

SENATE FILE 195

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Commerce--
Curtis, Chairman
Palmer
Taylor _____

By RABEDEAUX, WILLITS, COLEMAN,
BRILES, MILLER of Des Moines,
KINLEY and SHAFF
(Drake, Bittle, Doyle, Anderson,
Wells, Dunton, Logue, Pellett,
Caffrey and Den Herder)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to licensing and regulation of hearing aid
2 dealers, appropriating license fees for purposes of adminis-
3 tration, and providing penalties for a violation.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. DEFINITIONS. As used in this
2 Act, unless the context requires otherwise:

3 1. "Department" means the state department of health.

4 2. "Board" means the board of examiners for the licensing
5 and regulation of hearing aid dealers.

6 3. "Hearing aid" means a wearable instrument or device
7 designed for or offered for the purpose of aiding or compen-
8 sating for impaired human hearing, and any parts, attachments,
9 or accessories, including earmold, but excluding batteries
10 and cords.

11 4. "Hearing aid dealer" means any person engaged in the
12 fitting, dispensing and the sale of hearing aids and provid-
13 ing hearing aid services or maintenance, by means of proce-
14 dures stipulated by this Act or the board.

15 5. "Hearing aid fitting" means the measurement of human
16 hearing by any means for the purpose of selections, adapta-
17 tions, and sales of hearing aids, and the instruction and
18 counseling pertaining thereto, and demonstration of techniques
19 in the use of hearing aids, and the making of earmold impres-
20 sions as part of the fitting of hearing aids.

21 6. "Sale" means a transfer of title or of the right to
22 use by lease, bailment, or any other contract, but excludes
23 a wholesale transaction with a distributor or dealer.

24 7. "Person" means a natural person.

25 8. "Temporary permit" means a permit issued while the
26 applicant is in training to become a licensed hearing aid
27 dealer.

28 9. "License" means a license issued by the state under
29 this Act to hearing aid dealers.

30 Sec. 2. NEW SECTION. ESTABLISHMENT OF BOARD. A board
31 for the licensing and regulation of hearing aid dealers is
32 established. The board shall consist of three licensed hear-
33 ing aid dealers and two members who are not licensed hearing
34 aid dealers who shall represent the general public. Members,
35 who shall be residents of the state of Iowa, shall be ap-

1 pointed by the governor, subject to the approval of two-thirds
2 of the members of the senate. A licensed member shall be
3 actively employed as a hearing aid dealer and shall have been
4 so engaged for five years preceding his appointment, the last
5 two of which shall have been in Iowa. However, hearing aid
6 dealers appointed to the initial board shall have not less
7 than five-years' experience and shall fulfill the qualifica-
8 tions relating to experience for licensure as provided in
9 this Act.

10 Professional associations or societies composed of hearing
11 aid dealers may recommend the names of potential board mem-
12 bers to the governor, but the governor shall not be bound
13 by the recommendations. A board member shall not be required
14 to be a member of any professional association or society
15 composed of licensed hearing aid dealers.

16 Violation of the confidentiality of any information by
17 a member representing the general public shall constitute
18 a misdemeanor.

19 No more than two members of the board shall be employees
20 of, or dealers principally, for the same hearing aid manufac-
21 turer.

22 Sec. 3. NEW SECTION. TERM OF OFFICE. Appointments shall
23 be for three-year terms and shall commence on July first of
24 the year in which the appointment is made. Vacancies shall
25 be filled for the unexpired term by appointment of the gov-
26 ernor and shall be subject to senate confirmation. Members
27 shall serve a maximum of three terms or nine years, whichever
28 is least. For members appointed to the initial board, the
29 governor shall appoint one hearing aid dealer for a one-year
30 term, one hearing aid dealer for a two-year term, and one
31 hearing aid dealer for a three-year term; one member repre-
32 senting the general public for a one-year term and one mem-
33 ber representing the general public for a three-year term.

34 Sec. 4. NEW SECTION. DUTIES OF THE BOARD. Members of
35 the board shall annually elect a chairman and a secretary-

1 treasurer from their membership. The board shall prepare
2 examinations, direct the department in administering the pro-
3 visions of this Act, determine who is eligible for licensure,
4 suspend or revoke licenses or temporary permits for cause,
5 and promulgate rules and regulations for the administration
6 of the provisions of this Act.

7 Sec. 5. NEW SECTION. MEETINGS AND EXPENSES. The members
8 of the board shall set their own per diem compensation at
9 a rate not exceeding forty dollars per day for each day ac-
10 tually engaged in the discharge of their duties and actual
11 and necessary expenses and travel to be paid from funds ap-
12 propriated to the board. The board shall meet at least one
13 time per year at the seat of government and may hold addi-
14 tional meetings as deemed necessary. Additional meetings
15 shall be held at the call of the chairman or a majority of
16 the members of the board.

17 Sec. 6. NEW SECTION. DUTIES OF DEPARTMENT. The depart-
18 ment, with the advice and assistance of the board shall:

19 1. Employ personnel, and authorize disbursements neces-
20 sary to carry out the provisions of this Act.

21 2. Register and issue licenses to persons whom the board
22 deems qualified to engage in the fitting or selection and
23 sale of hearing aids.

24 3. Purchase, maintain, or rent equipment and other fa-
25 cilities necessary to carry out the examination of applicants.

26 4. Designate the time and place for examining applicants,
27 and conduct and supervise the examinations as directed by
28 the board.

29 Sec. 7. NEW SECTION. APPLICATIONS. Applications for
30 licensure or for a temporary permit shall be on forms pre-
31 scribed by the board and furnished by the department and shall
32 contain a recent photograph of the applicant, unless the board
33 deems the photograph unnecessary. An applicant shall not
34 be ineligible for certification because of age, citizenship,
35 sex, race, religion, marital status, or national origin al-

1 though the application may require citizenship information.
2 The board may consider the past felony record of an appli-
3 cant. Character references may be required, but shall not
4 be obtained from certified shorthand reporters.

5 Sec. 8. NEW SECTION. ISSUANCE OF INITIAL LICENSES. Dur-
6 ing the first six months after the effective date of this
7 Act, an applicant may obtain a license as a hearing aid dealer
8 without passing an examination, if the applicant:

9 1. Has been engaged as a hearing aid dealer for at least
10 two years in the state of Iowa, within a period of five years
11 immediately prior to the effective date of this Act.

12 2. Is free of contagious or infectious disease.

13 3. Pays the necessary fees set by the board pursuant to
14 section sixteen (16) of this Act.

15 Sec. 9. NEW SECTION. ISSUANCE OF LICENSES. After the
16 effective date of this Act, an applicant who does not meet
17 the experience qualification as set forth in section eight
18 (8) of this Act, may obtain a license, if the applicant:

19 1. Successfully passes the qualifying examination pre-
20 scribed in section eleven (11) of this Act.

21 2. Is free of contagious or infectious disease.

22 3. Pays the necessary fees set by the board pursuant to
23 section sixteen (16) of this Act.

24 Sec. 10. NEW SECTION. EXAMINATIONS. The board shall
25 determine the qualifying examination to test the knowledge
26 and proficiency of applicants, but shall not be required to
27 conduct the written portion of the examination. The members
28 representing the general public shall not participate in ad-
29 ministering the practical portion of the examination. The
30 board shall determine which applicants have successfully
31 passed the examination and who meet the other qualifications
32 and shall submit their names to the department for issuance
33 of a license.

34 The board shall administer at least one examination per
35 year and sufficient additional examinations as required to

1 permit applicants to be examined within ninety days follow-
2 ing submission of the application form. Applicants who fail
3 the examination once shall be allowed to take the examination
4 at the next scheduled time. Thereafter, the applicant shall
5 be allowed to take the examination at the discretion of the
6 board.

7 Sec. 11. NEW SECTION. SCOPE OF EXAMINATION. The exam-
8 ination required by this Act shall be designed to demonstrate
9 the applicant's adequate technical qualifications by:

10 1. Written tests of knowledge in areas such as physics
11 of sound, anatomy and physiology of hearing, and the function
12 of hearing aids, as these areas pertain to the fitting or
13 selection and sale of hearing aids.

14 2. Practical tests of proficiency in hearing testing
15 techniques as these techniques pertain to the fitting or
16 selection and sale of hearing aids.

17 3. Evidence of knowledge of the medical and rehabilita-
18 tion facilities that are available in the area served, for
19 children and adults who have hearing problems.

20 4. Evidence of knowledge of situations in which it is
21 commonly believed that a hearing aid is inappropriate.

22 The examination may consist of written and practical tests
23 to demonstrate that the applicant is qualified to practice
24 as a hearing aid dealer. The board shall not require the
25 applicant possess the degree of professional competence nor-
26 mally expected of physicians.

27 Sec. 12. NEW SECTION. TEMPORARY PERMIT. A person who
28 has not been employed as a hearing aid dealer prior to the
29 effective date of the Act, may obtain a temporary permit from
30 the department upon completion of the application accompanied
31 by the written verification of employment from a licensed
32 hearing aid dealer. The department shall issue a temporary
33 permit for one year which shall not be renewed or reissued.
34 The fee for issuance of the temporary permit shall be set
35 by the board pursuant to section sixteen (16) of this Act.

1 The temporary permit entitles an applicant to engage in the
2 fitting or selection and sale of hearing aids under the
3 supervision of a person holding a valid license.

4 Sec. 13. NEW SECTION. RECIPROCITY. If the board deter-
5 mines that another state or jurisdiction has requirements
6 equivalent to or higher than those provided in this Act, the
7 department may issue a license by reciprocity to applicants
8 who hold valid certificates or licenses to deal in and fit
9 hearing aids in the other state or jurisdiction. An appli-
10 cant for a license by reciprocity is not required to take
11 a qualifying examination, but is required to pay the license
12 fee as provided in section sixteen (16) of this Act. The
13 holder of a license of reciprocity is registered in the same
14 manner as the holder of a regular license. Fees, grounds
15 for renewal, and procedures for the suspension and revoca-
16 tion of license by reciprocity are the same as for a regular
17 license.

18 Sec. 14. NEW SECTION. LICENSE RENEWAL. Licenses shall
19 be renewed annually in a manner determined by the board.
20 The renewal fee shall be determined by the board pursuant
21 to section sixteen (16) of this Act. The department shall
22 notify every person licensed under this chapter of the date
23 of expiration of his license and the amount of fee required
24 for its renewal for one year. The notice shall be mailed
25 at least one month in advance of the expiration date. Failure
26 to renew the license within a reasonable time after the expi-
27 ration shall not invalidate the license, but a reasonable
28 penalty may be assessed by the board.

29 Sec. 15. NEW SECTION. CONTINUING EDUCATION. Beginning
30 January 1, 1975 in addition to payment of the annual renewal
31 fee, each hearing aid dealer applying for the renewal of his
32 license shall furnish to the department satisfactory evidence
33 that he has completed at least two days of education programs
34 during the year preceding the date of his application for
35 renewal selected from the following:

- 1 1. Education programs conducted by the board;
- 2 2. Training school conducted by one of the various hear-
- 3 ing aid manufacturers for their representatives, which is
- 4 approved by the board;
- 5 3. Periodic training sessions conducted by the national
- 6 hearing aid society which is approved by the board; or
- 7 4. Other educational means approved by the board.

8 The department shall send a written notice to this effect
9 to every person holding a valid license at least thirty days
10 prior to the license renewal date each year, directed to the
11 last known address of such licensee.

12 In the event that any licensee shall fail to meet the an-
13 nual educational requirement, his license shall be suspended
14 or withheld by the board. The board shall reinstate the li-
15 censee upon the presentation of satisfactory evidence of edu-
16 cational study of a standard approved by the board, and upon
17 the payment of all fees due.

18 Sec. 16. NEW SECTION. FEES. The fees for the examina-
19 tion shall be set by the board on the basis of the annual
20 cost of administration. The fees for the temporary permit,
21 license to practice as a hearing aid dealer, renewal of a
22 license to practice as a hearing aid dealer, and issuance
23 of a duplicate license, shall be set by the board on the basis
24 of the cost of sustaining the board and the administrative
25 costs of the department. The fees for licensure and permit
26 shall be based upon, but not limited to:

- 27 1. Per diem, expenses, and travel of members of the board.
- 28 2. Supplies and other expenses.
- 29 3. Costs submitted by the department.

30 Sec. 17. NEW SECTION. DISPLAY OF LICENSE. A person shall
31 not engage in business as a hearing aid dealer, or display
32 a sign, or in any other way advertise or represent himself
33 as a hearing aid dealer after January 1, 1974, unless he holds
34 a valid license issued by the department as provided in this
35 Act. The license shall be conspicuously posted in his office

1 or place of business. The department shall issue duplicate
2 licenses to valid license holders operating more than one
3 office. A license confers upon the holder the right to oper-
4 ate a business as a hearing aid dealer.

5 Sec. 18. NEW SECTION. EXCEPTIONS. This Act shall not
6 prohibit a corporation, partnership, trust, association, or
7 other organization maintaining an established business ad-
8 dress, from engaging in the business of selling or offering
9 for sale hearing aids at retail without a license, if it em-
10 ploys only licensed hearing aid dealers in the direct fitting
11 or selection and sale of hearing aids. Such an organization
12 shall file annually with the board a list of all licensed
13 hearing aid dealers and persons holding temporary permits
14 directly or indirectly employed by it. Such an organization
15 shall also file with the board a statement on a form approved
16 by the board that the organization submits itself to the rules
17 and regulations of the board and the provisions of this Act
18 which the department deems applicable.

19 This Act shall not apply to a person who engages in the
20 practices covered by this Act if this activity is part of
21 the academic curriculum of an accredited institution of higher
22 education, or part of a program conducted by a public or char-
23 itable institution, or nonprofit organization, unless the
24 institution or organization also dispenses or sells hearing
25 aids.

26 This Act shall not prevent any person from engaging in
27 practices covered by this Act, provided the person, or or-
28 ganization employing the person, does not dispense or sell
29 hearing aids.

30 Sec. 19. NEW SECTION. RIGHTS OF PURCHASER. A hearing
31 aid dealer shall deliver, to each person supplied with a hear-
32 ing aid, a receipt which contains the licensee's signature
33 and shows his business address and the number of his license,
34 together with specifications as to the make and model of hear-
35 ing aid furnished, and full terms of sale clearly stated.

1 If a hearing aid is sold which is not new, the receipt and
2 the container must be clearly marked "used" or "reconditioned",
3 with the terms of guarantee, if any.

4 The receipt shall bear the following statement in type
5 no smaller than the largest used in the body copy portion
6 of the receipt:

7 "The purchaser has been advised that any examination or
8 representation made by a licensed hearing aid dealer in con-
9 nection with the fitting or selection and selling of this
10 hearing aid is not an examination, diagnosis, or prescrip-
11 tion by a person licensed to practice medicine in this state
12 and therefore, must not be regarded as medical opinion or
13 advice."

14 A hearing aid dealer shall ascertain if the person with
15 whom he is dealing has ever had a medical examination of his
16 ears. If not, in all cases where the appropriateness of a
17 medical examination is indicated, the hearing aid dealer shall
18 so advise the person and shall note this fact on the receipt.

19 No hearing aid shall be sold by any individual licensed
20 under this bill to a person twelve years of age or younger,
21 unless within the preceding six months a recommendation for
22 a hearing aid has been made by a physician specializing in
23 otolaryngology. A replacement of an identical hearing aid
24 within one year shall be an exception to this requirement.

25 Sec. 20. NEW SECTION. NOTICE OF ADDRESS. A licensee
26 or person holding a temporary permit shall notify the depart-
27 ment in writing of the address of the place where he engages
28 or intends to engage in business as a hearing aid dealer.
29 The department shall keep a record of the place of business
30 of licensees and persons holding temporary permits.

31 Any notice required to be given by the department to a
32 licensee shall be adequately served if sent by certified mail
33 to the address of the last place of business recorded.

34 Sec. 21. NEW SECTION. DEPOSIT OF FEES. The department
35 shall deposit all fees collected under the provisions of this

1 Act in the general fund of the state. Compensation and travel
2 expenses of members and employees of the board, and other
3 expenses necessary for the board to administer and carry out
4 the provisions of this Act shall be paid from funds appro-
5 priated from the general fund of the state.

6 Sec. 22. NEW SECTION. COMPLAINTS. Any person wishing
7 to make a complaint against a licensee or holder of a tem-
8 porary permit shall file a written statement with the board
9 within six months from the date of the action upon which the
10 complaint is based. If the board determines that the com-
11 plaint alleges facts which, if proven, would be cause for
12 the suspension or revocation of the license of the licensee
13 or holder of a temporary permit, it shall make an order fix-
14 ing a time and place for a hearing and requiring the licensee
15 or holder of a temporary permit complained against to appear
16 and defend. The order shall contain a copy of the complaint,
17 and the order and copy of the complaint shall be served upon
18 the licensee or holder of a temporary permit at least twenty
19 days before the date set for hearing, either personally or
20 as provided in section twenty (20) of this Act. Continuance
21 or adjournment of a hearing date may be made for good cause.
22 At the hearing the licensee or holder of a temporary permit
23 may be represented by counsel. The licensee or holder of
24 a temporary permit and the board may take depositions in ad-
25 vance of hearing and after service of the complaint, and
26 either may compel the attendance of witnesses by subpoenas
27 issued by the board. The board shall issue such subpoenas
28 at the request of a licensee or holder of a temporary permit.
29 Either party taking depositions shall give at least five-days'
30 written notice to the other party of the time and place of
31 such depositions, and the other party may attend, with counsel
32 if desired, and cross-examine.

33 Sec. 23. NEW SECTION. SUSPENSION OR REVOCATION. The
34 board may revoke or suspend a license or temporary permit
35 for a fixed period for any of the following causes:

1 1. Conviction of a felony. The record of conviction,
2 or a certified copy, shall be conclusive evidence of convic-
3 tion.

4 2. Procuring a license or temporary permit by fraud or
5 deceit.

6 3. Unethical conduct in any of the following forms:

7 a. Obtaining a fee or making a sale by fraud or misrepre-
8 sentation.

9 b. Knowingly employing, directly or indirectly, any sus-
10 pended or unregistered person to perform any work covered
11 by this Act.

12 c. Using or causing or promoting the use of any adver-
13 tising matter, promotional literature, testimonial, guarantee,
14 warranty, label, brand, insignia, or any other representation,
15 however disseminated or published, which is misleading, de-
16 ceptive or untruthful.

17 d. Advertising a particular model or type of hearing aid
18 for sale when purchasers or prospective purchasers respond-
19 ing to the advertisement cannot purchase the advertised model
20 or type, if it is established that the purpose of the adver-
21 tisement is to obtain prospects for the sale of a different
22 model or type than that advertised.

23 e. Representing that the service or advice of a person
24 licensed to practice medicine, or one who is certificated
25 as a clinical audiologist by the American speech and hearing
26 association, will be used or made available in the fitting
27 or selection, adjustment, maintenance, or repair of hearing
28 aids when that is not true, or using the words "doctor",
29 "clinic", "clinical audiologist", "state approved", or simi-
30 lar words, abbreviations, or symbols which tend to connote
31 the medical or other professions, except where the title
32 "certified hearing aid audiologist" has been granted by the
33 national hearing aid society, or that the hearing aid dealer
34 has been recommended by this state or the board when such
35 is not accurate.

- 1 f. Habitual intemperance.
- 2 g. Permitting another person to use his license or tem-
3 porary permit.
- 4 h. Advertising a manufacturer's product or using a manu-
5 facturer's name or trademark to imply a relationship with
6 the manufacturer that does not exist.
- 7 i. Directly or indirectly giving or offering to give,
8 or permitting or causing to be given money or anything of
9 value to a person who advises another in a professional ca-
10 pacity, as an inducement to influence the person or cause
11 him to influence others to purchase or contract to purchase
12 products sold or offered for sale by a hearing aid dealer,
13 or to influence others to refrain from dealing in the prod-
14 ucts of competitors.
- 15 j. Conducting business while suffering from a contagious
16 or infectious disease.
- 17 k. Engaging in the fitting or selection and sale of hear-
18 ing aids under a false name or alias, with fraudulent intent.
- 19 l. Selling a hearing aid to a person who has not been
20 given tests utilizing appropriate established procedures and
21 instrumentation in fitting or selection of hearing aids, ex-
22 cept in cases of selling replacement hearing aids of the same
23 make or model within one year of the original sale.
- 24 m. Gross incompetence or negligence in fitting or selec-
25 tion and selling of hearing aids.
- 26 n. Violating any provisions of this Act.
- 27 Sec. 24. NEW SECTION. PROHIBITIONS. A person shall not:
- 28 1. Sell, barter, or offer to sell or barter a license
29 or temporary permit.
- 30 2. Purchase or procure by barter a license or temporary
31 permit with intent to use it as evidence of the holder's
32 qualifications to engage in business as a hearing aid dealer.
- 33 3. Alter a license or temporary permit with fraudulent
34 intent.
- 35 4. Use or attempt to use as a valid license a license

1 or temporary permit which has been purchased, fraudulently
2 obtained, counterfeited, or materially altered.

3 5. Willfully make a false statement in an application
4 for a license or temporary permit or for renewal of a li-
5 cense or temporary permit.

6 Sec. 25. NEW SECTION. PENALTIES. A violation of any
7 provision of this Act is punishable, upon conviction, by a
8 fine of not more than five hundred dollars or by imprison-
9 ment for not more than ninety days in the county jail, or
10 by both such fine and imprisonment.

11 Sec. 26. The provisions of this Act shall become effec-
12 tive January 1, 1974, except that the governor shall appoint
13 the members of the board to terms which shall commence July
14 1, 1973, and the board shall commence its duties.

15 EXPLANATION

16 This bill establishes a board for the licensing and requ-
17 lation of hearing aid dealers, which will prepare examinations
18 and advise the department of health in the administration
19 of the provisions of the bill. Experienced dealers may be
20 licensed during the first six months immediately following
21 the effective date of this Act, but after that period an ap-
22 plicant must qualify by examination, or by reciprocity. Evi-
23 dence of continuing education is required for renewal. A
24 temporary permit is also provided. License fees are deposited
25 in the general fund and funds are appropriated for the pur-
26 poses of administration of the Act.

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