

SENATE BILL NO. 95

Burnett
Estadillo Ryan

INTRODUCED BY *Bishop* *Simon* *Harding* *McKee* *Beale*
Chapman *Wilson* *Bohling* *Holligan* *Estadillo* *Turner*

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REQUIREMENTS FOR OBTAINING A HEARING AID TRAINEE LICENSE; ESTABLISHING THE BOARD'S POWER TO INITIATE COMPLAINTS, CONDUCT INVESTIGATIONS, AND SUSPEND OR REVOKE LICENSES; CHANGING THE TRAINING PERIOD FROM 12 MONTHS TO 180 DAYS; REDUCING THE NUMBER OF TRAINEE LICENSE RENEWALS FOLLOWING FAILURE TO PASS EXAMINATIONS FROM TWO TO ONE; INCREASING THE CONTINUING EDUCATION REQUIREMENTS FOR LICENSE RENEWAL APPLICANTS; AND AMENDING SECTIONS 37-16-202, 37-16-401, 37-16-403, 37-16-404, 37-16-405, 37-16-406, 37-16-407, AND 37-16-411, MCA ."

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

Section 1. Section 37-16-202, MCA, is amended to read:

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

- (1) license persons who apply and are qualified to practice the fitting of hearing aids;
- (2) establish a procedure to act as a grievance board to initiate or receive, investigate, and mediate complaints from any source concerning the activities of persons licensed under this chapter or their agents, whether licensed or not;
- (3) suspend or revoke licenses under this chapter;
- (4) designate the time and place for examining applicants for license and supervise and administer the examination;
- (5) adopt rules necessary to carry out this chapter;
- (6) require the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of facilities of persons who practice the fitting or selling of hearing aids;
- (7) prepare examinations required by the chapter;
- (8) initiate legal action to enjoin from operation a person or corporation engaged in the sale, dispensing, or fitting of hearing aids in this state who is not licensed under this chapter;
- (9) adopt rules consistent with the provisions of 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-403, 37-16-405, 37-16-407, 37-16-408, 37-16-411, and 37-16-414. Rules adopted by the board

1 may include but are not limited to rules defining the term "related devices" and other rules necessary to
 2 implement 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-403, 37-16-405, 37-16-407, 37-16-408,
 3 37-16-411, and 37-16-414."

4

5 **Section 2.** Section 37-16-401, MCA, is amended to read:

6 **"37-16-401. License required.** A person may not engage in selling, dispensing, or fitting hearing
 7 aids or display a sign or in any other way advertise ~~or hold himself out as a person who practices~~ the
 8 selling, dispensing, or fitting of hearing aids in Montana unless ~~he~~ the person holds a current ~~regular or~~
 9 ~~temporary~~ license issued by the department."

10

11 **Section 3.** Section 37-16-403, MCA, is amended to read:

12 **"37-16-403. Examination Examinations -- time and place -- number of failures allowed.** (1) An
 13 applicant for a license who is notified by the department that ~~he~~ the applicant has fulfilled the requirements
 14 of 37-16-402 shall appear at a time and place designated by the board to ~~be examined by~~ take written and
 15 practical ~~tests~~ examinations in order to demonstrate that ~~he~~ the applicant is qualified to practice the fitting
 16 of hearing aids and related devices.

17 (2) An applicant who fails two successive practical examinations is eligible for reexamination after
 18 ~~a period of 2 years~~ have elapsed since the date of the applicant's last examination and after the completion
 19 ~~of the applicant has completed~~ additional training or education recognized by the board."

20

21 **Section 4.** Section 37-16-404, MCA, is amended to read:

22 **"37-16-404. Examination Examinations -- subject areas.** The ~~examination~~ examinations provided
 23 in 37-16-403 ~~shall~~ must consist of a test of knowledge and practical tests of proficiency, ~~where~~ when they
 24 apply, in the following areas as they pertain to the fitting of hearing aids:

25 (1) acoustics:

26 (a) general principles;

27 (b) the decibel;

28 (c) hearing and speech;

29 (2) the human ear:

30 (a) external;

- 1 (b) middle;
- 2 (c) inner;
- 3 (3) the hearing process;
- 4 (4) disorders of hearing:
- 5 (a) conductive;
- 6 (b) sensorineural;
- 7 (c) central;
- 8 (d) psychogenic;
- 9 (5) audiometry:
- 10 (a) pure tone;
- 11 (b) theory;
- 12 (c) procedures;
- 13 (d) speech;
- 14 (6) the hearing analysis:
- 15 (a) audiogram;
- 16 (b) auditory area;
- 17 (7) hearing aids:
- 18 (a) history;
- 19 (b) characteristics;
- 20 (c) components;
- 21 (8) practical use of the otoscope:
- 22 (a) earmold;
- 23 (b) impression;
- 24 (9) fittings:
- 25 (a) hearing aid;
- 26 (b) earmold;
- 27 (10) delivery and checkup; or
- 28 (11) any change ~~as deemed~~ considered necessary by the board."
- 29
- 30

Section 5. Section 37-16-405, MCA, is amended to read:

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

4 (2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and
5 commensurate with the cost of administering the license and related functions of the board and verification
6 that the applicant has passed the written portion of the examination with a score of at least 70%, the board
7 shall issue a trainee license that entitles the applicant to engage in a ~~12-month~~ 180-day training period
8 during which ~~he the applicant shall~~:

9 (a) ~~is required to~~ pass the practical examination administered by the board before ~~he may be being~~
10 issued a hearing aid dispenser's license; and

11 (b) shall work ~~for the first 90 days~~ under the direct supervision of the sponsoring licensed hearing
12 aid dispenser, ~~during which~~ During this time ~~he the applicant~~ may do the testing necessary for proper
13 selection and fitting of hearing aids and related devices and make necessary impressions. However, the
14 delivery and final fitting of the hearing aid and related devices must be made by the trainee and ~~his the~~
15 supervisor.

16 ~~(c) work for the balance of the training period during which he may engage in all activities allowed~~
17 ~~a licensed hearing aid dispenser, under the general supervision of a licensed hearing aid dispenser.~~

18 (3) The training period must consist of a continuous ~~12-month~~ 180-day term. Any break in training
19 requires application for another trainee license under ~~such rules as~~ that the board may prescribe.

20 (4) A trainee license may not be issued unless the board has on file an unrevoked statement from
21 a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing
22 aid dispenser supervising a trainee license holder must submit a ~~quarterly~~ report every 90 days of the
23 trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible
24 for all hearing aid fittings of the trainee. A supervisor may terminate ~~his any~~ responsibilities to the trainee
25 by mailing by certified mail written notice to the board and the trainee.

26 (5) (a) If a person who holds a trainee license takes and fails to pass the practical examination
27 ~~given within his~~ during the training period, the board may authorize the department to renew the trainee
28 license for a period ~~ending 30~~ of 180 days after the next examination, during which the provisions of
29 subsection (2)(b) apply. In no event may more than ~~two renewals~~ one renewal be permitted.

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

1 the license and related functions of the board.

2 (6) A person licensed as an audiologist under the provisions of Title 37, chapter 15, is exempt from
3 the ~~12-month~~ 180-day training period but is required to pass the examinations prescribed in this chapter.

4 (7) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable
5 under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the
6 licensee's own.

7 (8) For the purposes of this section:

8 ~~(a)~~ "direct supervision" means the direct and regular observation and instruction of a trainee by
9 a licensed hearing aid dispenser who is available in the same place of business at the same location for
10 prompt consultation and treatment; ~~and~~

11 ~~(b) "general supervision" means oversight by a licensed hearing aid dispenser of those tasks and~~
12 ~~procedures that do not require the physical presence of the licensed dispenser on the business premises.~~
13 ~~However, the trainee remains under the licensed hearing aid dispenser's direction, control, responsibility,~~
14 ~~and evaluation."~~

15

16 **Section 6.** Section 37-16-406, MCA, is amended to read:

17 **"37-16-406. Admission of licensees from other states.** When the board determines that another
18 state or jurisdiction has requirements equivalent to or higher than those in effect under this chapter for the
19 practice of dispensing, fitting, and selling hearing aids and that the state or jurisdiction has a program
20 equivalent to or stricter than the program for determining whether applicants under this chapter are qualified
21 to sell, dispense, and fit hearing aids, the board may authorize the department to issue a license to
22 applicants who hold current, unsuspended, and unrevoked licenses to fit, dispense, and sell hearing aids
23 in the other state or jurisdiction. ~~No such applicants~~ An applicant for a license under this section ~~are~~ is not
24 required to submit to or undergo take a qualifying examination or the like, other than the payment of fees,
25 if the person complies but is required to pay the fee provided for in 37-16-402 and comply with all other
26 requirements of this chapter."

27

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

29 **"37-16-407. Renewal of license -- fee -- inactive status.** (1) A person who practices the fitting
30 of hearing aids and related devices shall annually pay to the department a fee as set by the board for a

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

8 (2) Each applicant for license renewal shall submit evidence showing completion of ~~4~~ 10 hours of
 9 continuing education completed during the preceding 12 months. The requirements of the continuing
 10 education programs are to be determined by the board by rule.

11 (3) (a) The board may set standards and fees for issuing licenses that designate inactive status.

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

13 (i) applies for reinstatement;

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

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

17

18 **Section 8.** Section 37-16-411, MCA, is amended to read:

19 **"37-16-411. Revocation or suspension of license -- investigations -- fines.** (1) The board may,
 20 at its discretion or upon written complaint of an aggrieved person, investigate an alleged violation of this
 21 chapter by a licensee or applicant for licensure. If the investigation discloses a probable violation of this
 22 chapter, the board may, pursuant to the provisions of 37-1-136, suspend or revoke the accused person's
 23 license or suspend or deny the person's application for a fixed period to be determined by the board.

24 (2) A person licensed under this chapter may have ~~his~~ the license revoked or suspended for a fixed
 25 period to be determined by the board or be fined not to exceed \$500 per incident for any of the following
 26 causes:

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

1 grounds for revocation or suspension.

2 ~~(2)~~ (b) securing a license under this chapter through fraud, ~~or~~ deceit, or false statements;

3 ~~(3)~~ (c) the personal use of a false name or alias in ~~the practice of his profession~~ professional
4 practice;

5 ~~(4)~~ (d) violating any of the provisions of this chapter;

6 ~~(5)~~ (e) obtaining ~~any a~~ fee or making any sale by fraud or misrepresentation;

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

9 ~~(7)~~ (g) using or causing or promoting the use of any advertising matter, promotional literature,
10 testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated
11 or published, ~~which~~ that is improbable, misleading, deceptive, or untruthful;

12 ~~(8)~~ (h) representing that the services or advice of a person licensed to practice medicine or
13 possessing certification as an audiologist will be used or made available in the selection, fitting, adjustment,
14 maintenance, or repair of hearing aids and related devices if that is not true or using the terms "doctor",
15 "clinic", "hearing clinic", "state registered", or other ~~like~~ similar words, abbreviations, or symbols ~~which~~
16 that tend to connote the medical profession when that use is not accurate;

17 ~~(9)~~ (i) permitting another to use ~~his~~ the license or certificate;

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

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

24 ~~(12)~~ (l) obtaining information concerning the business of a competitor by bribery of an employee
25 or agent of ~~such~~ that competitor, by false or misleading statements or representations, by the impersonation
26 of one in authority, or by any other unlawful means;

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

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

3 ~~(15)~~ (o) selling a hearing aid or related device to a person who has not been given tests ~~utilizing~~
4 using appropriate established procedures and instrumentation in fitting ~~of~~ hearing aids or related devices,
5 except for the sale of a replacement hearing aid or a related device of the same make and model within 1
6 year of the original sale;

7 ~~(16)~~ (p) falsifying hearing test or evaluation results or any associated client records;

8 ~~(17)~~ (q) refusing to cooperate with an investigation by the board by:

9 ~~(a)~~ (i) failing to furnish requested records or documents;

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

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

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

13 ~~(e)~~ (v) attempting to discourage a potential witness from cooperating with a board investigator or
14 from testifying by using threats, harassment, extortion, or bribery."

15

-END-

1 SENATE BILL NO. 95

2 INTRODUCED BY BISHOP, SIMON, HARDING, MCKEE, BROOKE, ESTRADA, RYAN, BURNETT,
3 CHRISTIAENS, WILSON, BOHLINGER, HALLIGAN, COCCHIARELLA, TUSS, ELLIOTT, SQUIRES,
4 BENEDICT, FRANKLIN, L. NELSON
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REQUIREMENTS FOR OBTAINING A HEARING
7 AID TRAINEE LICENSE; ESTABLISHING THE BOARD'S POWER TO INITIATE COMPLAINTS, CONDUCT
8 INVESTIGATIONS, AND SUSPEND OR REVOKE LICENSES; CHANGING THE TRAINING PERIOD FROM 12
9 MONTHS TO 180 DAYS; REDUCING THE NUMBER OF TRAINEE LICENSE RENEWALS FOLLOWING
10 FAILURE TO PASS EXAMINATIONS FROM TWO TO ONE; INCREASING THE CONTINUING EDUCATION
11 REQUIREMENTS FOR LICENSE RENEWAL APPLICANTS; AND AMENDING SECTIONS 37-16-202,
12 37-16-401, 37-16-403, 37-16-404, 37-16-405, 37-16-406, 37-16-407, AND 37-16-411, MCA."
13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15

16 **Section 1.** Section 37-16-202, MCA, is amended to read:

17 **"37-16-202. Powers and duties.** The powers and duties of the board are to:

- 18 (1) license persons who apply and are qualified to practice the fitting of hearing aids;
19 (2) establish a procedure to act as a grievance board to initiate or receive, investigate, and mediate
20 complaints from any source concerning the activities of persons licensed under this chapter or their agents,
21 whether licensed or not;
22 (3) suspend or revoke licenses under this chapter;
23 (4) designate the time and place for examining applicants for license and supervise and administer
24 the examination;
25 (5) adopt rules necessary to carry out this chapter;
26 (6) require the periodic inspection and calibration of audiometric testing equipment and carry out
27 periodic inspections of facilities of persons who practice the fitting or selling of hearing aids;
28 (7) prepare examinations required by the chapter;
29 (8) initiate legal action to enjoin from operation a person or corporation engaged in the sale,
30 dispensing, or fitting of hearing aids in this state who is not licensed under this chapter;

1 (9) adopt rules consistent with the provisions of 37-16-301, 37-16-303, 37-16-304, 37-16-402,
 2 37-16-403, 37-16-405, 37-16-407, 37-16-408, 37-16-411, and 37-16-414. Rules adopted by the board
 3 may include but are not limited to rules defining the term "related devices" and other rules necessary to
 4 implement 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-403, 37-16-405, 37-16-407, 37-16-408,
 5 37-16-411, and 37-16-414."

6
 7 **Section 2.** Section 37-16-401, MCA, is amended to read:

8 "**37-16-401. License required.** A person may not engage in selling, dispensing, or fitting hearing
 9 aids or display a sign or in any other way advertise ~~or hold himself out as a person who practices~~ the
 10 selling, dispensing, or fitting of hearing aids in Montana unless ~~he~~ the person holds a current ~~regular or~~
 11 ~~temporary~~ license issued by the department."

12
 13 **Section 3.** Section 37-16-403, MCA, is amended to read:

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

19 (2) An applicant who fails two successive practical examinations is eligible for reexamination after
 20 ~~a period of 2 years~~ have elapsed since the date of the applicant's last examination and after the completion
 21 ~~of the applicant has completed~~ additional training or education recognized by the board."

22
 23 **Section 4.** Section 37-16-404, MCA, is amended to read:

24 "**37-16-404. Examination Examinations -- subject areas.** The ~~examination~~ examinations provided
 25 in 37-16-403 ~~shall~~ must consist of a test of knowledge and practical tests of proficiency, ~~where~~ when they
 26 apply, in the following areas as they pertain to the fitting of hearing aids:

- 27 (1) acoustics:
 28 (a) general principles;
 29 (b) the decibel;
 30 (c) hearing and speech;

- 1 (2) the human ear:
- 2 (a) external;
- 3 (b) middle;
- 4 (c) inner;
- 5 (3) the hearing process;
- 6 (4) disorders of hearing:
- 7 (a) conductive;
- 8 (b) sensorineural;
- 9 (c) central;
- 10 (d) psychogenic;
- 11 (5) audiometry:
- 12 (a) pure tone;
- 13 (b) theory;
- 14 (c) procedures;
- 15 (d) speech;
- 16 (6) the hearing analysis:
- 17 (a) audiogram;
- 18 (b) auditory area;
- 19 (7) hearing aids:
- 20 (a) history;
- 21 (b) characteristics;
- 22 (c) components;
- 23 (8) practical use of the otoscope:
- 24 (a) earmold;
- 25 (b) impression;
- 26 (9) fittings:
- 27 (a) hearing aid;
- 28 (b) earmold;
- 29 (10) delivery and checkup; or
- 30 (11) any change ~~as deemed~~ considered necessary by the board."

1 **Section 5.** Section 37-16-405, MCA, is amended to read:

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

5 (2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and
6 commensurate with the cost of administering the license and related functions of the board and verification
7 that the applicant has passed the written portion of the examination with a score of at least 70%, the board
8 shall issue a trainee license that entitles the applicant to engage in a ~~12-month~~ 180-day training period
9 during which ~~he~~ the applicant shall:

10 (a) is required to pass the practical examination administered by the board before ~~he may be~~ being
11 issued a hearing aid dispenser's license; and

12 (b) shall work ~~for the first 90 days~~ under the direct supervision of the sponsoring licensed hearing
13 aid dispenser. ~~during which~~ During this time ~~he~~ the applicant may do the testing necessary for proper
14 selection and fitting of hearing aids and related devices and make necessary impressions. However, the
15 delivery and final fitting of the hearing aid and related devices must be made by the trainee and ~~his~~ the
16 supervisor.

17 ~~(c) work for the balance of the training period during which he may engage in all activities allowed~~
18 ~~a licensed hearing aid dispenser, under the general supervision of a licensed hearing aid dispenser.~~

19 (3) The training period must consist of a continuous ~~12-month~~ 180-day term. Any break in training
20 requires application for another trainee license under ~~such rules as~~ that the board may prescribe.

21 (4) A trainee license may not be issued unless the board has on file an unrevoked statement from
22 a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing
23 aid dispenser supervising a trainee license holder must submit a ~~quarterly~~ report every 90 days of the
24 trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible
25 for all hearing aid fittings of the trainee. A supervisor may terminate ~~his~~ any responsibilities to the trainee
26 by mailing by certified mail written notice to the board and the trainee.

27 (5) (a) If a person who holds a trainee license takes and fails to pass the practical examination
28 ~~given within his~~ during the training period, the board may authorize the department to renew the trainee
29 license for a period ~~ending 30 of 180 days after the next examination,~~ during which the provisions of
30 subsection (2)(b) apply. In no event may more than ~~two renewals~~ one renewal be permitted.

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

3 (6) A person licensed as an audiologist under the provisions of Title 37, chapter 15, OR A PERSON
4 PRACTICING PURSUANT TO 37-15-305 is exempt from the ~~42-month~~ 180-day training period but is
5 required to pass the examinations prescribed in this chapter.

6 (7) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable
7 under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the
8 licensee's own.

9 (8) For the purposes of this section:

10 ~~(a) "direct supervision" means the direct and regular observation and instruction of a trainee by~~
11 ~~a licensed hearing aid dispenser who is available in the same place of business at the same location for~~
12 ~~prompt consultation and treatment; and~~

13 ~~(b) "general supervision" means oversight by a licensed hearing aid dispenser of those tasks and~~
14 ~~procedures that do not require the physical presence of the licensed dispenser on the business premises.~~
15 ~~However, the trainee remains under the licensed hearing aid dispenser's direction, control, responsibility,~~
16 ~~and evaluation."~~

17
18 **Section 6.** Section 37-16-406, MCA, is amended to read:

19 **"37-16-406. Admission of licensees from other states.** When the board determines that another
20 state or jurisdiction has requirements equivalent to or higher than those in effect under this chapter for the
21 practice of dispensing, fitting, and selling hearing aids and that the state or jurisdiction has a program
22 equivalent to or stricter than the program for determining whether applicants under this chapter are qualified
23 to sell, dispense, and fit hearing aids, the board may authorize the department to issue a license to
24 applicants who hold current, unsuspended, and unrevoked licenses to fit, dispense, and sell hearing aids
25 in the other state or jurisdiction. ~~No such applicants~~ An applicant for a license under this section ~~are~~ is not
26 ~~required to submit to or undergo take a qualifying~~ THE PRACTICAL OR WRITTEN examination ~~or the like,~~
27 ~~other than the payment of fees, if the person complies~~ but is required to:

28 (1) pay the fee provided for in 37-16-402;

29 (2) TAKE A TEST OF THE APPLICANT'S KNOWLEDGE OF THE PROVISIONS OF TITLE 37,
30 CHAPTER 16, AND APPLICABLE RULES; and

1 (3) comply with all other requirements of this chapter."

2

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

4 "**37-16-407. Renewal of license -- fee -- inactive status.** (1) A person who practices the fitting
5 of hearing aids and related devices shall annually pay to the department a fee as set by the board for a
6 renewal of ~~his~~ the person's license. The fee must be fixed by the board to be commensurate with board
7 costs in administering licensure and related board functions. The fee must be increased 10% for each
8 month or major portion ~~thereof~~ of a month that the payment of the renewal fee is delayed after the
9 expiration date. The maximum fee for a delayed renewal may not exceed twice the normal renewal fee as
10 set by the board. A person applying for renewal whose license was suspended for failure to renew is
11 required to submit to the examinations described in 37-16-403 as a condition of renewal for a 3-year period
12 after suspension.

13 (2) Each applicant for license renewal shall submit evidence showing completion of 4 10 hours of
14 continuing education completed during the preceding 12 months. The requirements of the continuing
15 education programs are to be determined by the board by rule.

16 (3) (a) The board may set standards and fees for issuing licenses that designate inactive status.

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

18 (i) applies for reinstatement;

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

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

22

23 **Section 8.** Section 37-16-411, MCA, is amended to read:

24 "**37-16-411. Revocation or suspension of license -- investigations -- fines.** (1) The board may,
25 at its discretion or upon written complaint of an aggrieved person, investigate an alleged violation of this
26 chapter by a licensee or applicant for licensure. If the investigation discloses a probable violation of this
27 chapter, the board may, pursuant to the provisions of 37-1-136, suspend or revoke the accused person's
28 license or suspend or deny the person's application for a fixed period to be determined by the board.

29 (2) A person licensed under this chapter may have ~~his~~ the license revoked or suspended for a fixed
30 period to be determined by the board or be fined not to exceed \$500 per incident for any of the following

1 causes:

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

7 ~~(2)~~ (b) securing a license under this chapter through fraud, ~~or~~ deceit, or false statements;

8 ~~(3)~~ (c) the personal use of a false name or alias in ~~the practice of his profession~~ professional
9 practice;

10 ~~(4)~~ (d) violating any of the provisions of this chapter;

11 ~~(5)~~ (e) obtaining ~~any~~ a fee or making any sale by fraud or misrepresentation;

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

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

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

22 ~~(9)~~ (i) permitting another to use ~~his~~ the license or certificate;

23 ~~(10)~~ (j) defaming competitors by falsely imputing to them dishonorable conduct, inability to perform
24 contracts, or questionable credit standing, or by other false representations or falsely disparaging the
25 products of competitors in any respect or their business methods, selling prices, values, credit terms,
26 policies, or services;

27 ~~(11)~~ (k) using any method of advertising prohibited by trade practice rules 1 through 17 of the
28 federal trade commission;

29 ~~(12)~~ (l) obtaining information concerning the business of a competitor by bribery of an employee
30 or agent of ~~such~~ that competitor, by false or misleading statements or representations, by the impersonation

1 of one in authority, or by any other unlawful means;

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

6 ~~(14)~~ (n) unethical conduct or gross incompetence or negligence in the performance of ~~his~~
7 professional duties, including repeated failure to make indicated medical referrals of ~~his~~ customers;

8 ~~(15)~~ (o) selling a hearing aid or related device to a person who has not been given tests ~~utilizing~~
9 using appropriate established procedures and instrumentation in fitting ~~of~~ hearing aids or related devices,
10 except for the sale of a replacement hearing aid or a related device of the same make and model within 1
11 year of the original sale;

12 ~~(16)~~ (p) falsifying hearing test or evaluation results or any associated client records;

13 ~~(17)~~ (q) refusing to cooperate with an investigation by the board by:

14 ~~(a)~~ (i) failing to furnish requested records or documents;

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

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

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

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

20

-END-

1 SENATE BILL NO. 95

2 INTRODUCED BY BISHOP, SIMON, HARDING, MCKEE, BROOKE, ESTRADA, RYAN, BURNETT,
3 CHRISTIAENS, WILSON, BOHLINGER, HALLIGAN, COCCHIARELLA, TUSS, ELLIOTT, SQUIRES,
4 BENEDICT, FRANKLIN, L. NELSON

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REQUIREMENTS FOR OBTAINING A HEARING
7 AID TRAINEE LICENSE; ESTABLISHING THE BOARD'S POWER TO INITIATE COMPLAINTS, CONDUCT
8 INVESTIGATIONS, AND SUSPEND OR REVOKE LICENSES; CHANGING THE TRAINING PERIOD FROM 12
9 MONTHS TO 180 DAYS; REDUCING THE NUMBER OF TRAINEE LICENSE RENEWALS FOLLOWING
10 FAILURE TO PASS EXAMINATIONS FROM TWO TO ONE; INCREASING THE CONTINUING EDUCATION
11 REQUIREMENTS FOR LICENSE RENEWAL APPLICANTS; AND AMENDING SECTIONS 37-16-202,
12 37-16-401, 37-16-403, 37-16-404, 37-16-405, 37-16-406, 37-16-407, AND 37-16-411, MCA."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.

1 SENATE BILL NO. 95

2 INTRODUCED BY BISHOP, SIMON, HARDING, MCKEE, BROOKE, ESTRADA, RYAN, BURNETT,
 3 CHRISTIAENS, WILSON, BOHLINGER, HALLIGAN, COCCHIARELLA, TUSS, ELLIOTT, SQUIRES,
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 11 REQUIREMENTS FOR LICENSE RENEWAL APPLICANTS; AND AMENDING SECTIONS 37-16-202,
 12 37-16-401, 37-16-403, 37-16-404, 37-16-405, 37-16-406, 37-16-407, AND 37-16-411, MCA."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
 16 **Section 1.** Section 37-16-202, MCA, is amended to read:

17 **"37-16-202. Powers and duties.** The powers and duties of the board are to:

- 18 (1) license persons who apply and are qualified to practice the fitting of hearing aids;
- 19 (2) establish a procedure to act as a grievance board to initiate or receive, investigate, and mediate
 20 complaints from any source concerning the activities of persons licensed under this chapter or their agents,
 21 whether licensed or not;
- 22 (3) suspend or revoke licenses under this chapter;
- 23 (4) designate the time and place for examining applicants for license and supervise and administer
 24 the examination;
- 25 (5) adopt rules necessary to carry out this chapter;
- 26 (6) require the periodic inspection and calibration of audiometric testing equipment and carry out
 27 periodic inspections of facilities of persons who practice the fitting or selling of hearing aids;
- 28 (7) prepare examinations required by the chapter;
- 29 (8) initiate legal action to enjoin from operation a person or corporation engaged in the sale,
 30 dispensing, or fitting of hearing aids in this state who is not licensed under this chapter;

1 (9) adopt rules consistent with the provisions of 37-16-301, 37-16-303, 37-16-304, 37-16-402,
 2 37-16-403, 37-16-405, 37-16-407, 37-16-408, 37-16-411, and 37-16-414. Rules adopted by the board
 3 may include but are not limited to rules defining the term "related devices" and other rules necessary to
 4 implement 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-403, 37-16-405, 37-16-407, 37-16-408,
 5 37-16-411, and 37-16-414."

6

7 **Section 2.** Section 37-16-401, MCA, is amended to read:

8 "**37-16-401. License required.** A person may not engage in selling, dispensing, or fitting hearing
 9 aids or display a sign or in any other way advertise ~~or hold himself out as a person who practices~~ the
 10 selling, dispensing, or fitting of hearing aids in Montana unless ~~he~~ the person holds a current ~~regular or~~
 11 ~~temporary~~ license issued by the department."

12

13 **Section 3.** Section 37-16-403, MCA, is amended to read:

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

19 (2) An applicant who fails two successive practical examinations is eligible for reexamination after
 20 ~~a period of 2 years~~ have elapsed since the date of the applicant's last examination and after the completion
 21 of the applicant has completed additional training or education recognized by the board."

22

23 **Section 4.** Section 37-16-404, MCA, is amended to read:

24 "**37-16-404. Examination Examinations -- subject areas.** The ~~examination~~ examinations provided
 25 in 37-16-403 ~~shall~~ must consist of a test of knowledge and practical tests of proficiency, ~~where~~ when they
 26 apply, in the following areas as they pertain to the fitting of hearing aids:

27

(1) acoustics:

28

(a) general principles;

29

(b) the decibel;

30

(c) hearing and speech;

- 1 (2) the human ear:
- 2 (a) external;
- 3 (b) middle;
- 4 (c) inner;
- 5 (3) the hearing process;
- 6 (4) disorders of hearing:
- 7 (a) conductive;
- 8 (b) sensorineural;
- 9 (c) central;
- 10 (d) psychogenic;
- 11 (5) audiometry:
- 12 (a) pure tone;
- 13 (b) theory;
- 14 (c) procedures;
- 15 (d) speech;
- 16 (6) the hearing analysis:
- 17 (a) audiogram;
- 18 (b) auditory area;
- 19 (7) hearing aids:
- 20 (a) history;
- 21 (b) characteristics;
- 22 (c) components;
- 23 (8) practical use of the otoscope:
- 24 (a) earmold;
- 25 (b) impression;
- 26 (9) fittings:
- 27 (a) hearing aid;
- 28 (b) earmold;
- 29 (10) delivery and checkup; or
- 30 (11) any change ~~as deemed~~ considered necessary by the board."

1 **Section 5.** Section 37-16-405, MCA, is amended to read:

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

5 (2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and
6 commensurate with the cost of administering the license and related functions of the board and verification
7 that the applicant has passed the written portion of the examination with a score of at least 70%, the board
8 shall issue a trainee license that entitles the applicant to engage in a ~~12-month~~ 180-day training period
9 during which ~~he the applicant shall~~:

10 (a) is required to pass the practical examination administered by the board before ~~he may be being~~
11 issued a hearing aid dispenser's license; and

12 (b) shall work ~~for the first 90 days~~ under the direct supervision of the sponsoring licensed hearing
13 aid dispenser, ~~during which~~ During this time ~~he the applicant~~ may do the testing necessary for proper
14 selection and fitting of hearing aids and related devices and make necessary impressions. However, the
15 delivery and final fitting of the hearing aid and related devices must be made by the trainee and ~~his~~ the
16 supervisor.

17 ~~(c) work for the balance of the training period during which he may engage in all activities allowed~~
18 ~~a licensed hearing aid dispenser, under the general supervision of a licensed hearing aid dispenser.~~

19 (3) The training period must consist of a continuous ~~12-month~~ 180-day term. Any break in training
20 requires application for another trainee license under ~~such~~ rules as that the board may prescribe.

21 (4) A trainee license may not be issued unless the board has on file an unrevoked statement from
22 a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing
23 aid dispenser supervising a trainee license holder must submit a ~~quarterly~~ report every 90 days of the
24 trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible
25 for all hearing aid fittings of the trainee. A supervisor may terminate ~~his~~ any responsibilities to the trainee
26 by mailing by certified mail written notice to the board and the trainee.

27 (5) (a) If a person who holds a trainee license takes and fails to pass the practical examination
28 ~~given within his~~ during the training period, the board may authorize the department to renew the trainee
29 license for a period ~~ending 30~~ of 180 days ~~after the next examination,~~ during which the provisions of
30 subsection (2)(b) apply. In no event may more than ~~two renewals~~ one renewal be permitted.

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

3 (6) A person licensed as an audiologist under the provisions of Title 37, chapter 15, OR A PERSON
4 PRACTICING PURSUANT TO 37-15-305 is exempt from the ~~12-month~~ 180-day training period but is
5 required to pass the examinations prescribed in this chapter.

6 (7) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable
7 under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the
8 licensee's own.

9 (8) For the purposes of this section:

10 ~~(a) "direct supervision" means the direct and regular observation and instruction of a trainee by~~
11 ~~a licensed hearing aid dispenser who is available in the same place of business at the same location for~~
12 ~~prompt consultation and treatment; and~~

13 ~~(b) "general supervision" means oversight by a licensed hearing aid dispenser of those tasks and~~
14 ~~procedures that do not require the physical presence of the licensed dispenser on the business premises.~~
15 ~~However, the trainee remains under the licensed hearing aid dispenser's direction, control, responsibility,~~
16 ~~and evaluation."~~

17
18 **Section 6.** Section 37-16-406, MCA, is amended to read:

19 **"37-16-406. Admission of licensees from other states.** When the board determines that another
20 state or jurisdiction has requirements equivalent to or higher than those in effect under this chapter for the
21 practice of dispensing, fitting, and selling hearing aids and that the state or jurisdiction has a program
22 equivalent to or stricter than the program for determining whether applicants under this chapter are qualified
23 to sell, dispense, and fit hearing aids, the board may authorize the department to issue a license to
24 applicants who hold current, unsuspended, and unrevoked licenses to fit, dispense, and sell hearing aids
25 in the other state or jurisdiction. ~~No such applicants~~ An applicant for a license under this section are is not
26 required to submit to or undergo take a qualifying THE PRACTICAL OR WRITTEN examination or the like,
27 other than the payment of fees, if the person complies but is required to:

28 (1) pay the fee provided for in 37-16-402;

29 (2) TAKE A TEST OF THE APPLICANT'S KNOWLEDGE OF THE PROVISIONS OF TITLE 37,
30 CHAPTER 16, AND APPLICABLE RULES; and

1 (3) comply with all other requirements of this chapter."

2
3 **Section 7.** Section 37-16-407, MCA, is amended to read:

4 "**37-16-407. Renewal of license -- fee -- inactive status.** (1) A person who practices the fitting
5 of hearing aids and related devices shall annually pay to the department a fee as set by the board for a
6 renewal of ~~his~~ the person's license. The fee must be fixed by the board to be commensurate with board
7 costs in administering licensure and related board functions. The fee must be increased 10% for each
8 month or major portion ~~thereof~~ of a month that the payment of the renewal fee is delayed after the
9 expiration date. The maximum fee for a delayed renewal may not exceed twice the normal renewal fee as
10 set by the board. A person applying for renewal whose license was suspended for failure to renew is
11 required to submit to the examinations described in 37-16-403 as a condition of renewal for a 3-year period
12 after suspension.

13 (2) Each applicant for license renewal shall submit evidence showing completion of 4 10 hours of
14 continuing education completed during the preceding 12 months. The requirements of the continuing
15 education programs are to be determined by the board by rule.

16 (3) (a) The board may set standards and fees for issuing licenses that designate inactive status.

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

18 (i) applies for reinstatement;

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

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

22
23 **Section 8.** Section 37-16-411, MCA, is amended to read:

24 "**37-16-411. Revocation or suspension of license -- investigations -- fines.** (1) The board may,
25 at its discretion or upon written complaint of an aggrieved person, investigate an alleged violation of this
26 chapter by a licensee or applicant for licensure. If the investigation discloses a probable violation of this
27 chapter, the board may, pursuant to the provisions of 37-1-136, suspend or revoke the accused person's
28 license or suspend or deny the person's application for a fixed period to be determined by the board.

29 (2) A person licensed under this chapter may have ~~his~~ the license revoked or suspended for a fixed
30 period to be determined by the board or be fined not to exceed \$500 per incident for any of the following

1 causes:

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

7 ~~(2)~~ (b) securing a license under this chapter through fraud, ~~or~~ deceit, or false statements;

8 ~~(3)~~ (c) the personal use of a false name or alias in ~~the practice of his profession~~ professional
9 practice;

10 ~~(4)~~ (d) violating any of the provisions of this chapter;

11 ~~(5)~~ (e) obtaining ~~any~~ a fee or making any sale by fraud or misrepresentation;

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

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

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

22 ~~(9)~~ (i) permitting another to use ~~his~~ the license or certificate;

23 ~~(10)~~ (j) defaming competitors by falsely imputing to them dishonorable conduct, inability to perform
24 contracts, or questionable credit standing, or by other false representations or falsely disparaging the
25 products of competitors in any respect or their business methods, selling prices, values, credit terms,
26 policies, or services;

27 ~~(11)~~ (k) using any method of advertising prohibited by trade practice rules 1 through 17 of the
28 federal trade commission;

29 ~~(12)~~ (l) obtaining information concerning the business of a competitor by bribery of an employee
30 or agent of ~~such~~ that competitor, by false or misleading statements or representations, by the impersonation

- 1 of one in authority, or by any other unlawful means;
- 2 ~~(13)~~ (m) directly or indirectly giving or offering to give or permitting or causing to be given money
- 3 or anything of value to any person who advises another in a professional capacity as an inducement to
- 4 influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid
- 5 dispenser or influencing persons to refrain from dealing in the products of competitors;
- 6 ~~(14)~~ (n) unethical conduct or gross incompetence or negligence in the performance of ~~his~~
- 7 professional duties, including repeated failure to make indicated medical referrals of ~~his~~ customers;
- 8 ~~(15)~~ (o) selling a hearing aid or related device to a person who has not been given tests ~~utilizing~~
- 9 using appropriate established procedures and instrumentation in fitting ~~of~~ hearing aids or related devices,
- 10 except for the sale of a replacement hearing aid or a related device of the same make and model within 1
- 11 year of the original sale;
- 12 ~~(16)~~ (p) falsifying hearing test or evaluation results or any associated client records;
- 13 ~~(17)~~ (q) refusing to cooperate with an investigation by the board by:
- 14 ~~(a)~~ (i) failing to furnish requested records or documents;
- 15 ~~(b)~~ (ii) failing to furnish a complete explanation of matters referred to in the complaint;
- 16 ~~(c)~~ (iii) failing to respond to a subpoena issued by the board;
- 17 ~~(d)~~ (iv) willfully misrepresenting any relevant fact to a board investigator; or
- 18 ~~(e)~~ (v) attempting to discourage a potential witness from cooperating with a board investigator or
- 19 from testifying by using threats, harassment, extortion, or bribery."

20

-END-