

SENATE BILL 299

Introduced by Eck, et al.

| | |
|------|---|
| 1/31 | Introduced |
| 1/31 | Referred to Public Health, Welfare & Safety |
| 2/01 | Fiscal Note Requested |
| 2/06 | Fiscal Note Received |
| 2/06 | Hearing |
| 2/08 | Fiscal Note Printed |
| 2/08 | Hearing |
| 2/15 | Committee Report--Bill Not Passed as Amended |
| 2/15 | Adverse Committee Report Adopted |

1 *Senate* BILL NO. *299*
2 INTRODUCED BY *Ed Oxley Walker*
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 LAWS RELATING TO REGULATION OF HEARING AID DISPENSERS;
7 EXPANDING THE AUTHORITY OF THE BOARD OF HEARING AID
8 DISPENSERS TO REGULATE DISPENSERS; CLARIFYING THE
9 REQUIREMENTS REGARDING A PERMANENT PLACE OF BUSINESS;
10 CLARIFYING THE REQUIREMENTS RELATING TO THE ISSUANCE OF
11 RECEIPTS, EXAMINATIONS FOR LICENSURE, TRAINEE SPONSORSHIP,
12 AND THE ISSUANCE OF INACTIVE LICENSES; PROVIDING ADDITIONAL
13 CAUSES FOR DISCIPLINE OF LICENSEES AND TRAINEES; PROVIDING
14 FOR A BUYER'S RIGHT TO CANCEL; PROVIDING MINIMUM HEARING AID
15 TESTING REQUIREMENTS; AMENDING SECTIONS 37-16-201,
16 37-16-301, 37-16-303, 37-16-402, 37-16-403, 37-16-405,
17 37-16-407, 37-16-408, AND 37-16-411, MCA; AND PROVIDING AN
18 IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

19
20
21 It is the intent of the legislature that the board of
22 hearing aid dispensers be delegated the authority to adopt
23 rules to implement, administer, and enforce rules regarding
24 the practice of selling, fitting, and dispensing of hearing
25 aids and related devices.

1 These rules should regulate the licensee's permanent
2 place of business, establish minimum requirements relating
3 to bills of sale, sales contracts, and receipts, establish
4 quarterly reporting requirements relating to trainee
5 activities, set standards and fees for inactive licensees,
6 and establish minimum hearing aid testing requirements.
7

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

9 **Section 1.** Section 37-16-201, MCA, is amended to read:

10 "37-16-201. Meetings -- quorum -- organization. (1)
11 The board shall meet at least once each year at a place and
12 time determined by the chairman and at other times and
13 places specified by the chairman to carry out this chapter.
14 Three members constitute a quorum.

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

18 **Section 2.** Section 37-16-301, MCA, is amended to read:

19 "37-16-301. Permanent place of business in state
20 necessary -- records -- notice -- designation of licensee in
21 charge. (1) A person who is actively engaged in dispensing
22 hearing aids and related devices as a business must have a
23 permanent place of business in this state that will be
24 opened to serve the public, having the necessary testing,
25 fitting, and hearing aid accessories needed by the

1 hard-of-hearing public in the wearing of hearing aids and
2 related devices. All licensed hearing aid dispensers shall
3 identify their permanent place of business in all
4 advertising public notices and in all consumer
5 correspondence, both written and verbal. More than one
6 hearing aid dispenser licensee may work from a permanent
7 place of business.

8 (2) The department shall keep a record of the places
9 of practice of persons who hold regular licenses or trainee
10 licenses. A notice required to be given by the board or
11 department to a person who holds a regular or trainee
12 license may be given by mailing it to him at the address
13 last given by him to the department.

14 (3) All licensed hearing aid dispensers shall notify
15 the board of any change of address within 30 days of the
16 change. A trainee shall notify the board of any change of
17 address within 10 days of the change.

18 (4) (a) Licensed hearing aid dispensers and trainees
19 using the same permanent place of business shall designate
20 as the licensed dispenser in charge one licensed hearing aid
21 dispenser who uses that permanent place of business. There
22 must be a licensed hearing aid dispenser in charge of each
23 permanent place of business at all times.

24 (b) The licensed hearing aid dispenser in charge of a
25 permanent place of business:

1 (i) is responsible and accountable under the
2 disciplinary authority of the board for the conduct of other
3 licensed hearing aid dispensers and trainees using that
4 permanent place of business as if the conduct were his own;
5 and

6 (ii) has custody and control of the business records of
7 all licensed hearing aid dispensers and trainees using that
8 permanent place of business and is responsible for producing
9 the records during an investigation conducted by the board.

10 (c) The board may establish by rule criteria for the
11 operation of branch offices, including but not limited to
12 criteria relating to staffing, equipment, sanitation
13 standards, office hours, and the permanence of the
14 location."

15 **Section 3.** Section 37-16-303, MCA, is amended to read:

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17 otolaryngologist -- notation on receipt that examination not
18 medical opinion. (1) Any person who practices the selling,
19 fitting, or dispensing of hearing aids and related devices
20 shall deliver to each person supplied with a hearing aid or
21 related device, by him or at his order or direction, a bill
22 of sale ~~which shall~~ that must contain:

23 (a) the seller's signature, ~~and--show~~ the name and
24 address of his permanent place of business, and the number
25 of his license;

(b) together--with a description of the make and type of the hearing aid or related device furnished and the amount charged;

(c) with any warranty or guarantee and the terms of the warranty or guarantee, if any; ~~the bill of sale shall also reveal~~

(d) the condition of the hearing aid or related device and whether it is new, used, or reconditioned; and

(e) the availability of maintenance service for the hearing aid or related device furnished.

(2) (a) Any person practicing the selling, dispensing, or fitting of hearing aids and related devices shall, when if dealing with a person under 19 years of age, ascertain if the person has been examined by an otolaryngologist within 90 days prior to the fitting and shall obtain his the otolaryngologist's recommendations. ~~If such-not-be-the-case, a--recommendation-to-do-so-must-be-made-to-the-purchaser-and this-fact-be-noted-on-the-receipt~~ the person has not been examined, the licensed hearing aid dispenser shall recommend to the person being fitted that he have an examination. The licensed hearing aid dispenser shall issue a separate receipt indicating that he made this recommendation.

(b) Any person practicing the selling, dispensing, or fitting of hearing aids and related devices shall, when if the aid or device is to be purchased with state funds,

ascertain if the person has been examined by a licensed physician within 90 days prior to the fitting and shall obtain his the licensed physician's recommendations. ~~If such not-be-the-case, a-recommendation-to-do-so-must-be-made-to the-purchaser-and-this-fact-be-noted-on-the-receipt~~ the person has not been examined, the licensed hearing aid dispenser shall recommend to the person being fitted that he have an examination. The licensed hearing aid dispenser shall issue a separate receipt indicating that he made this recommendation.

(3) ~~Such~~ The separate receipt issued under subsection (2) must bear, in no smaller type than the largest used in the body portion, the following: "Any examination(s) or representation(s) made by a licensed hearing aid dispenser in connection with the dispensing, fitting, and selling of this hearing aid(s) is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and, therefore, must not be regarded as medical opinion or advice."

(4) The board may establish minimum requirements for the form of bills and receipts."

Section 4. Section 37-16-402, MCA, is amended to read:

"37-16-402. **Application -- qualifications -- fee.** An applicant for a license shall pay a fee fixed by the board and commensurate with the costs of processing and

1 administering his application and related functions of the
2 board and shall show to the satisfaction of the board that
3 he:

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

12 **Section 5.** Section 37-16-403, MCA, is amended to read:

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

20 (2) An applicant who has failed either the written or
21 practical test three times is no longer eligible to take the
22 examination."

23 **Section 6.** Section 37-16-405, MCA, is amended to read:

24 ***37-16-405. Trainee license.** (1) An applicant who
25 fulfills the requirements of 37-16-402 and who has not

1 previously applied to take the practical examination under
2 37-16-403 may apply to the board for a trainee license.

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

11 (a) pass the practical examination administered by the
12 board before he may be issued a hearing aid dispenser's
13 license;

14 (b) work for a period of 60 days during which he at
15 least 300 hours in a 6-month period under the direct
16 supervision and in the physical presence of the sponsoring
17 licensed hearing aid dispenser as provided for in
18 subsections (7) through (10). During this period, the
19 trainee may do the testing necessary for proper selection
20 and fitting of a hearing aid aids and related devices and
21 make necessary impressions; but. However, the delivery and
22 final fitting of the a hearing aid or related device 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 the general
2 supervision of a licensed hearing aid dispenser.

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

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

18 (5) (a) If a person who holds a trainee license takes
19 and fails to pass the practical examination given within his
20 training period, the board may authorize the department to
21 renew the trainee license for a period ending 30 days after
22 the next examination. In no event may more than two renewals
23 be permitted.

24 (b) The fee for renewal ~~shall~~ must be set by the board
25 commensurate with the cost of administering the license and

1 related functions of the board.

2 (6) A person licensed as an audiologist under the
3 provisions of Title 37, chapter 15, is exempt from the
4 12-month training period but is required to pass the
5 examinations prescribed in this chapter.

6 (7) A sponsor of a trainee must be licensed as a
7 hearing aid dispenser for 1 year before becoming a sponsor.

8 (8) A licensed hearing aid dispenser may not sponsor
9 more than two trainees at any time.

10 (9) A licensed hearing aid dispenser who sponsors a
11 trainee is directly responsible and accountable under the
12 disciplinary authority of the board for the conduct of the
13 trainee in his training activities as if the conduct were
14 the licensee's own.

15 (10) For the purposes of this section:

16 (a) "direct supervision" means the direct and regular
17 observation and instruction of a trainee by a licensed
18 hearing aid dispenser who is available for prompt
19 consultation and treatment; and

20 (b) "general supervision" means oversight by a
21 licensed hearing aid dispenser of those tasks and procedures
22 that do not require the physical presence of the licensed
23 dispenser on the business premises. However, the trainee
24 must remain under the licensed hearing aid dispenser's
25 direction, control, responsibility, and evaluation."

Section 7. Section 37-16-407, MCA, is amended to read:

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

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

(3) (a) The board may set standards and fees for issuing an inactive license.

(b) An inactive licensee may be reinstated to active practice if he:

(i) applies for reinstatement;

(ii) pays a fee set by the board; and

(iii) produces proof satisfactory to the board of completion of the continuing education requirements established by the board."

Section 8. Section 37-16-408, MCA, is amended to read:

"37-16-408. Deposit of fees, and fines, and costs. Fees, and fines, and costs collected under this chapter, except those collected by a justice's court, ~~shall~~ must be deposited in the state special revenue fund for the use of the board, subject to appropriations and 37-1-101(6)."

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

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

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

- 1 (2) securing a license under this chapter through
- 2 fraud or deceit or false statements;
- 3 (3) the personal use of a false name or alias in the
- 4 practice of his profession;
- 5 (4) violating any of the provisions of this chapter;
- 6 (5) obtaining any fee or making any sale by fraud or
- 7 misrepresentation;
- 8 (6) knowingly employing, directly or indirectly, any
- 9 suspended or unlicensed person to perform any work covered
- 10 by this chapter;
- 11 (7) using or causing or promoting the use of any
- 12 advertising matter, promotional literature, testimonial,
- 13 guarantee, warranty, label, brand, insignia, or any other
- 14 representation, however disseminated or published, which is
- 15 improbable, misleading, deceptive, or untruthful;
- 16 (8) representing that the services or advice of a
- 17 person licensed to practice medicine or possessing
- 18 certification as an audiologist will be used or made
- 19 available in the selection, fitting, adjustment,
- 20 maintenance, or repair of hearing aids when and related
- 21 devices if that is not true or using the terms "doctor",
- 22 "clinic", "hearing clinic", "state registered", or other
- 23 like words, abbreviations, or symbols which tend to connote
- 24 the medical profession when if that use is not accurate;
- 25 (9) permitting another to use his license or

- 1 certificate;
- 2 (10) defaming competitors by falsely imputing to them
- 3 dishonorable conduct, inability to perform contracts,
- 4 questionable credit standing, or by other false
- 5 representations or falsely disparaging the products of
- 6 competitors in any respect or their business methods,
- 7 selling prices, values, credit terms, policies, or services;
- 8 (11) using any method of advertising prohibited by
- 9 trade practice rules 1 through 17 of the federal trade
- 10 commission;
- 11 (12) obtaining information concerning the business of a
- 12 competitor by bribery of an employee or agent of such
- 13 competitor, by false or misleading statements or
- 14 representations, by the impersonation of one in authority,
- 15 or by any other unlawful means;
- 16 (13) directly or indirectly giving or offering to give
- 17 or permitting or causing to be given money or anything of
- 18 value to any person who advises another in a professional
- 19 capacity as an inducement to influence others to purchase or
- 20 contract to purchase products sold or offered for sale by a
- 21 hearing aid dispenser or influencing persons to refrain from
- 22 dealing in the products of competitors;
- 23 (14) unethical conduct or gross incompetence or
- 24 negligence in the performance of his duties, including
- 25 repeated failure to make indicated medical referrals of his

1 customers;

2 (15) selling a hearing aid or related device to a
3 person who has not been given tests utilizing appropriate
4 established procedures and instrumentation in fitting of
5 hearing aids or related devices, except in-cases-of--selling
6 replacement-hearing-aids if the licensee sells a replacement
7 hearing aid of the same make and model within 1 year of the
8 original sale;

9 (16) refusing to cooperate with an investigation by the
10 board by:

11 (a) failing to furnish requested records or documents;

12 (b) failing to furnish a complete explanation of
13 matters referred to in the complaint;

14 (c) failing to respond to a subpoena issued by the
15 board;

16 (d) willfully misrepresenting any relevant fact to a
17 board investigator; or

18 (e) attempting to discourage a potential witness from
19 cooperating with a board investigation or from testifying,
20 by using threats, harassment, extortion, or bribery.

21 (17) having under one's responsibility or supervision a
22 sponsored trainee, licensee, or trainee who performs any of
23 the acts described in subsections (1) through (16)."

24 **NEW SECTION. Section 10. Restitution -- costs. (1) In**
25 **addition to being disciplined for any of the causes provided**

1 in 37-16-411, a person licensed under this chapter may be
2 ordered to:

3 (a) make restitution of the purchase price of a
4 hearing aid or related device; or

5 (b) pay a fine in an amount not to exceed \$500 an
6 incident.

7 (2) A person being disciplined may also be ordered to
8 pay the reasonable costs of the disciplinary proceeding.

9 **NEW SECTION. Section 11. Right to cancel -- return of**
10 **hearing aid or related device. (1) Except as provided in**
11 **subsection (4), a buyer or any other person obligated for**
12 **any part of the purchase price of a hearing aid or related**
13 **device may cancel the sale within 30 days of the date of**
14 **delivery if:**

15 (a) the hearing aid or related device is defective in
16 fit or function;

17 (b) a licensed hearing aid dispenser has failed to
18 correct a problem in fit or function;

19 (c) a licensed hearing aid dispenser violates any
20 statute or rule regulating the sale of hearing aids or
21 related devices.

22 (2) (a) A buyer may cancel the sale by giving written
23 notice to the seller indicating his intention not to be
24 bound by the sale contract and returning the hearing aid or
25 related device in substantially the same condition as it was

1 received by the buyer or other obligated person.

2 (b) For the purpose of determining whether
3 cancellation has occurred within 30 days of the date of
4 delivery, written notice given by mail is considered given
5 on the date postmarked.

6 (3) A licensed hearing aid dispenser shall refund the
7 amount paid by the buyer for the hearing aid or related
8 device when he receives the written notice of cancellation
9 and the aid or device is returned to him. The board shall
10 determine by rule the period in which the hearing aid or
11 related device must be returned.

12 (4) A sale may not be canceled under this section
13 unless the hearing aid or related device is returned in
14 substantially the same condition as when it was received by
15 the buyer.

16 NEW SECTION. Section 12. Testing procedures. (1) A
17 licensed hearing aid dispenser and a trainee engaged in the
18 selling, fitting, or dispensing of hearing aids and related
19 devices shall:

20 (a) use appropriate testing procedures for each
21 hearing aid fitting; and

22 (b) retain a record of each hearing aid test and the
23 case history of the person being tested.

24 (2) The board shall establish minimum requirements for
25 hearing aid testing procedures.

1 NEW SECTION. Section 13. Extension of authority. Any
2 existing authority to make rules on the subject of the
3 provisions of [this act] is extended to the provisions of
4 [this act].

5 NEW SECTION. Section 14. Codification instruction.
6 (1) [Section 10] is intended to be codified as an integral
7 part of Title 37, chapter 16, part 4, and the provisions of
8 Title 37, chapter 16, part 4, apply to [section 10].

9 (2) [Sections 11 and 12] are intended to be codified
10 as an integral part of Title 37, chapter 16, part 3, and the
11 provisions of Title 37, chapter 16, part 3, apply to
12 [sections 11 and 12].

13 NEW SECTION. Section 15. Severability. If a part of
14 [this act] is invalid, all valid parts that are severable
15 from the invalid part remain in effect. If a part of [this
16 act] is invalid in one or more of its applications, the part
17 remains in effect in all valid applications that are
18 severable from the invalid applications.

19 NEW SECTION. Section 16. Effective date. [This act]
20 is effective on passage and approval.

-End-

APPROVED BY COMMITTEE
ON PUBLIC HEALTH, WELFARE
& SAFETY

SENATE BILL NO. 299

INTRODUCED BY ECK, O'KEEFE, WALKER

BY REQUEST OF THE BOARD OF HEARING AID DISPENSERS

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO REGULATION OF HEARING AID DISPENSERS; EXPANDING THE AUTHORITY OF THE BOARD OF HEARING AID DISPENSERS TO REGULATE DISPENSERS; CLARIFYING THE REQUIREMENTS REGARDING A PERMANENT PLACE OF BUSINESS; CLARIFYING THE REQUIREMENTS RELATING TO THE ISSUANCE OF RECEIPTS, AND EXAMINATIONS FOR LICENSURE, ~~TRAINEE SPONSORSHIP, AND THE ISSUANCE OF INACTIVE LICENSES~~; PROVIDING ADDITIONAL CAUSES FOR DISCIPLINE OF LICENSEES AND TRAINEES; PROVIDING FOR A BUYER'S RIGHT TO CANCEL; PROVIDING MINIMUM HEARING AID TESTING REQUIREMENTS; AMENDING SECTIONS 37-16-201, 37-16-301, 37-16-303, 37-16-402, 37-16-403, 37-16-405, 37-16-407, 37-16-408, AND 37-16-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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These rules should regulate the licensee's permanent place of business, establish minimum requirements relating to bills of sale, sales contracts, and receipts, ~~establish quarterly reporting requirements relating to trainee activities, set standards and fees for inactive licensees,~~ and establish minimum hearing aid testing requirements.

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 20 shall deliver to each person supplied with a hearing aid or
 21 related device, by him or at his order or direction, a bill
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23 (a) the seller's signature, and--show the name and
 24 address of his permanent place of business, and the number
 25 of his license;

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB299, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

SB299 would generally revise the laws relating to the regulation of hearing aid dispensers.

ASSUMPTIONS:


1. There will be eight pages of rules and a rule hearing which will increase FY90 expenses by \$960 over the recommended executive budget that is used for current law below.
2. There are 83 current licensees and 18 trainees.
3. There will be approximately five inactive licensees per year and the renewal fees will be \$75.
4. The board has a cash balance to cover any shortfall in funding from license and administrative fees.

FISCAL IMPACT:Expenditures:

| | Current | FY90 | | Current | FY91 | |
|------------------------|----------|----------|------------|----------|----------|------------|
| | Law | Proposed | Difference | Law | Proposed | Difference |
| Dept. of Commerce. POL | | | | | | |
| Personal Services | \$ 1,624 | \$ 1,624 | -0- | \$ 1,624 | \$ 1,624 | -0- |
| Operating Expenses | 10,149 | 11,109 | 960 | 10,162 | 10,162 | -0- |
| Total | \$11,773 | \$12,733 | \$960 | \$11,786 | \$11,786 | -0- |

Funding:

| | | | | | | |
|----------------------------|----------|----------|-------|----------|----------|-----|
| State Special License Fees | \$10,250 | \$11,210 | \$960 | \$10,250 | \$10,250 | -0- |
| Board Cash Account | 523 | 523 | -0- | 536 | 536 | -0- |
| Administrative Fees | 1,000 | 1,000 | -0- | 1,000 | 1,000 | -0- |
| Total | \$11,773 | \$12,733 | \$960 | \$11,786 | \$11,786 | -0- |

 2/6/89
 RAY SHACKLEFORD, BUDGET DIRECTOR DATE
 OFFICE OF BUDGET AND PROGRAM PLANNING


 DOROTHY ECK, PRIMARY SPONSOR DATE

Fiscal Note for SB299, as introduced

SB 299

1 (b) together--with a description of the make and type
 2 of the hearing aid or related device furnished and the
 3 amount charged;

4 (c) with any warranty or guarantee and the terms of
 5 the warranty or guarantee, if any;--The bill-of--sale--shall
 6 also reveal

7 (d) the condition of the hearing aid or related device
 8 and whether it is new, used, or reconditioned; and

9 (e) the availability of maintenance service for the
 10 hearing aid or related device furnished.

11 (2) (a) Any person practicing the selling, dispensing,
 12 or fitting of hearing aids and related devices shall, when
 13 if dealing with a person under 19 years of age, ascertain if
 14 the person has been examined by an otolaryngologist within
 15 90 days prior to the fitting and shall obtain his the
 16 otolaryngologist's recommendations. If such-not-be-the-case,
 17 a--recommendation-to-do-so-must-be-made-to-the-purchaser-and
 18 this-fact-be-noted-on-the-receipt the person has not been
 19 examined, the licensed hearing aid dispenser shall recommend
 20 to the person being fitted that he have an examination. The
 21 licensed hearing aid dispenser shall issue a separate
 22 receipt indicating that he made this recommendation.

23 (b) Any person practicing the selling, dispensing, or
 24 fitting of hearing aids and related devices shall, when if
 25 the aid or device is to be purchased with state funds,

1 ascertain if the person has been examined by a licensed
 2 physician within 90 days prior to the fitting and shall
 3 obtain his the licensed physician's recommendations. If such
 4 not--be--the-case, a recommendation to do so must be made to
 5 the purchaser and this fact be noted on the receipt the
 6 person has not been examined, the licensed hearing aid
 7 dispenser shall recommend to the person being fitted that he
 8 have an examination. The licensed hearing aid dispenser
 9 shall issue a separate receipt indicating that he made this
 10 recommendation.

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

20 (4) The board may establish minimum requirements for
 21 the form of bills and receipts."

22 **Section 4.** Section 37-16-402, MCA, is amended to read:

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

1 administering his application and related functions of the
2 board and shall show to the satisfaction of the board that
3 he:

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

12 **Section 5.** Section 37-16-403, MCA, is amended to read:

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

20 (2) An applicant who has failed either the written or
21 practical test three times is no longer eligible to take the
22 examination."

23 **Section 6.** Section 37-16-405, MCA, is amended to read:

24 "37-16-405. Trainee license. (1) An applicant who
25 fulfills the requirements of 37-16-402 and who has not

1 ~~previously applied to take the practical~~ PASSED THE WRITTEN
2 examination under 37-16-403 may apply to the board for a
3 trainee license.

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

12 (a) pass the practical examination administered by the
13 board ~~before he may be issued a hearing aid dispenser's~~
14 license;

15 (b) work for ~~a period of 60 days during which he at~~
16 ~~least 300 hours in a 6-month period under the direct~~
17 ~~supervision and in the physical presence of the sponsoring~~
18 ~~licensed hearing aid dispenser as provided for in~~
19 ~~subsections (7) through (10). During this period, the~~
20 trainee A PERIOD OF 60 DAYS DURING WHICH HE may do the
21 testing necessary for proper selection and fitting of a
22 hearing aid aids and related devices and make necessary
23 impressions; ~~but~~. However, the delivery and final fitting of
24 the a hearing aid or related device must be made by his
25 supervisor; ~~and~~.

1 (c) work for the balance of the training period during
2 which he may engage in all activities allowed a licensed
3 hearing aid dispenser, ~~but--while~~ under the general
4 supervision of a licensed hearing aid dispenser.

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

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

20 (5) (a) If a person who holds a trainee license takes
21 and fails to pass the practical examination given within his
22 training period, the board may authorize the department to
23 renew the trainee license for a period ending 30 days after
24 the next examination. In no event may more than two renewals
25 be permitted.

1 (b) The fee for renewal ~~shall~~ must be set by the board
2 commensurate with the cost of administering the license and
3 related functions of the board.

4 (6) A person licensed as an audiologist under the
5 provisions of Title 37, chapter 15, is exempt from the
6 12-month training period but is required to pass the
7 examinations prescribed in this chapter.

8 ~~(7)--A--sponsor--of--a--trainee--must--be--licensed--as--a~~
9 ~~hearing-aid-dispenser-for-1-year-before-becoming-a--sponsor;~~

10 ~~(8)--A--licensed--hearing-aid-dispenser--may--not--sponsor~~
11 ~~more-than-two-trainees-at-any-time;~~

12 ~~(9)--A--licensed--hearing-aid-dispenser--who--sponsors--a~~
13 ~~trainee--is--directly--responsible--and--accountable--under--the~~
14 ~~disciplinary-authority--of--the--board--for--the--conduct--of--the~~
15 ~~trainee--in--his--training--activities--as--if--the--conduct--were~~
16 ~~the--licensee's--own;~~

17 ~~(10)--For--the--purposes--of--this--section:~~

18 ~~(a)--"direct-supervision"--means--the--direct--and--regular~~
19 ~~observation--and--instruction--of--a--trainee--by--a--licensed~~
20 ~~hearing--aid--dispenser--who--is--available--for--prompt~~
21 ~~consultation--and--treatment;--and~~

22 ~~(b)--"general--supervision"--means--oversight--by--a~~
23 ~~licensed--hearing-aid-dispenser--of--those--tasks--and--procedures~~
24 ~~that--do--not--require--the--physical--presence--of--the--licensed~~
25 ~~dispenser--on--the--business--premises;--However,--the--trainee~~

~~must remain under the licensed hearing aid dispenser's direction, control, responsibility, and evaluation."~~

Section 7. Section 37-16-407, MCA, is amended to read:

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

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

~~(3) -- (a) -- The board may set standards and fees for issuing an inactive license.~~

~~(b) -- An inactive licensee may be reinstated to active practice if he:~~

~~(i) -- applies for reinstatement;~~

~~(ii) -- pays a fee set by the board; and~~

~~(iii) -- produces proof satisfactory to the board of completion of the continuing education requirements established by the board."~~

Section 8. Section 37-16-408, MCA, is amended to read:

"37-16-408. Deposit of fees, and fines, and costs. Fees, and fines, and costs collected under this chapter, except those collected by a justice's court, ~~shall~~ must be deposited in the state special revenue fund for the use of the board, subject to appropriations and 37-1-101(6)."

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

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

(1) being convicted of a felony, subject to chapter 1, part 2, of this title. The record of the conviction or a certified copy from the clerk of the court where the conviction occurred or certification by the judge of the court is conclusive evidence of the conviction, except that if the person has been pardoned by a governor or the

1 president of the United States, the conviction does not
2 constitute grounds for revocation or suspension.

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

5 (3) the personal use of a false name or alias in the
6 practice of his profession;

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

8 (5) obtaining any fee or making any sale by fraud or
9 misrepresentation;

10 (6) knowingly employing, directly or indirectly, any
11 suspended or unlicensed person to perform any work covered
12 by this chapter;

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

18 (8) representing that the services or advice of a
19 person licensed to practice medicine or possessing
20 certification as an audiologist will be used or made
21 available in the selection, fitting, adjustment,
22 maintenance, or repair of hearing aids when and related
23 devices if that is not true or using the terms "doctor",
24 "clinic", "hearing clinic", "state registered", or other
25 like words, abbreviations, or symbols which tend to connote

1 the medical profession when if that use is not accurate;

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

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

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

13 (12) obtaining information concerning the business of a
14 competitor by bribery of an employee or agent of such
15 competitor, by false or misleading statements or
16 representations, by the impersonation of one in authority,
17 or by any other unlawful means;

18 (13) directly or indirectly giving or offering to give
19 or permitting or causing to be given money or anything of
20 value to any person who advises another in a professional
21 capacity as an inducement to influence others to purchase or
22 contract to purchase products sold or offered for sale by a
23 hearing aid dispenser or influencing persons to refrain from
24 dealing in the products of competitors;

25 (14) unethical conduct or gross incompetence or

negligence in the performance of his duties, including repeated failure to make indicated medical referrals of his customers;

(15) selling a hearing aid or related device to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids or related devices, except in cases of setting replacement hearing aids if the licensee sells a replacement hearing aid of the same make and model within 1 year of the original sale;

(16) refusing to cooperate with an investigation by the board by:

(a) failing to furnish requested records or documents;

(b) failing to furnish a complete explanation of matters referred to in the complaint;

(c) failing to respond to a subpoena issued by the board;

(d) willfully misrepresenting any relevant fact to a board investigator; or

(e) attempting to discourage a potential witness from cooperating with a board investigation or from testifying, by using threats, harassment, extortion, or bribery.

(17) having under one's responsibility or supervision a sponsored trainee, licensee, or trainee who performs any of the acts described in subsections (1) through (16)."

NEW SECTION. Section 10. Restitution -- costs. (1) In addition to being disciplined for any of the causes provided in 37-16-411, a person licensed under this chapter may be ordered to:

(a) make restitution of the purchase price of a hearing aid or related device; or

(b) pay a fine in an amount not to exceed \$500 an incident.

(2) A person being disciplined may also be ordered to pay the reasonable costs of the disciplinary proceeding.

NEW SECTION. Section 11. Right to cancel -- return of hearing aid or related device. (1) Except as provided in subsection (4), a buyer or any other person obligated for any part of the purchase price of a hearing aid or related device may cancel the sale within 30 days of the date of delivery if:

(a) the hearing aid or related device is defective in fit or function;

(b) a licensed hearing aid dispenser has failed to correct a problem in fit or function;

(c) a licensed hearing aid dispenser violates any statute or rule regulating the sale of hearing aids or related devices.

(2) (a) A buyer may cancel the sale by giving written notice to the seller indicating his intention not to be

1 bound by the sale contract and returning the hearing aid or
2 related device in substantially the same condition as it was
3 received by the buyer or other obligated person.

4 (b) For the purpose of determining whether
5 cancellation has occurred within 30 days of the date of
6 delivery, written notice given by mail is considered given
7 on the date postmarked.

8 (3) A licensed hearing aid dispenser shall refund the
9 amount paid by the buyer for the hearing aid or related
10 device when he receives the written notice of cancellation
11 and the aid or device is returned to him. The board shall
12 determine by rule the period in which the hearing aid or
13 related device must be returned.

14 (4) A sale may not be canceled under this section
15 unless the hearing aid or related device is returned in
16 substantially the same condition as when it was received by
17 the buyer.

18 NEW SECTION. Section 12. Testing procedures. (1) A
19 licensed hearing aid dispenser and a trainee engaged in the
20 selling, fitting, or dispensing of hearing aids and related
21 devices shall:

22 (a) use appropriate testing procedures for each
23 hearing aid fitting; and

24 (b) retain a record of each hearing aid test and the
25 case history of the person being tested.

1 (2) The board shall establish minimum requirements for
2 hearing aid testing procedures.

3 NEW SECTION. Section 13. Extension of authority. Any
4 existing authority to make rules on the subject of the
5 provisions of [this act] is extended to the provisions of
6 [this act].

7 NEW SECTION. Section 14. Codification instruction.
8 (1) [Section 10] is intended to be codified as an integral
9 part of Title 37, chapter 16, part 4, and the provisions of
10 Title 37, chapter 16, part 4, apply to [section 10].

11 (2) [Sections 11 and 12] are intended to be codified
12 as an integral part of Title 37, chapter 16, part 3, and the
13 provisions of Title 37, chapter 16, part 3, apply to
14 [sections 11 and 12].

15 NEW SECTION. Section 15. Severability. If a part of
16 [this act] is invalid, all valid parts that are severable
17 from the invalid part remain in effect. If a part of [this
18 act] is invalid in one or more of its applications, the part
19 remains in effect in all valid applications that are
20 severable from the invalid applications.

21 NEW SECTION. Section 16. Effective date. [This act]
22 is effective on passage and approval.

-End-