

CHAPTER 441

S.B. No. 953

AN ACT

relating to the licensing of persons who fit and dispense hearing instruments; providing administrative penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 1, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. DEFINITIONS. In this Act, unless the context requires a different definition:

(1) [(a)] "Board" means the Texas Board of Health [~~Examiners in the Fitting and Dispensing of Hearing Aids~~].

(2) [(b)] "License" means license issued by the committee [Board] under this Act to a person authorized to fit and dispense hearing instruments [aids].

(3) [(c)] "Temporary training permit [Training Permit]" means a permit issued by the committee [Board] to persons authorized to fit and dispense hearing instruments [aids] only under the direct supervision of a person who holds a license under this Act.

(4) [(d)] "Hearing instrument [aid]" means any wearable instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing, but as used herein shall not [~~mean repair services, replacements for defective parts and shall not~~] include batteries or[,] cords [~~and accessories~~]. The term includes the instrument's parts, attachments, including earmolds, and accessories.

(5) [(e)] "Sell" or "sale" includes a transfer of title or of the right to use by lease, bailment, or any other contract. Provided, for the purpose of this Act, the term "sell" or "sale" shall not include sales at wholesale by manufacturers to persons licensed under this Act, or to distributors for distribution and sale to persons licensed under this Act.

(6) [(f)] "Fitting and dispensing [~~Dispensing~~] hearing instruments [aids]" means the measurement of human hearing by the use of an audiometer or by any means for the purpose of making selections, adaptations, or [~~and/or~~] sales of hearing instruments [aids]. The term [~~also~~] includes the [~~sale of hearing aids, and the~~] making of impressions for earmolds to be used as a part of the hearing instrument and any necessary postfitting counseling for the purpose of fitting and dispensing hearing instruments [aid].

(7) [(g)] "30-day trial period" means the period in which a person may cancel the purchase of a hearing instrument [aid].

(8) "Committee" means the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.

(9) "Department" means the Texas Department of Health.

(10) "Person" means an individual, corporation, partnership, or other legal entity.

(11) "Apprentice permit" means a permit issued by the committee to a person who meets the requirements of Section 9A of this Act.

(12) "Supervisor" means a licensed hearing instrument dispenser who has an established place of business, is responsible for the direct supervision and education of a temporary training permit holder, and meets the qualifications established by this Act.

(13) "Direct supervision" means the physical presence of the supervisor any time a temporary permit holder is engaged in services related to the fitting, dispensing, and sales of hearing instruments.

SECTION 2. Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Section 1A to read as follows:

Sec. 1A. *POLICY. It is the policy of this state to:*

(1) safeguard the health and welfare of the communicatively handicapped people of this state from the dispensing of hearing instruments by unskilled or unprincipled practitioners;

(2) establish and enforce standards of practitioner competency;

(3) provide regulatory authority over practitioners offering hearing instrument dispensing services to the public; and

(4) ensure professional ethical conduct in the dispensing of hearing aid devices or instruments.

SECTION 3. Section 2, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.02, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. *COMMITTEE MEMBERSHIP [BOARD OF EXAMINERS].* (a) The State Committee [~~Texas Board~~] of Examiners in the Fitting and Dispensing of Hearing Instruments [~~Aids~~] is *within the Texas Department of Health and is [hereby created. The Board shall be]* composed of nine members appointed by the governor [~~Governor~~] with the advice and consent of the senate [~~Senate~~]. Appointments shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. The committee [~~Board~~] members must have the following qualifications [~~, to-wit~~]:

(1) ~~six committee [Five of such] members must [shall] possess a hearing instrument dispenser's license under this Act [the necessary qualifications to fit and dispense hearing aids in this state] and have been residents of this state actually engaged in fitting and dispensing hearing instruments [aids] for at least five years [immediately] preceding their appointment; no more than two persons licensed under Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), and its subsequent amendments, are eligible to serve as members of the committee. No more than two of such five members shall be employed by, franchised by, or associated exclusively with the same hearing aid manufacturer;~~

(2) ~~two committee [Two Board] members must be members of the general public, each of whom [A person] is eligible for appointment as a public member only if the person and the person's spouse are not licensed by an occupational regulatory agency in the field of health care; are not employed by and do not participate in the management of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; and do not own, control, or have, directly or indirectly, an interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; and~~

(3) ~~one committee member must [One of such members shall] be a citizen of the United States and a resident of this state for [a period of] at least two years [immediately] preceding the person's [his] appointment, [shall] be an active practicing physician or surgeon [duly] licensed to practice in this state by the Texas State Board of Medical Examiners, and specialize in the practice of otolaryngology and may [Such member shall] not have a financial interest in a hearing instrument [aid] manufacturing company or a wholesale or retail hearing instrument [aid] company [and~~

(4) ~~One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment and shall be~~

~~an active practicing audiologist. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale or retail hearing aid company.~~

(b) One who has served two full consecutive terms on the *committee* [Board] is [Board shall] not [be] eligible for a reappointment to the *committee* [Board] for [a period of] 12 months immediately following the expiration of the second full term.

(c) In the event of death, resignation, or removal of any members, the vacancy of the unexpired terms shall be filled by the *governor* [Governor] in the same manner as other appointments. Each appointee to the *committee* [Board] shall, within 15 days *after* [from] the date of [his] appointment, qualify by taking the constitutional oath of office. Upon presentation of the [such] oath, the *secretary of state* [Secretary of State] shall issue commissions to appointees as evidence of their authority to act as members of the *committee* [Board].

(d) Members hold office for staggered terms of six years, and each member shall continue until a successor is appointed and qualifies.

~~(e) [The Board shall be represented by the Attorney General and the District and County Attorneys of the state.~~

[~~(f)~~] A person who is required to register as a lobbyist under Chapter 305, Government Code, may not serve as a member of the *committee* [Board] or act as the general counsel to the *committee* [Board].

[~~(g)~~] A member or employee of the *committee* [Board] may not be an officer, employee, or paid consultant of a statewide or national trade association in the hearing *instrument* [aid] industry. A member or employee of the *committee* [Board] may not be related within the second degree by affinity or consanguinity, as determined under Article 5996h, Revised Statutes, to a person who is an officer, employee, or paid consultant of a statewide or national trade association in the regulated industry.

(g) [~~(h)~~] It is a ground for removal from the *committee* [Board] if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) of this section for appointment to the *committee* [Board];

(2) does not maintain during his service on the *committee* [Board] the qualifications required by Subsection (a) of this section for appointment to the *committee* [Board];

(3) violates a prohibition established by Subsection (e) or (f) [~~or (g)~~] of this section; or

(4) fails to attend at least half of the regularly scheduled *committee* [Board] meetings held in a calendar year, excluding meetings held while the person was not a *committee* [Board] member.

(h) [~~(i)~~] The validity of an action of the *committee* [Board] is not affected by the fact that it was taken when a ground for removal of a member of the *committee* [Board] existed.

(i) [~~(j)~~] The *State Committee* [Texas Board] of Examiners in the Fitting and Dispensing of Hearing *Instruments* [Aids] is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the *committee* [board] is abolished and this Act expires September 1, 2005 [1993].

(j) [~~(k)~~] The *committee* [Board] is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 4. Section 3, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.03, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. COMMITTEE [BOARD] ORGANIZATION AND MEETINGS. (a) Within 60 days after [their] appointment and qualification the initial *committee* [Board] shall hold its first meeting and elect a *president and vice-president* [President, Vice-President, and Secretary-Treasurer]. The term of office for all officers of the *committee* [Board] shall be for a period of one year.

(b) The *committee* [Board] shall hold regular meetings at least twice a year [at which an examination of applicants for license shall be given]. Special meetings of the *committee* [Board] shall be held upon request of a majority of the members or upon the call of the *president* [President]. A majority of the *committee* [Board] shall constitute a quorum [for the

transaction of business and should a quorum not be present on the day appointed for any meeting, those present may adjourn from day to day until a quorum be present provided such period shall not be longer than three successive days].

SECTION 5. Section 4, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.04, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. POWERS AND DUTIES OF THE COMMITTEE [BOARD]. (a) *Subject to the approval of the board, the committee [The Board] shall have the power to make [such] procedural rules consistent with this Act as may be necessary for the performance of its duties.*

(b) *The committee [Board] shall have the power to appoint subcommittees [committees] from its own membership[, the duties of which shall be] to consider [such] matters[,] pertaining to the enforcement of this Act[,] as shall be referred to the subcommittees by the committee. The subcommittees [said committees, and they] shall make recommendations to the committee [Board in respect thereto].*

(c) *With the assistance of the department, the committee shall:*

(1) *administer, coordinate, and enforce the provisions of this Act;*

(2) *evaluate the qualifications of applicants;*

(3) *examine applicants; and*

(4) *issue subpoenas, examine witnesses, and administer oaths under the laws of this state.*

(d) *The committee shall conduct hearings and keep records and minutes necessary to the orderly administration [The Board shall have the power to employ the services of stenographers, inspectors, agents, attorneys, and other necessary assistants in carrying out the provisions] of this Act with the assistance of the department and subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.*

(e) *The board, with the aid of the department, shall investigate a person that engages in practices that violate this Act.*

(f) *A license holder under this Act is subject to the rules adopted by the committee and approved by the board under this Act.*

(g) *The committee by rule shall adopt requirements for the continuing education of a license holder under this Act. The committee shall approve not less than five hours of specific courses of instruction annually.*

~~[(d) The Board, by majority vote, shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records and documents, to administer oaths and to take testimony concerning all matters within its jurisdiction.~~

~~[(e) The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for injunction shall be in addition to any other action, proceeding or remedy authorized by law.~~

~~[(f) The Board is charged with the duty of aiding in the enforcement of this Act, and any member of the Board may present to the Attorney General or a County or District Attorney of this state complaints relating to violations of any provision of this Act; and the Board through the members, officers, counsel, and agents may assist in the trial of any case involving alleged violations of this Act, subject to the control of the Attorney General, County Attorney, or District Attorney charged with the responsibility of prosecuting such case.~~

~~[(g) Before entering upon the discharge of the duties of such office, the Secretary-Treasurer of the Board shall give such bond for the performance of this duty as the Board may require, the premium of such bond is to be paid from any available funds.~~

~~[(h) The Board shall adopt an official seal and the form of a license of suitable design and shall have an office where all the permanent records shall be kept.~~

~~[(i) The Board by rule shall adopt requirements for the continuing education of licensees under this Act in subjects pertaining to the fitting and dispensing of hearing aids. The Board by rule may approve specific courses of instruction or establish minimum content require-~~

ments of courses of continuing professional education and provide programs for continuing education.]

SECTION 6. Section 4A, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.04A, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4A. *COMMITTEE EMPLOYEES [PERSONNEL POLICIES].* [(a)] *The department shall provide administrative and clerical employees necessary to implement the provisions of this Act [President of the Board or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least 10 days before any public posting.*

[(b) *The President of the Board or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for Board employees must be based on the system established under this subsection.*

[*The Board may recognize, prepare, or carry out continuing education programs for its licensees. Participation in the programs is voluntary.*]

SECTION 7. Section 5, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.05, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. *SEAL AND AUTHENTICATION OF RECORDS.* [(a)] *The committee [Board] shall adopt a seal that the committee shall use to authenticate its proceedings [preserve an accurate record of all meetings and proceedings of the Board].*

[(b) *A record shall be kept showing the name, age and present legal and mailing address of each applicant for examination. The record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained.*

[(c) *The Secretary-Treasurer of the Board shall on or before March 1st of each year send a certified copy of such record to the Secretary of State for permanent record. A certified copy of said record with the hand and seal of the Secretary-Treasurer of the Board to the Secretary of State, shall be admitted as evidence in all courts.*

[(d) *The Board shall keep a record of each license issued under this Act containing the name, residence, place of business of the person to whom each license has been issued, and the date of issuance of each of such license and all information pertaining to renewals, revocations and suspensions of such licensee.*]

SECTION 8. Section 6, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.06, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. *EXAMINATION: APPLICATION.* (a) *Except as provided in Subsection (h) of this section, each [Every] person desiring to engage in fitting and dispensing hearing instruments [aids] in this state must [the State of Texas shall be required to] pass an examination given by the committee [Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids].*

(b) *The applicant must [shall] make application[, furnishing] to the committee [Secretary-Treasurer of the Board] on forms to be furnished by the committee [Board], including sworn evidence that the applicant [he] has attained the age of majority and has graduated from an accredited high school or equivalent[,], and providing [such] other information as the committee [Board] may deem necessary for the enforcement of this Act.*

(c) *The examination must [shall] consist of written, oral, or practical tests that are [shall be] objective in method and applied in a consistent manner. The examination shall be administered at least twice a year. The committee shall administer or arrange for the administration of a written examination. All examinations shall be validated by an independent testing professional. The examination must [shall] cover the following areas as they relate to the fitting and dispensing of hearing instruments [aids]:*

- (1) *basic [Basic] physics of sound;*
- (2) *[The] structure and function of hearing instruments [aids];*
- (3) *fitting [Fitting] of hearing instruments [aids];*
- (4) *pure [Pure] tone audiometry, including air conduction testing and bone conduction testing;*
- (5) *live [Live] voice and recorded [and/or record] voice speech audiometry;*

- (6) *masking* [~~Masking~~] when indicated for air conduction, bone conduction, and speech;
- (7) *recording* [~~Recording~~] and evaluation of audiograms and speech audiometry to determine the hearing *instrument* [~~aid~~] candidacy;
- (8) *selection* [~~Selection~~] and adaption of hearing *instruments*, [~~aids and~~] testing of hearing *instruments*, and verification of aided hearing *instrument performance* [~~aids~~]; [~~and~~]
- (9) *taking* [~~Taking~~] of earmold impressions;
- (10) *verification of hearing instrument fitting and functional gain measurements using a calibrated system*;
- (11) *anatomy and physiology of the ear*;
- (12) *counseling and aural rehabilitation of the hearing impaired for the purpose of fitting and dispensing hearing instruments*;
- (13) *using an otoscope for the visual observation of the entire ear canal*; and
- (14) *laws, rules, and regulations of this state and the United States*.
- (d) *The* [~~No part of the~~] examination may not test [~~shall consist of tests requiring~~] knowledge of the diagnosis or [~~and/or~~] treatment of any disease or injury to the human body.
- (e) Each applicant shall be given due notice of the date and place of the examination and the subjects, areas, and [~~and/or~~] skills that will be included in the [~~within such~~] examination, and there shall be no changes in those [~~said~~] subjects, areas, and [~~and/or~~] skills after the date of the examination has been announced and publicized. All examinations shall be conducted in writing and by such other means as the *committee* [~~Board~~] shall determine adequate to ascertain the qualifications of applicants. Upon reexamination, a person who has previously failed shall be examined only on those portions of the examination *that the person* [~~which he~~] failed. Every applicant successfully passing the examination and meeting all the requirements of this Act shall be registered by the *committee* [~~Board~~] as possessing the qualifications required by this Act and shall be issued an *apprentice permit* [~~receive from the Board a license~~] to fit and dispense hearing *instruments* [~~aids~~] in this state.
- (f) The *committee* [~~Board~~], in its discretion, may refuse to examine an applicant *who* [~~if he~~] has been convicted of [~~a felony or~~] a misdemeanor that involved moral turpitude or a *felony*.
- (g) Within 30 days after the date a licensing examination is administered under this Act, the *committee* [~~Board~~] shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the *committee* [~~Board~~] shall notify each examinee of the results of the examination within two weeks after the date the *committee* [~~Board~~] receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the *committee* [~~Board~~] shall notify each examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this Act, the *committee* [~~Board~~] shall furnish the person with an analysis of the person's performance on the examination.
- (h) *A person who is licensed under Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), and its subsequent amendments, as an audiologist or an audiology intern is exempt from the examination.*

SECTION 9. Section 8, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.08, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. RECIPROCAL ARRANGEMENTS. (a) *On* [~~Upon~~] proper application, the *committee* [~~Texas Board of Examiners in Fitting and Dispensing of Hearing Aids~~] shall grant a license to fit and dispense hearing *instruments* [~~aids~~] without requiring an examination to *license holders* [~~licentiates~~] of other states or territories having requirements equivalent to or higher than those in effect *under* [~~pursuant to~~] this Act for fitting and dispensing hearing *instruments* [~~aids~~].

(b) Applications for license under the provisions of this section *must* [~~shall~~] be in writing and *on* [~~upon~~] a form prescribed by the *committee* [~~Board~~]. *An application* [~~Such applica-~~] shall be filed with the *committee* [~~Secretary-Treasurer of the Board~~]. The application shall be accompanied by *documentation that clearly shows that the state, territory, or other*

authority under which the applicant was practicing has minimum requirements equivalent to or higher than those in effect under this Act [a license or a certified copy of a license to fit and dispense hearing aids, lawfully issued to the applicant by some other state or territory; and shall also be accompanied by an affidavit of the President or Secretary of the Board of Examiners in Fitting and Dispensing Hearing Aids who issued the license. The affidavit shall recite that the accompanying certificate or license has not been cancelled or revoked, and that the statement of qualifications made in this application for license in Texas is true and correct].

(c) In addition to any other documentation required by the committee, the committee shall request all written records from the state, territory, or authority under which the applicant was practicing regarding the applicant, including a copy of the written examination, the practicum examination, the outline of the oral examination, and any other information necessary for the committee's decision [Applicants for a license under the provisions of this section shall subscribe to an oath in writing which shall be a part of said application, stating that the license, certificate or authority under which the applicant fits and dispenses hearing aids in the state or territory from which the applicant is removed, was at that time of such removal in full force and not suspended or cancelled; that the applicant is the identical person to whom the said certificate or license was issued and that no proceeding was pending at the time of such removal, or at the present time pending against the applicant for the cancellation, suspension or revocation or such certificate or license in the state or territory in which the same was issued and that no prosecution was then or at the time of application pending against the applicant in any state or federal court for any offense under the laws of Texas which is a felony].

SECTION 10. Section 9, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.09, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. TEMPORARY TRAINING PERMIT. (a)(1) The *committee* [Board] shall grant a temporary training permit to fit and dispense hearing *instruments* [aids] to any person applying to the *committee* [Board] who has never taken the examination provided in the Act and who possesses the qualifications in Subsection (b) of Section 6[,] of this Act, *on* [upon] written application to the *committee*. The [Secretary-Treasurer of the Board, the] applicant *must* [shall] make application on forms to be furnished by the *committee* [Board] furnishing sworn evidence that *the applicant* [he] possesses the qualifications contained in Subsection (b), Section 6, of this Act, that *the applicant* [he] has never taken the examination provided in this Act, and that *the applicant* [he] has never previously been issued *in this state* a temporary training permit to fit and dispense hearing *instruments* [aids ~~by the Board~~].

(2) Students of audiology in an accredited college or university program are exempt from the provisions of this Act, provided that their activities and services constitute a part of their supervised course of study or practicum experience. Such students are subject to the provisions of Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), and its subsequent amendments.

(b) The application for a temporary *training permit* *must* [shall] be accompanied by the affidavit of a person [duly] licensed and qualified to fit and dispense hearing *instruments* [aids] in this state. The accompanying affidavit *must* [shall] state that the applicant, if granted a temporary training permit, will be supervised by the affiant in all work done by *the applicant under the* [such] temporary training permit *and*[,] that *the affiant* will notify the *committee* [Board] within 10 days following *the applicant's* terminating of supervision by *the affiant*.

(c) A temporary training permit shall authorize the *permit holder* [thereof] to fit and dispense hearing *instruments* [aids] for a period of one year or until the *permit holder* [thereof] shall have successfully passed the examination required for a license under this Act, whichever occurs first.

(d) A temporary training permit [shall] automatically *becomes* [become] void *on the first anniversary* [at the end] of the [period of 6 months from the] date of its issuance unless extended for an additional period not to exceed 6 months by the *committee* [Board]. The *committee may not* [Board shall never] extend a temporary training permit more than one time.

(e) The committee [Board] shall establish educational guidelines, both formal and practical, for the training of temporary training permit holders. The training guidelines must [shall] include directions to the training supervisor about the subject matter to be taught, length of the training [period], extent of a trainee's [trainee] contact with the public, and responsibility of the training supervisor for direct supervision of all aspects of the training [period]. A trainee shall be required to have at least 150 hours of directly supervised practicum that shall include the following:

(1) 25 hours of pure tone air conduction, bone conduction, and speech audiometry, recorded and live voice;

(2) 25 hours of hearing instrument evaluations including sound field measurements with recorded and live voice;

(3) 20 hours of instrument fittings with actual clients;

(4) 10 hours of earmold orientation types, uses, and terminology;

(5) 15 hours of earmold impressions and otoscopic examinations of the ear;

(6) 15 hours of troubleshooting of defective hearing instruments;

(7) 20 hours of case history with actual clients;

(8) 10 hours of the laws governing the licensing of persons fitting and dispensing hearing instruments and federal Food and Drug Administration and Federal Trade Commission regulations relating to the fitting and dispensing of hearing instruments; and

(9) 10 hours of supplemental work in one or more of the above areas.

(f) The length of the training may not be shorter than 200 days. The training period begins on the date of the issuance of the temporary permit.

(g) Satisfactory completion of the requirements of this section by a supervisor and trainee must be verified before the trainee may take the examination.

(h) A supervisor of a temporary training permit holder must be licensed under this Act. Supervision of a permit holder shall entail direct supervision by the supervisor. A supervisor may not supervise more than two trainees at any one time.

(i) A supervisor under this Act shall:

(1) be responsible for the day-to-day supervision of a trainee and be ultimately responsible for the service to a client treated by the trainee;

(2) provide the trainee with materials and equipment necessary for appropriate audiometric and hearing instrument evaluation and fitting procedures;

(3) supplement the trainee's background information through reading lists and other references;

(4) be responsible for conducting in-service training for the trainee;

(5) act as a consultant to the trainee by providing time for conferences for the trainee and providing a variety of resource materials, approaches, and techniques that are based on sound theory, successful practice, or documented research;

(6) establish goals with the trainee that are realistic, easily understandable, and directed toward the successful completion of trainee requirements;

(7) observe the trainee during the practicum, confer with the trainee following trainee contact with clients, and provide an opportunity for the trainee to comment on the practicum experience, during and after the practicum experience, either in writing or through conferences;

(8) establish that the responsibility for the trainee's practicum is solely that of the supervisor and that the daily supervision of the trainee is also the responsibility of the supervisor;

(9) assist and encourage the trainee to utilize supportive professional sources;

(10) be aware of and adhere to state and federal laws relating to hearing instrument fitting and dispensing; and

(11) be aware of and assist the trainee in fulfilling licensing requirements of this Act.

~~[(9) The licensee represented that the service or advice of a person licensed to practice medicine by the Texas State Board of Medical Examiners is used or made available in the selection, fitting, adjustment, maintenance, or repair of a hearing aid when such representation was not true.~~

~~[(10) The licensee used the term "doctor," "clinic" or any like words, abbreviations or symbols in the conduct of his business which would tend to connote that the licensee was a physician or surgeon.~~

~~[(11) The licensee obtained or attempted to obtain information concerning the business of another licensee under this Act by bribery, or attempting to bribe an employee or agent of such other licensee or by the impersonation of one in authority.~~

~~[(12) The licensee] directly or indirectly *giving* [gave,] or *offering* [offered] to give or *permitting* [permitted] or *causing* [caused] to be given money or anything of value to any person who advises others in a professional capacity as an inducement to influence *the* [such] person to influence those persons *that the* [such] person advises in a professional capacity to purchase or contract to purchase products sold or offered for sale by *the permit or license holder* [licensee] or to refrain from purchasing or contracting to purchase products sold or offered for sale by any other *permit or license holder* [licensee] under this Act;~~

(22) [.

~~[(13) The licensee falsely represented to a purchaser that a hearing aid was "custom-made," "made to order," "prescription-made" or any other representations that such hearing aid was specially fabricated for the purchaser.~~

~~[(14) The licensee refused to accept responsibility for the acts of a temporary training permittee in a licensee's employ and under licensee's supervision.~~

~~[(15) The licensee] with fraudulent intent, *engaging* [engaged] in the fitting and dispensing of hearing *instruments* [aids] under a false name or alias;~~

~~(23) *engaging in the fitting or sale of a hearing instrument under a name with fraudulent intent;*~~

~~(24) *failing to provide adequately for the service or repair of a hearing instrument fitted and sold by the license holder; or*~~

~~(25) *violating a regulation of the federal Food and Drug Administration or the Federal Trade Commission relating to hearing instruments.*~~

SECTION 13. Section 11, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.11, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. DISCIPLINARY ACTIONS. (a) If the *committee* [Board] proposes to refuse a person's application for examination, to suspend or revoke a person's license or *permit*, or to probate or reprimand a person, the person is entitled to a hearing before the *committee* [Board].

(b) The proceedings *under this section* are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) Proceedings shall be commenced by filing charges with the *committee* [Board] in writing and under oath. The charges may be made by any person or persons.

~~(d) [The president of the Board shall fix a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing to be served upon the applicant or licensee against whom charges have been filed at least 30 days prior thereto. Service of such charges and notice of hearing thereon may be given by certified mail to the last known address of such licensee or applicant.~~

~~[(e) At the hearing, such applicant or licensee shall have the right to appear either personally or by counsel or both to produce witnesses, and to have subpoenas issued by the Board and cross-examine opposing or adverse witnesses.~~

~~[(f) The Board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings but the determination shall be founded upon sufficient legal evidence to sustain it.~~

~~[(g) The Board shall determine the charges upon their merits. The Board shall enter an order in the permanent records of the Board setting forth the findings of fact and law of the Board and its action thereon. A copy of such order of the Board shall be mailed to such applicant or licensee to his last known address by certified mail.~~

~~[(h) Any person whose license to fit and dispense hearing aids has been refused or has been cancelled, revoked or suspended by the Board, may, within 20 days after making and entering of such order, take an appeal to any district court of Travis County or any district court of the county of his residence.~~

~~[(i) Appeal from the judgment of such district court will lie as other civil cases.~~

~~[(j) Upon application, the committee [Board] may reissue a license to fit and dispense hearing instruments [aids] to a person whose license has been cancelled or revoked but the [such] application shall not be made prior to the expiration of [a period of] six months after the order of cancellation or revocation has become final, and the [such] application shall be made in the [such] manner and form as the committee [Board] may require.~~

SECTION 14. Section 12, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.12, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. FEES AND EXPENSES. (a) ~~The fees for administering this Act shall be as follows [Board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed]:~~

1. Temporary Training Permit	\$200	[40]
2. Examination Fee	250	[125]
3. <i>Apprentice License Fee</i>	300	
4. License Fee	220	[75]
5 [4]. License Renewal Fee	440	[220]
6 [5]. Duplicate Document <i>Fee</i> [fee]	50	[10]

~~(b) [Every person passing the examination and meeting the requirements of the Board shall be notified that he is eligible for such license upon payment of the fee herein provided. Such notice shall be by certified mail at the address given on his examination papers. The fee for issuance of such license must be paid by the applicant within 90 days after having been notified. Failure to pay such fee within such time shall constitute a waiver of the right to such person to obtain his license.~~

~~[(c) The committee [Secretary-Treasurer of the Board] shall, every third work day [on or before the 10th day of each month], remit to the state treasurer [State Treasurer] all of the fees collected by the committee [Board] during the preceding month for deposit in the general revenue fund [General Revenue Fund].~~

~~(c) [(d) Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act. The travel expenses allowance for members of the Board and its employees shall be provided in the General Appropriations Act. The executive director of the Board shall be allowed his actual expenses incurred while traveling on official business for the Board.~~

~~[(e) The number of days for which compensation may be paid to members of the Board shall not exceed two days in any calendar month except in those months in which examinations are held, but compensations may never be allowed to exceed six days in those months in which examinations are held.~~

~~[(f) The Board may authorize all necessary disbursements to carry out the provisions of this Act, including payment of the premium on the bond of the Secretary-Treasurer, stationery expenses, purchase and maintain or rent equipment and facilities necessary to carry out the examinations of applications for license; pay for printing of all licenses; rent and furnish an office to maintain the permanent records of the Board.~~

~~[(g) Funds for the administration of this Act shall be provided by the General Appropriations Act from the general revenue fund [General Revenue Fund]. The financial transactions~~

of the *committee* [Board] are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

SECTION 15. Section 12A, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566–1.12A, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12A. *FALSE, MISLEADING, OR DECEPTIVE ADVERTISEMENTS.* (a) The *committee* [Board] may not adopt rules restricting competitive bidding or advertising by a person regulated by the *committee* [Board] except to prohibit false, misleading, or deceptive practices by the person. The *committee* [Board] may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the *committee* [Board] a rule that:

- (1) restricts the person's use of any medium for advertising;
- (2) restricts the person's personal appearance or use of *the person's* [his] voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

(b) *An advertisement is false, misleading, or deceptive if the advertisement:*

- (1) *contains a misrepresentation of fact;*
- (2) *contains a false statement as to the license holder's professional achievements, education, skills, or qualifications in the hearing instrument dispensing profession;*
- (3) *makes a partial disclosure of relevant fact, including:*

(A) the advertisement of a discounted price of an item without identifying in the advertisement or at the location of the item either the specific product being offered at the discounted price or the usual price of the item; and

(B) the advertisement of the price of a specifically identified hearing instrument if more than one hearing instrument appears in the same advertisement without an accompanying price;

(4) contains a representation that a product innovation is new when in fact the product was first offered by the manufacturer to the general public in this state not less than 12 months before the date of the advertisement;

(5) contains any other representation, statement, or claim that is inherently misleading or deceptive; or

(6) contains information that the license holder manufactures hearing instruments at the license holder's office location unless the following statement includes a statement disclosing that the instruments are manufactured by a specified manufacturer and remanufactured by the license holder.

SECTION 16. Section 12B, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566–1.12B, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12B. *CONSUMER INFORMATION AND COMPLAINTS.* (a) The *committee* [Board] shall prepare information of consumer interest describing the regulatory functions of the *committee* [Board] and the *committee's* [Board's] procedures by which consumer complaints are filed with and resolved by the *committee* [Board]. The *committee* [Board] shall make the information available to the general public and appropriate state agencies.

(b) Each written contract for services in this state of a licensed hearing instrument [aid fitter and] dispenser shall contain the name, mailing address, and telephone number of the *committee* [Board]. There shall at all times be prominently displayed in the place of business of each *license or permit holder* [licensee] regulated under this Act a sign containing the name, mailing address, and telephone number of the *committee* [Board] and a statement informing consumers that complaints against *license or permit holders* [licensees] can be directed to the *committee* [Board].

(c) The *committee* [Board] shall establish guidelines for a 30-day trial period on every hearing instrument [aid] purchased [from a licensed hearing aid fitter and dispenser].

(d) The *committee* [Board] shall keep an information file about each complaint filed with the *committee* [Board] relating to a *license or permit holder* [licensee]. If a written complaint

is filed with the *committee* [Board] relating to a *license or permit holder* [licensee], the *committee* [Board], at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

SECTION 17. Section 13, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.13, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13. RENEWAL OF LICENSE. (a) Each license to fit and dispense hearing *instruments* [aids] shall be issued for the term of one year and shall, unless suspended or revoked, be renewed annually [on September 1] on payment of the renewal fee. *The committee may adopt a system under which licenses expire on various dates during the year. For the year in which the expiration date is changed, license fees shall be prorated on a monthly basis so that each license holder shall pay only the portion of the license fee that is applicable to the number of months during which the license is valid.*

(b) A person may renew an [his] unexpired license by paying to the *committee* [Board] before the expiration date of the license the required renewal fee.

(c) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the *committee* [Board] the required renewal fee and a fee that is one-half of the examination fee for the license.

(d) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the *committee* [Board] all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(e) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(f) Before a license can be renewed, the *committee* [Board] shall require certification that all testing equipment, both portable and stationary, used by the *license holder* [licensee] has been calibrated within one year prior to the renewal date.

(g) Before a license can be renewed, a *license holder* [licensee] must demonstrate compliance with the requirements of continuing education established by the *committee* [Board] under *Section 14A* [~~Subsection (i) of Section 4~~] of this Act.

On written request, the *committee* [Board] shall provide an alternative mechanism for meeting the continuing education requirement through examination.

The *committee* [Board] may waive compliance with the continuing education requirement for license renewal in an individual case upon evidence of hardship or inability to meet the requirement. The waiver may be granted after review by the *committee* [Board] on an annual basis.

(h) Fitting and dispensing a hearing *instrument* [aids] without an annual renewal certificate for the current year as provided by *this section* [herein] shall [~~have the same force and effect and~~] be subject to the same penalties as fitting and dispensing a hearing *instrument* [aids] without a license.

(i) The *committee* [Board] shall issue a duplicate license to any *license holder* [licensee] whose license has been lost or destroyed and the *committee* [Board] shall have the authority to prescribe the procedure and requirements for the issuance of the duplicate license.

SECTION 18. Section 14, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.14, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14. DUTY OF A LICENSE HOLDER [LICENSEE]. (a) Every person engaged in the fitting and dispensing of hearing *instruments* [aids] in this state shall display *the person's* [his] license in a conspicuous place in *the person's* [his] principal office and whenever required, exhibit *the* [such] license to the *committee* [Board] or its authorized representatives.

(b) Every *license holder* [licensee] shall deliver to each person supplied with a hearing *instrument* [aid], by the *license holder* [licensee] or under *the license holder's* [his] direction, a bill of sale which shall contain *the license holder's* [his] signature, *the license holder's* [his] printed name, the address of *the license holder's* [his] principal office, the number of *the license holder's* [his] license, a description of the make and model of the hearing *instrument*

[aid] furnished and the amount charged for the hearing instrument [therefor], and whether the hearing instrument [aid] is new, used, or rebuilt.

(c) ~~An [Such receipt as required in Subsection (b) of this section shall be accompanied by the following statement in no smaller type than the largest type used in the body portion of such receipt, to-wit:~~

~~["The purchaser has been advised at the outset of his relationship with the undersigned fitter and dispenser of hearing aids that any examination or representation made by a licensed fitter and dispenser of hearing aids in connection with the fitting and selling of this hearing aid is not an examination, diagnosis or prescription by a person duly licensed and qualified as a physician or surgeon authorized to practice medicine in the State of Texas and, therefore, must not be regarded as medical opinion or advice."]~~

~~[(d) Every licensee must, when dealing with a child 10 years of age or under, ascertain whether the child has been examined by an otolaryngologist for his recommendation within 90 days prior to the fitting. If such is not the case, a recommendation by the licensee to do so must be made and this fact noted on the bill of sale required in Subsection (b) of this Section.~~

~~[(e) Any] individual licensed under this Act shall seek personally or through proper referral channels to obtain the following minimal information on each prospective candidate for amplification:~~

- ~~(1) pertinent case history;~~
- ~~(2) otoscopic inspection of the outer ear, including canal and drumhead;~~
- ~~(3) evaluation of hearing acuity utilizing puretone techniques via air and bone conduction pathways through a calibrated system; [and]~~
- ~~(4) an aided and unaided speech reception threshold and ability to differentiate between the phonemic elements of the language through speech audiometry, utilizing a calibrated system or other acceptable verification techniques; and~~
- ~~(5) verification of satisfactory aided instrument performance by use of appropriate sound field speech, noise, or tone testing, utilizing a calibrated system.~~

~~(d) A licensed hearing instrument fitter and dispenser or licensed audiologist shall not sell a hearing instrument to a person under 18 years of age unless the prospective user, parent, or guardian has presented to the hearing instrument fitter and dispenser or audiologist a written statement signed by a licensed physician specializing in diseases of the ear that states that the patient's hearing loss has been medically evaluated and the patient may be considered a candidate for a hearing instrument. The evaluation must have taken place within the preceding six months.~~

~~(e) If audiometric testing is not conducted in a stationary acoustical enclosure, sound level measurements must be conducted at the time of the testing to ensure that ambient noise levels meet permissible standards for testing threshold to 20 dB based on the most current American National Standards Institute (ANSI) "ears covered" octave band criteria for Permissible Ambient Noise Levels During Audiometric Testing. A dBA equivalent level may be used to determine compliance. The committee shall adopt rules necessary to enforce the provisions of this subsection.~~

SECTION 19. Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Section 14A to read as follows:

Sec. 14A. CONTINUING EDUCATION. (a) The committee shall require that a fitter and dispenser licensed under this Act complete 20 hours of continuing education each year. For purposes of this section, each year runs concurrently with the effective date of a license issued under this Act.

(b) The committee will provide a list of approved continuing education sponsors which will be revised and updated periodically. Approved sponsors will be designated by the committee. Any continuing education activity must be provided by an approved sponsor.

(c) On written request to the committee, a license holder may take the state examination given by the committee. A license holder who pays the examination fee and passes the

examination shall be exempt from the continuing education requirement for the year that the test is taken.

(d) A license holder may be credited with continuing education credit hours for a published book or article written by the license holder that contributes to the license holder's professional competence. No more than five credit hours for preparation of a publication may be claimed by a license holder in an annual reporting period. The continuing education committee may grant credit hours based on the degree that the published book or article advances knowledge regarding the fitting and dispensing of hearing instruments.

(e) A license holder may receive no more than five continuing education credit hours for attendance at a manufacturer-sponsored course.

(f) A license holder who has not complied with the continuing education requirements of this section may not be issued a renewal license unless the license holder:

(1) has served in the regular armed forces of the United States during part of the 12 months before the annual reporting date;

(2) submits proof from an attending physician that the license holder suffered a serious or disabling illness or physical disability that prevented compliance with the requirements of this section during the 12 months before the annual reporting date; or

(3) was licensed for the first time during the 12 months before the annual reporting date.

(g) A course summary and resume for each teacher of a course who seeks approval from the committee must be submitted 30 days before the date the course is scheduled to take place. The committee shall establish criteria for the approval of submitted courses.

(h) A license holder shall provide written proof of attendance and completion of an approved course on a form prescribed by the committee.

SECTION 20. Section 15, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.15, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 15. PROHIBITED ACTS. (a) It is unlawful for any person to:

(1) buy, sell, or fraudulently obtain a license to fit and dispense hearing instruments [aids] or aid another in any of those activities [~~or abet therein~~];

(2) alter a license to fit and dispense hearing instruments [aids] with the intent to defraud;

(3) willfully make a false statement in an application to the committee [~~Texas Board of Examiners of Fitters and Dispensers of Hearing Aids~~] for a license, for a temporary training permit, or for the renewal of a license;

(4) falsely impersonate any person [duly] licensed as a fitter and dispenser of hearing instruments [aids] under [~~the provisions of~~] this Act;

(5) offer or represent that the person is [~~hold himself out as~~] authorized to fit and dispense hearing instruments [aids], or use in connection with the person's [his] name any designation tending to imply that the person [he] is authorized to engage in the fitting and dispensing of hearing instruments [aids], if the person is not [~~so~~] licensed under the provisions of this Act;

(6) engage in the fitting and dispensing of hearing instruments [aids] during the time the person's [his] license shall be cancelled, suspended, or revoked;

(7) dispense or fit a hearing instrument [aid] on any individual who has ordered the [such] hearing instrument [aid] or device by mail unless the person dispensing and fitting the [such] hearing instrument [aid] or device is licensed under this Act or under Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), and its subsequent amendments; or

(8) sell hearing instruments by mail.

(b) It is unlawful for any person not a licensed [~~fitter and~~] dispenser of hearing instruments [aids] or a holder of a temporary training permit or an apprentice permit provided in this Act, or a licensed physician or surgeon to do any one act or thing or any combination of acts or things named or described in this section [~~Subsection (b) of Section 1 of this Act~~].

(c) It is unlawful for any *license or permit holder* [licensee] to:

(1) fail to clearly disclose *the holder's* [his] name, business address, and the purpose of the communication in any telephone solicitation of potential customers;

(2) use or purchase for use a list of names of potential customers compiled by a person by telephone other than the *license or permit holder or the holder's* [licensee, his] authorized agent or another *license or permit holder* [licensee]; or

(3) do any act *that* [which] requires a license from the Texas Optometry Board or the Texas State Board of Medical Examiners.

SECTION 21. Section 16, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.16, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16. *ADMINISTRATIVE PENALTIES; INJUNCTION* [PENALTY]. (a) *The committee, with the approval of the board, may impose a fine not to exceed \$250 plus costs for the first violation and not to exceed \$1,000 plus costs for each subsequent violation of this Act and the rules adopted under this Act on any person or entity described in this Act. The fine may be invoked as an alternative to any other disciplinary measure, except for probation, as set forth by the committee.*

(b) *If a person other than a licensed hearing instrument dispenser has engaged in any act or practice that constitutes an offense under this Act, a district court of any county on application of the committee may issue an injunction or other appropriate order restraining such conduct. [Whoever violates any provision of this Act shall be fined not less than \$100.00 nor more than \$500.00 or be confined in jail for a period of not more than 90 days, or both.]*

SECTION 22. Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Section 16A to read as follows:

Sec. 16A. *SURETY BONDING.* (a) *A license holder shall file a bond or a surety in lieu of a bond in the amount of \$10,000 with the committee conditioned on the license holder's promise to pay all:*

(1) *taxes and contributions due to the state and political subdivisions of the state; and*

(2) *judgments that the license holder may be required to pay for negligently or improperly dispensing hearing instruments or for breaching a contract relating to the dispensing of hearing instruments.*

(b) *A license holder may file with the committee a cash deposit or other negotiable security acceptable to the committee in the amount required in Subsection (a) of this section in lieu of a bond.*

(c) *A bond required under this section remains in effect until cancelled by action of the surety, the principal, or the committee. A person may not commence an action on the bond later than the third anniversary of the date the bond was cancelled.*

(d) *The purchaser of a hearing instrument may rescind the purchase and recover as provided by this section for:*

(1) *a material misstatement of fact or misrepresentation by the license holder regarding the hearing instrument or services to be provided by the license holder that were relied on by the purchaser or that induced the purchaser to purchase the instrument;*

(2) *the failure by the license holder to provide the purchaser with an instrument or with fitting and dispensing services that conform to the specifications of the purchase agreement;*

(3) *the diagnosis of a medical condition unknown to the purchaser at the time of the purchase that precludes the purchaser's use of the instrument;*

(4) *the failure by the license holder to remedy a significant material defect of the hearing instrument within a reasonable time;*

(5) *the provision by the license holder of a hearing instrument of fitting and dispensing services that are not in accordance with accepted industry practices; or*

(6) *the failure by the license holder to meet the standards of conduct prescribed under this Act or by rules adopted under this Act that adversely affects the transactions between the purchaser and the license holder.*

SECTION 23. Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Section 16B to read as follows:

Sec. 16B. OWNERSHIP OF DISPENSING PRACTICE. A person who owns, maintains, or operates an office or place of business where the person employs or engages under contract a person who practices the fitting and dispensing of hearing instruments shall be considered also to be engaged in the practice of fitting and dispensing of hearing instruments under this Act. A person who is considered to be practicing the fitting and dispensing of hearing instruments under this section shall be required to be licensed under this Act or licensed under Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), and its subsequent amendments, as an audiologist.

SECTION 24. Section 17, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.17, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 17. TREATMENT OF EAR DEFECTS AND ADMINISTRATION OF DRUGS. This [Nothing contained in this] Act does not [shall be construed to] permit a person [persons] licensed under this Act to treat the ear for any defect [whatsoever] in any manner, nor to administer any drug or physical treatment [whatsoever] unless the license holder [licensee] is a [duly-qualified] physician or [and] surgeon [and] licensed to practice by the Texas State Board of Medical Examiners. This [Nothing in this] Act does not [shall be construed to] amend or modify the laws regulating the practice of medicine as defined by the Medical Practice Act (Article 4495b [4510], Vernon's Texas [Revised] Civil Statutes) [of Texas].

SECTION 25. Section 18, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.18, Vernon's Texas Civil Statutes), is repealed.

SECTION 26. Sections 21 and 22, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Articles 4566-1.21 and 4566-1.22, Vernon's Texas Civil Statutes), are repealed.

SECTION 27. This Act takes effect September 1, 1993.

SECTION 28. (a) A person holding a license for the fitting and dispensing of hearing aids from the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids on August 31, 1993, may apply to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for a license under Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), and its subsequent amendments, without taking the examination required by Section 6 of that Act. The committee shall have 14 days from the receipt of the application to issue a new license under that Act to the applicant.

(b) An application for a license under Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes), and its subsequent amendments, must be received by the committee by December 31, 1993. An applicant may continue to fit and dispense hearing instruments under the applicant's existing license until the committee issues a new license under that Act.

SECTION 29. (a) The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids is abolished. All powers, duties, obligations, and rights of action of that board are transferred to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments in the Texas Department of Health on the effective date of this Act. A reference in the law to the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids means the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments in the Texas Department of Health.

(b) The personnel, property, records, and funds in the custody of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids on the effective date of this Act are transferred to the Texas Department of Health.

(c) The Texas Department of Health shall continue any proceeding brought by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids before September 1, 1993, in accordance with the law in effect on the date the proceeding was brought, and the former law is continued in effect for this purpose.

(d) The unobligated and unexpended balance of any appropriation made to the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids for the fiscal year ending August 31, 1993, is transferred to the Texas Department of Health for the purpose of implementing this Act.

SECTION 30. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 30, 1993, by a viva-voce vote; the Senate concurred in House amendment on May 21, 1993, by a viva-voce vote; passed the House, with amendment, on May 18, 1993, by a non-record vote.

Approved June 6, 1993.

Effective Sept. 1, 1993.