.~~

9 ~~(6)(5)~~ If a person who holds a trainee license takes
 10 and fails to pass the next practical examination given after
 11 the completion of within his training period, the board may
 12 authorize the department to renew the trainee license for a
 13 period ending 30 days after the results of the next
 14 examination given after the dates of renewal are announced.
 15 In no event may more than two renewals be permitted. The fee
 16 for renewal shall be set by the board commensurate with the
 17 cost of administering the license and related functions of
 18 the board.

19 ~~(7)(6)~~ A person licensed as an audiologist under the
 20 provisions of Title 37, chapter 15, is exempt from the
 21 trainee license and examination requirements of 12-month
 22 training period but is required to pass the examinations
 23 prescribed in this chapter."

24 Section 12. Section 37-16-406, MCA, is amended to
 25 read:

1 "37-16-406. Admission of licensees from other states.
 2 When the board determines that another state or jurisdiction
 3 has requirements equivalent to or higher than those in
 4 effect under this chapter for the practice of dispensing,
 5 fitting, and selling hearing aids and that the state or
 6 jurisdiction has a program equivalent to or stricter than
 7 the program for determining whether applicants under this
 8 chapter are qualified to sell, dispense, and fit hearing
 9 aids, the board may authorize the department to issue a
 10 license to applicants who hold current, unsuspended, and
 11 unrevoked licenses to fit, dispense, and sell hearing aids
 12 in the other state or jurisdiction. ~~No such applicants for a~~
 13 ~~license under this section are required to submit to or~~
 14 ~~undergo a qualifying examination or the like, other than the~~
 15 ~~payment of fees, if the person complies with all other~~
 16 ~~requirements of this chapter.~~ NO SUCH APPLICANTS FOR A
 17 LICENSE UNDER THIS SECTION ARE REQUIRED TO SUBMIT TO OR
 18 UNDERGO A QUALIFYING EXAMINATION OR THE LIKE, OTHER THAN THE
 19 PAYMENT OF FEES, IF THE PERSON COMPLIES WITH ALL OTHER
 20 REQUIREMENTS OF THIS CHAPTER."

21 Section 13. Section 37-16-407, MCA, is amended to
 22 read:

23 "37-16-407. Renewal of license -- fee. (1) A person
 24 who practices the fitting of hearing aids shall annually pay
 25 to the department a fee as set by the board for a renewal of

1 his license. The fee shall be fixed by the board to be
 2 commensurate with board costs in administering licensure and
 3 related board functions. The fee shall be increased 10% for
 4 each month or major portion thereof that the payment of the
 5 renewal fee is delayed after the expiration date. The
 6 maximum fee for a delayed renewal shall not exceed twice the
 7 normal renewal fee as set by the board. A person applying
 8 for renewal whose license was suspended for failure to renew
 9 is not required to submit to ~~an examination~~ the examinations
 10 described in 37-16-403 as a condition of renewal for a
 11 3-year period after suspension.

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

17 Section 14. Section 37-16-408, MCA, is amended to
 18 read:

19 "37-16-408. Deposit of fees and fines. Fees and fines
 20 collected under this chapter shall be deposited in the state
 21 special revenue fund for the use of the board, subject to
 22 appropriations and 37-1-101(6)."

23 Section 15. Section 37-16-411, MCA, is amended to
 24 read:

25 "37-16-411. Revocation or suspension of license --

1 fines. A person registered under this chapter may have his
 2 license revoked or suspended for a fixed period to be
 3 determined by the board or be fined not to exceed \$500 per
 4 incident for any of the following causes:

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

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

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

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

18 (5) obtaining any fee or making any sale by fraud or
 19 misrepresentation;

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

23 (7) using or causing or promoting the use of any
 24 advertising matter, promotional literature, testimonial,
 25 guarantee, warranty, label, brand, insignia, or any other

1 representation, however disseminated or published, which is
 2 improbable, misleading, deceptive, or untruthful;

3 (8) representing that the services or advice of a
 4 person licensed to practice medicine or possessing
 5 certification as an audiologist will be used or made
 6 available in the selection, fitting, adjustment,
 7 maintenance, or repair of hearing aids when that is not true
 8 or using the terms "doctor", "clinic", "hearing clinic",
 9 "state registered", or other like words, abbreviations, or
 10 symbols which tend to connote the medical profession when
 11 that use is not accurate; ~~The term "hearing center" shall~~
 12 ~~be discontinued in accordance with the code of ethics of the~~
 13 ~~national hearing aid society;~~

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

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

22 (11) using any method of advertising prohibited by
 23 trade practice rules 1 through 17 of the federal trade
 24 commission;

25 ~~†††~~(12) obtaining information concerning the business

1 of a competitor by bribery of an employee or agent of such
 2 competitor, by false or misleading statements or
 3 representations, by the impersonation of one in authority,
 4 or by any other unlawful means;

5 ~~(12)~~(13) directly or indirectly giving or offering to
 6 give or permitting or causing to be given money or anything
 7 of value to any person who advises another in a professional
 8 capacity as an inducement to influence others to purchase or
 9 contract to purchase products sold or offered for sale by a
 10 hearing aid dispenser or influencing persons to refrain from
 11 dealing in the products of competitors;

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

16 ~~(14)~~(15) selling a hearing aid to a person who has not
 17 been given tests utilizing appropriate established
 18 procedures and instrumentation in fitting of hearing aids,
 19 except in cases of selling replacement hearing aids."

20 Section 16. Section 37-16-413, MCA, is amended to
 21 read:

22 "37-16-413. Penalty for unlawful practice --
 23 injunction. (1) Any person who practices the selling,
 24 fitting, or dispensing of hearing aids without a valid
 25 license shall be guilty of a misdemeanor and upon conviction

1 be fined not more than \$500 or be imprisoned for not more
 2 than 90 days, or both.

3 (2) The board may enforce any provision of this
 4 chapter by injunction or by any other appropriate
 5 proceeding."

6 Section 17. Section 2-15-1850, MCA, is amended to
 7 read:

8 "2-15-1850. Board of hearing aid dispensers. (1) There
 9 is a board of hearing aid dispensers.

10 (2) The board consists of five members appointed by
 11 the governor with the consent of the senate. The members
 12 are:

13 (a) one member who shall hold or be eligible for a
 14 certificate of qualification from the American board of
 15 otolaryngology;

16 (b) three members who have been qualified licensed
 17 dispensers and fitters of hearing aids for at least 5 years
 18 before their appointment to the board;

19 (c) one public member who is not in the hearing health
 20 care field.

21 (3) Each member shall serve for a term of 3 years. A
 22 member may not be reappointed within 1 year after the
 23 expiration of his second consecutive full term.

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

1 NEW SECTION. Section 18. Extension of authority. Any
2 existing authority of the board of hearing aid dispensers to
3 make rules on the subject of the provisions of this act is
4 extended to the provisions of this act.

-End-

1 SENATE BILL NO. 226

2 INTRODUCED BY JACOBSON

3 ~~BY-REQUEST-OF-THE-BOARD-OF-HEARING-AID-DISPENSERS~~

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 LAW RELATING TO THE BOARD OF HEARING AID DISPENSERS;
7 PROVIDING A CONTINUING EDUCATION REQUIREMENT; REVISING THE
8 TRAINEE LICENSE LAW; AND GIVING THE BOARD AUTHORITY TO FINE
9 LICENSEES."

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

12 Section 1. Section 37-16-101, MCA, is amended to read:

13 "37-16-101. Declaration of policy. The selling,
14 dispensing, and fitting of hearing aids is hereby declared
15 to affect the public health and welfare and is subject to
16 regulation and control in the public interest. This chapter
17 shall be liberally construed to carry out the objects and
18 purposes hereinafter described in accordance with this
19 declaration of policy."

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

21 "37-16-102. Definitions. Unless the context requires
22 otherwise, in this chapter the following definitions apply:

23 (1) "Board" means the board of hearing aid dispensers
24 provided for in 2-15-1850.

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

1 provided for in Title 2, chapter 15, part 18.

2 (3) "License" means a regular or trainee license.

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

7 (5) "Practice of selling, dispensing, and fitting
8 hearing aids" means the evaluation or measurement of the
9 powers or range of human hearing by means of an audiometer
10 and a visual examination of the ear and canal or by any
11 other means devised and the consequent selection, adaption,
12 or sale, dispensing, or fitting of hearing aids intended to
13 compensate for hearing loss, including eyeglass hearing aids
14 and their fittings, and the making of an impression of the
15 ear and the subsequent selection of a proper ear mold, but
16 does not include batteries, cords, or accessories."

17 Section 3. Section 37-16-103, MCA, is amended to read:

18 "37-16-103. Exemptions. (1) This chapter does not
19 apply to a person who is a physician licensed to practice by
20 the state board of medical examiners.

21 (2) This chapter does not apply to a person while he
22 is engaged in the practice of fitting hearing aids if his
23 practice is part of the academic curriculum of an accredited
24 institution of higher education or part of a program
25 conducted by a public agency or ~~by-a-charitable-or-nonprofit~~

THIRD READING

1 ~~organization--which--is--primarily--supported--by--voluntary~~
2 ~~contributions,--unless--they--sell--hearing--aids."~~

3 Section 4. Section 37-16-202, MCA, is amended to read:

4 "37-16-202. Powers and duties. The powers and duties
5 of the board are to:

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

8 (2) establish a procedure to act as a grievance board
9 to receive, investigate, and mediate complaints from any
10 source concerning the activities of persons licensed under
11 this chapter or their agents, whether licensed or not;

12 (3) suspend or revoke licenses under this chapter;

13 (4) designate the time and place for examining
14 applicants for license and supervise and administer the
15 examination;

16 (5) adopt rules necessary to carry out this chapter;

17 (6) require the periodic inspection and calibration of
18 audiometric testing equipment and carry out periodic
19 inspections of facilities of persons who practice the
20 fitting or selling of hearing aids;

21 (7) prepare examinations required by the chapter;

22 (8) initiate legal action to enjoin from operation a
23 person or corporation engaged in the sale, and dispensing,
24 or fitting of hearing aids in this state who is not licensed
25 under this chapter."

1 Section 5. Section 37-16-301, MCA, is amended to read:

2 "37-16-301. Permanent place of business in state
3 necessary ---exception -- records -- notice. (1) A person
4 who obtains-a-license-to-dispense is actively engaged in
5 dispensing hearing aids as a business must have a permanent
6 place of business in this state that will be opened to serve
7 the public, having the necessary testing, fitting, and
8 hearing aid accessories needed by the hard-of-hearing public
9 in the wearing of hearing aids. More than one licensee may
10 work from a permanent place of business.

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

14 ~~(3)(2)~~ The department shall keep a record of the
15 places of practice of persons who hold regular licenses or
16 trainee licenses. A notice required to be given by the board
17 or department to a person who holds a regular or trainee
18 license may be given by mailing it to him at the address
19 last given by him to the department.

20 ~~(4)(3)~~ All licensed dispensers shall notify the board
21 of any change of address within 30 days of the change. A
22 trainee shall notify the board of any change of address
23 within 10 days of the change."

24 Section 6. Section 37-16-302, MCA, is amended to read:

25 "37-16-302. Sale of dispensing business. A business

1 selling, dispensing, or fitting hearing aids may be sold
 2 provided the new owners comply with all the provisions of
 3 this chapter."

4 Section 7. Section 37-16-303, MCA, is amended to read:

5 "37-16-303. Bill of sale -- examination by
 6 otolaryngologist -- notation on receipt that examination not
 7 medical opinion. (1) Any person who practices the selling,
 8 fitting, or dispensing of hearing aids shall deliver to each
 9 person supplied with a hearing aid, by him or at his order
 10 or direction, a bill of sale which shall contain the
 11 seller's signature and show the name and address of his
 12 regular permanent place of business and the number of his
 13 license, together with a description of the make and type of
 14 the hearing aid furnished and the amount charged, with terms
 15 of guarantee, if any. The bill of sale shall also reveal the
 16 condition of the hearing device and whether it is new, used,
 17 or reconditioned.

18 (2) (A) Any person practicing the selling, dispensing,
 19 or fitting and sale of hearing aids shall, when dealing with
 20 a person ~~18~~ UNDER 19 years of age ~~and under or when the aid~~
 21 ~~is to be purchased with state funds,~~ ascertain if the person
 22 has been examined by an otolaryngologist within 90 days
 23 prior to the fitting and shall obtain his recommendations.
 24 If such not be the case, a recommendation to do so must be
 25 made to the purchaser and this fact be noted on the receipt.

1 ~~If a medical recommendation is not obtained, a waiver of~~
 2 ~~such recommendation signed by the patient must accompany all~~
 3 ~~final sales.~~

4 (B) ANY PERSON PRACTICING THE SELLING, DISPENSING, OR
 5 FITTING OF HEARING AIDS SHALL, WHEN THE AID IS TO BE
 6 PURCHASED WITH STATE FUNDS, ASCERTAIN IF THE PERSON HAS BEEN
 7 EXAMINED BY A LICENSED PHYSICIAN WITHIN 90 DAYS PRIOR TO THE
 8 FITTING AND SHALL OBTAIN HIS RECOMMENDATIONS. IF SUCH NOT BE
 9 THE CASE, A RECOMMENDATION TO DO SO MUST BE MADE TO THE
 10 PURCHASER AND THIS FACT BE NOTED ON THE RECEIPT.

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

20 Section 8. Section 37-16-401, MCA, is amended to read:

21 "37-16-401. License required. A person may not engage
 22 in the ~~sale or practice of~~ selling, dispensing, and or
 23 fitting hearing aids or display a sign or in any other way
 24 advertise or hold himself out as a person who practices the
 25 selling, dispensing, and or fitting of hearing aids in

1 Montana unless he holds a current regular or temporary
2 license issued by the department."

3 Section 9. Section 37-16-402, MCA, is amended to read:
4 "37-16-402. Application -- qualifications -- fee. An
5 applicant for a license shall pay a fee fixed by the board
6 and commensurate with the costs of processing and
7 administering his application and related functions of the
8 board and shall show to the satisfaction of the board that
9 he:

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

11 (2) has an education equivalent to a 4-year course in
12 an accredited high school, has continuously engaged in the
13 practice of selling, fitting, or and dispensing hearing aids
14 in Montana during the 3 years preceding the date of
15 application, or holds a current license as an audiologist
16 under Title 37, chapter 15;

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

18 Section 10. Section 37-16-403, MCA, is amended to
19 read:

20 "37-16-403. Examination -- time and place. (†) An
21 applicant for a license who is notified by the department
22 that he has fulfilled the requirements of 37-16-402 shall
23 appear at a time and place designated by the board to be
24 examined by written and practical tests in order to
25 demonstrate that he is qualified to practice the fitting of

1 hearing aids.

2 ~~(2) The department shall, subject to 37-1-1017, give~~
3 ~~examinations required to permit applicants to be examined~~
4 ~~within 30 days following the board's approval of the~~
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8 read:

9 "37-16-405. Trainee license. (1) An applicant who
10 fulfills the requirements of 37-16-402 and who has not
11 previously applied to take the practical examination under
12 37-16-403 may apply to the board for a trainee license.

13 (2) On receiving an application under subsection (1)
14 of this section, accompanied by a fee fixed by the board and
15 commensurate with the cost of administering the license and
16 related functions of the board and verification that the
17 applicant has passed the written portion of the examination
18 with a score of at least 70%, the board shall issue a
19 trainee license which entitles the applicant to engage in a
20 6-month 12-month training period during which he shall:

21 (a) ~~work for a period of 30 days under the direct~~
22 ~~control of a hearing aid dispenser during which the trainee~~
23 ~~may not in any way fit a hearing aid or test a customer~~ pass
24 the practical examination administered by the board;

25 (b) ~~after the completion of the period provided for in~~

1 subsection-(2)(a); work for a period of 60 days during which
 2 he may do the testing necessary for proper selection and
 3 fitting of a hearing aid and make necessary impressions, but
 4 the delivery and final fitting of the hearing aid must be
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6 (c) work for the balance of the training period during
 7 which he may engage in all activities allowed a licensed
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 9 licensed hearing aid dispenser.

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 11 6-month 12-month term. Any break in training requires
 12 application for another trainee license under such rules as
 13 the board may prescribe.

14 (4) A trainee license may not be issued unless the
 15 board has on file an unrevoked statement from a licensed
 16 hearing aid dealer accepting responsibility for the trainee.
 17 Every licensee supervising a trainee license holder must
 18 submit a quarterly report of the trainee's activities and
 19 training assignments, on forms furnished by the board. The
 20 supervisor is responsible for the professional--conduct--and
 21 all hearing aid fittings of the trainee. A trainee is
 22 responsible for his own ethical conduct. A supervisor may
 23 terminate his responsibilities to the trainee by mailing by
 24 certified mail written notice to the board and the trainee.

25 ~~(4)--No--trainee--license--may--be--issued--by--the--board~~

1 ~~unless the applicant shows to the satisfaction of the board~~
 2 ~~that he is or will be supervised and trained by a person who~~
 3 ~~holds a valid license issued under this chapter.~~

4 ~~(5)--If--a--person--who--holds--a--trainee--license--does--not~~
 5 ~~take the next examination given after the completion of his~~
 6 ~~training period, the trainee license may not be renewed~~
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 8 ~~board.~~

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 10 and fails to pass the next practical examination given after
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 12 authorize the department to renew the trainee license for a
 13 period ending 30 days after the results--of--the next
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 16 for renewal shall be set by the board commensurate with the
 17 cost of administering the license and related functions of
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 20 provisions of Title 37, chapter 15, is exempt from the
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 2 When the board determines that another state or jurisdiction
 3 has requirements equivalent to or higher than those in
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 5 fitting, and selling hearing aids and that the state or
 6 jurisdiction has a program equivalent to or stricter than
 7 the program for determining whether applicants under this
 8 chapter are qualified to sell, dispense, and fit hearing
 9 aids, the board may authorize the department to issue a
 10 license to applicants who hold current, unsuspended, and
 11 unrevoked licenses to fit, dispense, and sell hearing aids
 12 in the other state or jurisdiction. ~~No such applicants for a~~
 13 ~~license under this section are required to submit to or~~
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 15 ~~payment of fees, if the person complies with all other~~
 16 ~~requirements of this chapter.~~ NO SUCH APPLICANTS FOR A
 17 LICENSE UNDER THIS SECTION ARE REQUIRED TO SUBMIT TO OR
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 21 special revenue fund for the use of the board, subject to
 22 appropriations and 37-1-101(6)."

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 2 license revoked or suspended for a fixed period to be
 3 determined by the board or be fined not to exceed \$500 per
 4 incident for any of the following causes:

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

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

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

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

18 (5) obtaining any fee or making any sale by fraud or
 19 misrepresentation;

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

23 (7) using or causing or promoting the use of any
 24 advertising matter, promotional literature, testimonial,
 25 guarantee, warranty, label, brand, insignia, or any other

1 representation, however disseminated or published, which is
 2 improbable, misleading, deceptive, or untruthful;

3 (8) representing that the services or advice of a
 4 person licensed to practice medicine or possessing
 5 certification as an audiologist will be used or made
 6 available in the selection, fitting, adjustment,
 7 maintenance, or repair of hearing aids when that is not true
 8 or using the terms "doctor", "clinic", "hearing clinic",
 9 "state registered", or other like words, abbreviations, or
 10 symbols which tend to connote the medical profession when
 11 that use is not accurate; ~~The term "hearing center" shall~~
 12 ~~be discontinued in accordance with the code of ethics of the~~
 13 ~~national hearing aid society;~~

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

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 17 dishonorable conduct, inability to perform contracts,
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 19 representations or falsely disparaging the products of
 20 competitors in any respect or their business methods,
 21 selling prices, values, credit terms, policies, or services;

22 (11) using any method of advertising prohibited by
 23 trade practice rules 1 through 17 of the federal trade
 24 commission;

25 ~~(12)~~ (12) obtaining information concerning the business

1 of a competitor by bribery of an employee or agent of such
2 competitor, by false or misleading statements or
3 representations, by the impersonation of one in authority,
4 or by any other unlawful means;

5 ~~(12)~~(13) directly or indirectly giving or offering to
6 give or permitting or causing to be given money or anything
7 of value to any person who advises another in a professional
8 capacity as an inducement to influence others to purchase or
9 contract to purchase products sold or offered for sale by a
10 hearing aid dispenser or influencing persons to refrain from
11 dealing in the products of competitors;

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

16 ~~(14)~~(15) selling a hearing aid to a person who has not
17 been given tests utilizing appropriate established
18 procedures and instrumentation in fitting of hearing aids,
19 except in cases of selling replacement hearing aids."

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24 fitting, or dispensing of hearing aids without a valid
25 license shall be guilty of a misdemeanor and upon conviction

1 be fined not more than \$500 or be imprisoned for not more
2 than 90 days, or both.

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4 chapter by injunction or by any other appropriate
5 proceeding."

6 Section 17. Section 2-15-1850, MCA, is amended to
7 read:

8 "2-15-1850. Board of hearing aid dispensers. (1) There
9 is a board of hearing aid dispensers.

10 (2) The board consists of five members appointed by
11 the governor with the consent of the senate. The members
12 are:

13 (a) one member who shall hold or be eligible for a
14 certificate of qualification from the American board of
15 otolaryngology;

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17 dispensers and fitters of hearing aids for at least 5 years
18 before their appointment to the board;

19 (c) one public member who is not in the hearing health
20 care field.

21 (3) Each member shall serve for a term of 3 years. A
22 member may not be reappointed within 1 year after the
23 expiration of his second consecutive full term.

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

SB 0226/02

1 NEW SECTION. Section 18. Extension of authority. Any
2 existing authority of the board of hearing aid dispensers to
3 make rules on the subject of the provisions of this act is
4 extended to the provisions of this act.

-End-

HOUSE

STANDING COMMITTEE REPORT

March 15 19 85

MR. Speaker

We, your committee on House Human Services and Aging

having had under consideration Senate Bill No. 226

third reading copy (blue color)

Generally revise hearing aid dispenser law

Respectfully report as follows: That Senate Bill No. 226

AMENDED AS FOLLOWS:

- 1) Page 4, line 9. Following: "aids." Insert: "All licensed hearing aid dispensers shall identify their permanent place of business in all advertising, public notices, and in all consumer correspondence, both written and verbal."

BE CONCURRED IN AS AMENDED

[Handwritten signature]

Rep. Keenan Chairman.

1 SENATE BILL NO. 226

2 INTRODUCED BY JACOBSON

3 ~~BY-REQUEST-OF-THE-BOARD-OF-HEARING-AID-DISPENSERS~~

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 LAW RELATING TO THE BOARD OF HEARING AID DISPENSERS;
7 PROVIDING A CONTINUING EDUCATION REQUIREMENT; REVISING THE
8 TRAINEE LICENSE LAW; AND GIVING THE BOARD AUTHORITY TO FINE
9 LICENSEES."

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

12 Section 1. Section 37-16-101, MCA, is amended to read:

13 "37-16-101. Declaration of policy. The selling,
14 dispensing, and fitting of hearing aids is hereby declared
15 to affect the public health and welfare and is subject to
16 regulation and control in the public interest. This chapter
17 shall be liberally construed to carry out the objects and
18 purposes hereinafter described in accordance with this
19 declaration of policy."

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

21 "37-16-102. Definitions. Unless the context requires
22 otherwise, in this chapter the following definitions apply:

23 (1) "Board" means the board of hearing aid dispensers
24 provided for in 2-15-1850.

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

1 provided for in Title 2, chapter 15, part 18.

2 (3) "License" means a regular or trainee license.

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

7 (5) "Practice of selling, dispensing, and fitting
8 hearing aids" means the evaluation or measurement of the
9 powers or range of human hearing by means of an audiometer
10 and a visual examination of the ear and canal or by any
11 other means devised and the consequent selection, adaption,
12 or sale, dispensing, or fitting of hearing aids intended to
13 compensate for hearing loss, including eyeglass hearing aids
14 and their fittings, and the making of an impression of the
15 ear and the subsequent selection of a proper ear mold, but
16 does not include batteries, cords, or accessories."

17 Section 3. Section 37-16-103, MCA, is amended to read:

18 "37-16-103. Exemptions. (1) This chapter does not
19 apply to a person who is a physician licensed to practice by
20 the state board of medical examiners.

21 (2) This chapter does not apply to a person while he
22 is engaged in the practice of fitting hearing aids if his
23 practice is part of the academic curriculum of an accredited
24 institution of higher education or part of a program
25 conducted by a public agency ~~or-by-a-charitable-or-nonprofit~~

1 ~~organization--which--is--primarily--supported--by--voluntary~~
2 ~~contributions,--unless--they--sell--hearing--aids."~~

3 Section 4. Section 37-16-202, MCA, is amended to read:

4 "37-16-202. Powers and duties. The powers and duties
5 of the board are to:

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

8 (2) establish a procedure to act as a grievance board
9 to receive, investigate, and mediate complaints from any
10 source concerning the activities of persons licensed under
11 this chapter or their agents, whether licensed or not;

12 (3) suspend or revoke licenses under this chapter;

13 (4) designate the time and place for examining
14 applicants for license and supervise and administer the
15 examination;

16 (5) adopt rules necessary to carry out this chapter;

17 (6) require the periodic inspection and calibration of
18 audiometric testing equipment and carry out periodic
19 inspections of facilities of persons who practice the
20 fitting or selling of hearing aids;

21 (7) prepare examinations required by the chapter;

22 (8) initiate legal action to enjoin from operation a
23 person or corporation engaged in the sale, and dispensing,
24 or fitting of hearing aids in this state who is not licensed
25 under this chapter."

1 Section 5. Section 37-16-301, MCA, is amended to read:

2 "37-16-301. Permanent place of business in state
3 necessary ~~---exception~~ -- records -- notice. (1) A person
4 who obtains-a-license-to-dispense is actively engaged in
5 dispensing hearing aids as a business must have a permanent
6 place of business in this state that will be opened to serve
7 the public, having the necessary testing, fitting, and
8 hearing aid accessories needed by the hard-of-hearing public
9 in the wearing of hearing aids. ALL LICENSED HEARING AID
10 DISPENSERS SHALL IDENTIFY THEIR PERMANENT PLACE OF BUSINESS
11 IN ALL ADVERTISING PUBLIC NOTICES AND IN ALL CONSUMER
12 CORRESPONDENCE, BOTH WRITTEN AND VERBAL. More than one
13 licensee may work from a permanent place of business.

14 ~~{2}--Subsection--(1)--of--this--section--does--not--apply--to~~
15 ~~persons--who--obtain--a--license--as--salespeople--representing--a~~
16 ~~licensed--hearing--aid--dispenser;~~

17 ~~{3}(2)~~ The department shall keep a record of the
18 places of practice of persons who hold regular licenses or
19 trainee licenses. A notice required to be given by the board
20 or department to a person who holds a regular or trainee
21 license may be given by mailing it to him at the address
22 last given by him to the department.

23 ~~{4}(3)~~ All licensed dispensers shall notify the board
24 of any change of address within 30 days of the change. A
25 trainee shall notify the board of any change of address

1 within 10 days of the change."

2 Section 6. Section 37-16-302, MCA, is amended to read:

3 "37-16-302. Sale of dispensing business. A business
4 selling, dispensing, or fitting hearing aids may be sold
5 provided the new owners comply with all the provisions of
6 this chapter."

7 Section 7. Section 37-16-303, MCA, is amended to read:

8 "37-16-303. Bill of sale -- examination by
9 otolaryngologist -- notation on receipt that examination not
10 medical opinion. (1) Any person who practices the selling,
11 fitting, or dispensing of hearing aids shall deliver to each
12 person supplied with a hearing aid, by him or at his order
13 or direction, a bill of sale which shall contain the
14 seller's signature and show the name and address of his
15 regular permanent place of business and the number of his
16 license, together with a description of the make and type of
17 the hearing aid furnished and the amount charged, with terms
18 of guarantee, if any. The bill of sale shall also reveal the
19 condition of the hearing device and whether it is new, used,
20 or reconditioned.

21 (2) (A) Any person practicing the selling, dispensing,
22 or fitting and sale of hearing aids shall, when dealing with
23 a person ~~is~~ UNDER 19 years of age ~~and under or when the aid~~
24 ~~is to be purchased with state funds~~, ascertain if the person
25 has been examined by an otolaryngologist within 90 days

1 prior to the fitting and shall obtain his recommendations.
2 If such not be the case, a recommendation to do so must be
3 made to the purchaser and this fact be noted on the receipt.
4 ~~If--a--medical--recommendation--is--not--obtained--a--waiver--of~~
5 ~~such--recommendation--signed--by--the--patient--must--accompany--all~~
6 ~~final--sales.~~

7 (B) ANY PERSON PRACTICING THE SELLING, DISPENSING, OR
8 FITTING OF HEARING AIDS SHALL, WHEN THE AID IS TO BE
9 PURCHASED WITH STATE FUNDS, ASCERTAIN IF THE PERSON HAS BEEN
10 EXAMINED BY A LICENSED PHYSICIAN WITHIN 90 DAYS PRIOR TO THE
11 FITTING AND SHALL OBTAIN HIS RECOMMENDATIONS. IF SUCH NOT BE
12 THE CASE, A RECOMMENDATION TO DO SO MUST BE MADE TO THE
13 PURCHASER AND THIS FACT BE NOTED ON THE RECEIPT.

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

23 Section 8. Section 37-16-401, MCA, is amended to read:

24 "37-16-401. License required. A person may not engage
25 in the ~~sale or practice of~~ selling, dispensing, and or

1 fitting hearing aids or display a sign or in any other way
 2 advertise or hold himself out as a person who practices the
 3 selling, dispensing, and or fitting of hearing aids in
 4 Montana unless he holds a current regular or temporary
 5 license issued by the department."

6 Section 9. Section 37-16-402, MCA, is amended to read:
 7 "37-16-402. Application -- qualifications -- fee. An
 8 applicant for a license shall pay a fee fixed by the board
 9 and commensurate with the costs of processing and
 10 administering his application and related functions of the
 11 board and shall show to the satisfaction of the board that
 12 he:

- 13 (1) is a person of good moral character;
 14 (2) has an education equivalent to a 4-year course in
 15 an accredited high school, has continuously engaged in the
 16 practice of selling, fitting, or and dispensing hearing aids
 17 in Montana during the 3 years preceding the date of
 18 application, or holds a current license as an audiologist
 19 under Title 37, chapter 15;
 20 (3) is free of contagious or infectious disease."

21 Section 10. Section 37-16-403, MCA, is amended to
 22 read:

23 "37-16-403. Examination -- time and place. ~~(1)~~ An
 24 applicant for a license who is notified by the department
 25 that he has fulfilled the requirements of 37-16-402 shall

1 appear at a time and place designated by the board to be
 2 examined by written and practical tests in order to
 3 demonstrate that he is qualified to practice the fitting of
 4 hearing aids.

5 ~~(2) The department shall, subject to 37-1-1017, give~~
 6 ~~examinations required to permit applicants to be examined~~
 7 ~~within 30 days following the board's approval of the~~
 8 ~~application for examination. Examination may be delayed on~~
 9 ~~notice to the department under this section."~~

10 Section 11. Section 37-16-405, MCA, is amended to
 11 read:

12 "37-16-405. Trainee license. (1) An applicant who
 13 fulfills the requirements of 37-16-402 and who has not
 14 previously applied to take the practical examination under
 15 37-16-403 may apply to the board for a trainee license.

16 (2) On receiving an application under subsection (1)
 17 of this section, accompanied by a fee fixed by the board and
 18 commensurate with the cost of administering the license and
 19 related functions of the board and verification that the
 20 applicant has passed the written portion of the examination
 21 with a score of at least 70%, the board shall issue a
 22 trainee license which entitles the applicant to engage in a
 23 6-month 12-month training period during which he shall:

24 (a) ~~work for a period of 30 days under the direct~~
 25 ~~control of a hearing aid dispenser during which the trainee~~

1 ~~may not in any way fit a hearing aid or test a customer~~ pass
2 the practical examination administered by the board;

3 (b) ~~after the completion of the period provided for in~~
4 ~~subsection (2)(a);~~ work for a period of 60 days during which
5 he may do the testing necessary for proper selection and
6 fitting of a hearing aid and make necessary impressions, but
7 the delivery and final fitting of the hearing aid must be
8 made by his supervisor; and

9 (c) work for the balance of the training period during
10 which he may engage in all activities allowed a licensed
11 hearing aid dispenser, but while under supervision of a
12 licensed hearing aid dispenser.

13 (3) The training period must consist of a continuous
14 ~~6-month~~ 12-month term. Any break in training requires
15 application for another trainee license under such rules as
16 the board may prescribe.

17 (4) A trainee license may not be issued unless the
18 board has on file an unrevoked statement from a licensed
19 hearing aid dealer accepting responsibility for the trainee.
20 Every licensee supervising a trainee license holder must
21 submit a quarterly report of the trainee's activities and
22 training assignments, on forms furnished by the board. The
23 supervisor is responsible for the professional conduct and
24 all hearing aid fittings of the trainee. A trainee is
25 responsible for his own ethical conduct. A supervisor may

1 terminate his responsibilities to the trainee by mailing by
2 certified mail written notice to the board and the trainee.

3 (4) ~~No trainee license may be issued by the board~~
4 ~~unless the applicant shows to the satisfaction of the board~~
5 ~~that he is or will be supervised and trained by a person who~~
6 ~~holds a valid license issued under this chapter.~~

7 (5) ~~If a person who holds a trainee license does not~~
8 ~~take the next examination given after the completion of his~~
9 ~~training period, the trainee license may not be renewed~~
10 ~~except for a good cause shown to the satisfaction of the~~
11 ~~board.~~

12 (6) If a person who holds a trainee license takes
13 and fails to pass the next practical examination given ~~after~~
14 ~~the completion of~~ within his training period, the board may
15 authorize the department to renew the trainee license for a
16 period ending 30 days after the ~~results of the~~ next
17 examination ~~given after the dates of renewal are announced.~~
18 In no event may more than two renewals be permitted. The fee
19 for renewal shall be set by the board commensurate with the
20 cost of administering the license and related functions of
21 the board.

22 (7) (6) A person licensed as an audiologist under the
23 provisions of Title 37, chapter 15, is exempt from the
24 ~~trainee license and examination requirements of 12-month~~
25 training period but is required to pass the examinations

1 prescribed in this chapter."

2 Section 12. Section 37-16-406, MCA, is amended to
3 read:

4 "37-16-406. Admission of licensees from other states.
5 When the board determines that another state or jurisdiction
6 has requirements equivalent to or higher than those in
7 effect under this chapter for the practice of dispensing,
8 fitting, and selling hearing aids and that the state or
9 jurisdiction has a program equivalent to or stricter than
10 the program for determining whether applicants under this
11 chapter are qualified to sell, dispense, and fit hearing
12 aids, the board may authorize the department to issue a
13 license to applicants who hold current, unsuspended, and
14 unrevoked licenses to fit, dispense, and sell hearing aids
15 in the other state or jurisdiction. ~~No such applicants for a
16 license under this section are required to submit to or
17 undergo a qualifying examination or the like, other than the
18 payment of fees, if the person complies with all other
19 requirements of this chapter.~~ NO SUCH APPLICANTS FOR A
20 LICENSE UNDER THIS SECTION ARE REQUIRED TO SUBMIT TO OR
21 UNDERGO A QUALIFYING EXAMINATION OR THE LIKE, OTHER THAN THE
22 PAYMENT OF FEES, IF THE PERSON COMPLIES WITH ALL OTHER
23 REQUIREMENTS OF THIS CHAPTER."

24 Section 13. Section 37-16-407, MCA, is amended to
25 read:

1 "37-16-407. Renewal of license -- fee. (1) A person
2 who practices the fitting of hearing aids shall annually pay
3 to the department a fee as set by the board for a renewal of
4 his license. The fee shall be fixed by the board to be
5 commensurate with board costs in administering licensure and
6 related board functions. The fee shall be increased 10% for
7 each month or major portion thereof that the payment of the
8 renewal fee is delayed after the expiration date. The
9 maximum fee for a delayed renewal shall not exceed twice the
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14 3-year period after suspension.

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