

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Representative Hogue**

# A Bill

**HOUSE BILL**

## For An Act To Be Entitled

8 "AN ACT TO AMEND TITLE 17, CHAPTER 83 OF THE ARKANSAS CODE  
9 OF 1987 ANNOTATED RELATING TO THE ARKANSAS BOARD OF  
10 HEARING AID DISPENSERS; AND FOR OTHER PURPOSES."

11

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

13

14 SECTION 1. Title 17, Chapter 83 of the Arkansas Code of 1987 Annotated  
15 is hereby amended to read as follows:

16 "17-83-101. Definitions.

17 As used in this chapter, unless the context otherwise requires:

18 (1) 'Board' means the Arkansas Board of Hearing Aid Dispensers;

19 (2) 'License' and 'permit' mean, respectively, license as  
20 provided for in 17-83-306, and training permit as provided for in 17-83-308;

21 (3) 'Current' means valid, effective, unexpired, or unsuspended  
22 and unrevoked with reference to a license or permit;

23 (4) 'Licensed' means holding a current license;

24 (5) 'Hearing aid' means any instrument or device designed for or  
25 represented as aiding, improving, or correcting defective human hearing and  
26 any parts, attachments, or accessories of such an instrument or device;

27 (6) 'Practice of dispensing hearing aids' means conducting and  
28 interpreting hearing tests for purposes of selecting suitable hearing aids,  
29 making earmolds or ear impressions and providing appropriate counseling  
30 pertaining to the selling, renting, leasing, pricing, delivery and warranty of  
31 hearing aids;

32 (7) 'Established place of business' means a place of business at  
33 a permanent address which is open to the public during normal business hours  
34 for fitting and dispensing hearing aids;

35 (8) 'Unethical conduct' includes, but is not limited to:

1 (A) Obtaining any fee or making any sale by fraud or  
2 misrepresentation;

3 (B) Employing directly or indirectly any unlicensed person  
4 to perform any work covered by this chapter;

5 (C) Using or causing or promoting the use of any  
6 advertising matter, promotional literature, testimonial, guarantee, warranty,  
7 label, brand, insignia, or any other representation, however made, which is  
8 misleading or untruthful;

9 (D) Advertising a particular model, type, or kind of  
10 hearing aid for sale when prospective purchasers responding to the  
11 advertisement cannot purchase or are dissuaded from purchasing the advertised  
12 model, type, or kind if the purpose of the advertisement is to obtain  
13 prospects for the sale of a model, type, or kind other than that advertised;

14 (E) Falsely representing that the services or advice of a  
15 person licensed to practice medicine will be used or made available in the  
16 selection, fitting, adjustment, maintenance, or repair of hearing aids or  
17 using the words 'doctor,' 'audiologist,' or 'clinic,' or like words,  
18 abbreviations, or symbols which suggest the medical profession when such use  
19 is not accurate;

20 (F) Permitting another to use the holder's license or  
21 permit;

22 (G) In any manner making false representations concerning a  
23 competitor or his products, business methods, selling prices, values, credit  
24 terms, policies, services, reliability, ability to perform contracts, credit  
25 standing, integrity, or morals;

26 (H) In any manner using, imitating, or simulating the  
27 trademark, trade name, corporate name, brand, model name, or number or label  
28 of any competitor, manufacturer, or product when it implies or represents a  
29 relationship that does not exist;

30 (I) Obtaining information concerning the business of a  
31 competitor by bribery of any employee or agent of the competitor, by the  
32 impersonation of one in authority, or by any other unfair or deceptive means;  
33 and

34 (J) Directly or indirectly giving or offering to give  
35 anything of value to any person who advises others in a professional capacity

1 as an inducement to influence others to purchase products sold by a hearing  
2 aid dispenser or to refrain from dealing with a competitor;

3 (9) 'Sponsor' means a licensed person who trains and directly  
4 supervises a training permit holder.

5

6 17-83-102. Applicability and construction.

7 (a) This chapter shall not apply to an audiologist who does not sell or  
8 repair hearing aids or to any person while engaged in the practice of  
9 recommending hearing aids as part of the academic curriculum of an accredited  
10 institution of higher education or part of a program conducted by a public  
11 charitable institution or nonprofit organization which is primarily supported  
12 by voluntary contributions.

13 (b) This chapter shall not be construed to prohibit any doctor who  
14 holds a valid license issued by the Arkansas State Medical Board, specializing  
15 in otology or otolaryngology, from treating or fitting hearing aids to the  
16 human ear, or to prohibit any corporation, partnership, trust, association, or  
17 other like organization from engaging in the business of fitting and selling  
18 hearing aids at retail, if it employs only natural persons licensed under this  
19 chapter in the direct fitting and sale of such products.

20 (c) Nothing in this chapter shall be construed as preventing or  
21 restricting the activities and services of a person pursuing a course of study  
22 leading to a degree in audiology in a college or university, which is an  
23 accredited institution of higher education, if such activities and services  
24 constitute a part of a supervised course of study and the person is designated  
25 as an audiology intern, audiology trainee, or by any other such titles clearly  
26 indicating the training status appropriate to his level of training.

27

28 17-83-103. Penalty - Injunction.

29 (a) Any person convicted of violating any provision of this chapter  
30 shall be guilty of a misdemeanor and upon conviction shall be subject to a  
31 fine not to exceed five hundred dollars (\$500) or to imprisonment in the  
32 county jail for not more than ninety (90) days, or both.

33 (b) Any violation of the provisions of this chapter may be enjoined by  
34 the chancery courts of this state.

35

1           17-83-104. Bills of sale.

2           Whether supplied by him or at his order or direction, any person who  
3 practices the dispensing of hearing aids shall deliver to each person supplied  
4 with a hearing aid:

- 5                   (1) A bill of sale containing his signature;
- 6                   (2) The address of his established place of business;
- 7                   (3) The number of his license;
- 8                   (4) A description of the make, model, and condition of the  
9 hearing aid furnished and whether it is new, used, or rebuilt; and
- 10                  (5) The amount charged.

11

12           17-83-201. Creation and composition.

13           (a) There is created the Arkansas Board of Hearing Aid Dispensers.

14           (b) The board shall be composed of eight (8) members, appointed by the  
15 Governor for terms of three (3) years:

16                   (1) At least four (4) of the members shall be hearing aid  
17 dispensers licensed under this chapter, who has held a valid license for at  
18 least three (3) years. The Governor shall consider nominations from the  
19 Arkansas Hearing Aid Society and the Arkansas Speech, Hearing and Language  
20 Association;

21                   (2) At least one (1) member shall be a physician licensed to  
22 practice medicine in Arkansas and specializing in otology or otolaryngology;

23                   (3) At least one (1) member shall be an audiologist holding a  
24 master's degree or doctorate degree in audiology from a recognized college or  
25 university;

26                   (4) One (1) member shall not be actively engaged in or retired  
27 from the practice of dispensing hearing aids. The member shall be sixty (60)  
28 years of age or older and shall represent the elderly. The member shall be  
29 appointed from the state at large subject to confirmation by the Senate and  
30 shall be a full voting member but shall not participate in the grading of  
31 examinations.

32           (c) (1) All terms shall expire on July 31 of the designated year.

33                   (2) Each member shall serve for the term of his appointment and  
34 until his successor has been appointed and qualified.

35                   (3) No member shall serve more than two (2) terms consecutively.

1 (d) In the event of a vacancy on the board, a new member shall be  
2 appointed to serve out the unexpired term.

3 (e) The Governor may remove any member for cause.

4 (f) Any board member who was appointed to a seven (7) year term or to  
5 fill a vacancy for the remainder of a seven (7) year term shall not have his  
6 or her term reduced to a three (3) year term as provided for in subsection  
7 (b).

8

9 17-83-202. Organization and proceedings.

10 (a) (1) The board shall meet at least twice a year at times and places  
11 to be designated by the board and upon such notice as the board may prescribe.

12 (2) The board shall elect a chairman, vice-chairman and  
13 secretary-treasurer annually, each to serve in his respective capacity for one  
14 (1) year.

15 (b) Any five (5) of the eight (8) members of the board, when properly  
16 convened, may conduct business of the board. The board may appoint one (1) or  
17 more of its members, or any other person they deem appropriate, as examiners  
18 for the purpose of hearing evidence, reporting findings thereon, and making  
19 recommendations to the entire board for decision on any matter over which the  
20 board has authority.

21 (c) The board shall keep a record of all of its proceedings and  
22 transactions and shall annually make a report to the Governor showing all  
23 receipts and disbursements and a summary of all business transacted during the  
24 year.

25

26 17-83-203. Powers and duties.

27 The powers and duties of the Arkansas Board of Hearing Aid Dispensers  
28 are:

29 (1) To authorize all disbursements necessary to carry out the  
30 provisions of this chapter and to receive and account for all fees;

31 (2) To prepare, supervise, and administer qualifying examinations  
32 to test the knowledge and proficiency of applicants;

33 (3) To register, issue, and renew licenses and permits to persons  
34 qualified under this chapter and to suspend, revoke, or refuse to renew  
35 licenses and permits pursuant to this chapter;

1           (4) To purchase and maintain or rent audiometric equipment and  
2 facilities necessary to carry out the examination of applicants for licenses;

3           (5) To make rules and regulations not inconsistent with the laws  
4 of this state which are necessary to the enforcement and orderly  
5 administration of this chapter. However, no rule or regulation shall be  
6 promulgated which in any manner serves to restrict the number of licenses  
7 which may be issued in any city, town, or county of this state;

8           (6) To require the periodic inspection and calibration of  
9 audiometric testing equipment and to carry out the periodic inspection of  
10 facilities of persons who practice the fitting or selling of hearing aids;

11           (7) To employ and retain the services of attorneys, accountants,  
12 and other necessary assistants in carrying out the provisions of this chapter;

13           (8) To require, of the board deems necessary, an applicant or  
14 dealer or licensee to furnish a surety bond, in an amount fixed by the board,  
15 for the benefit of any person damaged as the result of a violation of this  
16 chapter. All requirements pertaining to the surety bond may be promulgated by  
17 regulation of the board;

18           (9) To set the following fees:

19                   (A) an application fee not to exceed one hundred dollars  
20 (\$100.00);

21                   (B) an examination fee not to exceed seventy-five dollars  
22 (\$75.00);

23                   (C) a reexamination fee not to exceed seventy-five dollars  
24 (\$75.00);

25                   (D) a permanent registration fee not to exceed thirty-five  
26 dollars (\$35.00);

27                   (E) an annual license fee not to exceed one hundred fifty  
28 dollars (\$150.00);

29                   (F) a late penalty of ten percent (10%) of the annual  
30 license fee if paid within thirty (30) days after expiration;

31                   (G) a license reinstatement fee not to exceed one and one-  
32 half (1 1/2) times the annual license fee, if the renewal fee is not paid  
33 within the thirty (30) day grace period; and

34                   (H) a training permit fee not to exceed seventy-five  
35 dollars (\$75.00).

1

2 17-83-204. Disposition of funds - Compensation of members.

3 (a) (1) Fees collected by the board shall be used to pay expenses in  
4 administering this chapter.

5 (2) All moneys shall be received, disbursed, and accounted for by  
6 the secretary-treasurer, or a person designated by the board, who shall be  
7 bonded at the expense of the board.

8 (3) All moneys not expended by the board to pay expenses in  
9 administering this chapter shall be retained by the board from year to year to  
10 be expended for the purposes expressed in this chapter.

11 (b) Each member of the board shall be paid a reasonable sum, not to  
12 exceed twenty-five dollars (\$25.00) per day, for each day of actual service on  
13 the board and shall be reimbursed all reasonable and necessary travel  
14 expenses.

15

16 17-83-301. Application of Administrative Procedure Act.

17 The Administrative Procedure Act, as amended, 25-15-201 et seq., shall  
18 apply to the authority and procedures of the board in exercising control over  
19 licensing under this chapter.

20

21 17-83-302. License required.

22 No person shall engage in the sale of hearing aids, or display a sign or  
23 in any other way advertise or hold himself out as a person who practices the  
24 dispensing of hearing aids unless he is licensed under this chapter and has  
25 his license or training permit conspicuously posted in his office or place of  
26 business.

27

28 17-83-303. Unlawful practices.

29 It shall be unlawful for any person to:

30 (1) Sell or purchase a license or permit in a manner not  
31 authorized by this chapter;

32 (2) Willfully alter, with the intent to defraud, any license or  
33 permit;

34 (3) Represent as a valid license or permit one which has been  
35 purchased, fraudulently obtained, counterfeited, or materially altered; or

1           (4) Willfully make a false material statement in any application  
2 to the board.

3

4           17-83-304. Applications - Qualifications of applicants.

5           (a) An applicant for a license under this chapter shall:

6                 (1) Submit a written application and request for examination in  
7 the form and within the time prescribed by the board;

8                 (2) Pay an application and examination fee as prescribed by the  
9 board, pursuant to this chapter; and

10                (3) Show to the satisfaction of the board that he:

11                         (A) Is twenty-one (21) years of age or older;

12                         (B) Has an education equivalent to a four-year course in an  
13 accredited high school;

14                         (C) Is of good moral character; and

15                         (D) Has satisfactorily completed a training program,  
16 approved by the board, in the basics of testing for and fitting of hearing  
17 aids.

18           (b) Before an applicant is issued a license, he must satisfactorily  
19 pass the examination in the form and within the time prescribed by the board.

20

21           17-83-305. Examinations.

22           (a) The examination provided in 17-83-304 shall be given by the board  
23 at least once each year and at such additional times as may be necessary to  
24 meet the volume of applications. However, no candidate shall be required to  
25 wait more than ninety (90) days from the date of his application to have the  
26 examination administered unless he so requests.

27           (b) The examination may be written or practical, or both, and shall  
28 consist of:

29                 (1) Tests of knowledge in the following areas as they pertain to  
30 the fitting of hearing aids:

31                         (A) Basic physics of sound;

32                         (B) The human hearing mechanism, including the science of  
33 hearing and the causes and rehabilitations of abnormal hearing and hearing  
34 disorders;

35                         (C) Structure and function of hearing aids;



1 (D) Pure tone audiometry, including air conduction testing  
2 and bone conduction testing;

3 (E) Live voice or recorded voice speech audiometry,  
4 including speech reception, threshold testing, and speech discrimination  
5 testing;

6 (F) Effective masking;

7 (G) Recording and evaluation of audiograms and speech  
8 audiometry to determine hearing aid candidacy;

9 (H) Selection and adaptation of hearing aids; and

10 (I) Taking earmold impressions;

11 (2) Testing of other knowledge and skills as may be required to  
12 determine an applicant's ability and suitability for the practice of  
13 dispensing hearing aids to the public.

14 (c) The tests under this section shall not include questions requiring  
15 a medical or surgical education.

16 (d) Applicants who fail to pass the required examination may retake the  
17 examination by paying a reexamination fee as prescribed by the board pursuant  
18 to this chapter, for each additional examination taken.

19

20 17-83-306. Issuance and renewal.

21 (a) Upon payment of a permanent registration fee and an annual license  
22 fee as prescribed by the board pursuant to this chapter, the board shall  
23 register and issue licenses to applicants who have fulfilled the requirements  
24 of this chapter.

25 (b) All licenses shall expire on the date or dates set by the board and  
26 all licenses shall be renewed annually.

27 (c)(1) The fee for renewal of a license, as prescribed by the board  
28 pursuant to this chapter, shall be paid before the expiration of the license.  
29 Failure to make such payment before the expiration date of the license shall  
30 result in the payment of the license renewal fee, plus a late penalty as  
31 prescribed by the board pursuant to this chapter, if paid within thirty (30)  
32 days after expiration.

33 (2) If the renewal fee is not paid within the thirty-day grace  
34 period, the board shall renew such license upon payment of the required fee as  
35 prescribed by the board pursuant to this chapter, and satisfaction of all

1 other requirements contained in this chapter for the renewal of the license.

2 (d)(1) The board shall require that all applicants seeking renewal of  
3 their licenses shall show proof of attending, during the preceding year, a  
4 minimum of ten (10) hours of board approved continuing education in the  
5 methods and techniques of testing for and fitting hearing aids.

6 (2) The board shall require that all applicants seeking renewal  
7 of their licenses shall present written evidence of annual calibration of all  
8 audiometers to current national standards.

9

10 17-83-307. Training permits.

11 (a) An applicant who fulfills the requirements of and pays the fees  
12 prescribed by the board pursuant to this chapter and has successfully passed  
13 the entry-level training permit examination, shall be issued a training permit  
14 for a period not to exceed six (6) months, if he pays a training permit fee as  
15 prescribed by the board pursuant to this chapter and shows to the satisfaction  
16 of the board that, during the period of the training permit, he will be  
17 directly trained and supervised by a sponsor who has continuously held a valid  
18 Arkansas hearing aid dispensers license for a period of not less than three  
19 (3) years.

20 (b) It shall be a violation of this chapter for any person holding a  
21 training permit to practice the dispensing of hearing aids except under the  
22 direct supervision of a person who has continuously held a valid Arkansas  
23 hearing aid dispenser's license for a period of not less than three (3) years.

24 (c) It shall be a violation of this chapter for any sponsor of a  
25 temporary permit holder to knowingly allow or require that temporary permit  
26 holder to practice the dispensing of hearing aids except under the sponsor's  
27 direct supervision.

28

29 17-83-308. Suspension, revocation, or nonrenewal.

30 The board may suspend, revoke, or refuse to renew the license or permit  
31 of any person for any of the following causes:

32 (1) Being convicted of a crime involving moral turpitude. A  
33 record of a conviction, certified by the judge or the clerk of the court where  
34 the conviction occurred, shall be sufficient evidence to warrant suspension,  
35 revocation, or refusal to renew;

1 (2) Securing a license or training permit under this chapter  
2 through fraud or deceit;

3 (3) Unethical conduct, gross ignorance, or inefficiency in the  
4 conduct of his practice;

5 (4) Using a false name or an alias in his practice;

6 (5) Violation of any provision of this chapter;

7 (6) Failure of any of the requirements for issuance of the  
8 license or training permit.

9

10 17-83-309. Notification and use of business address.

11 (a) Every person who holds a license or training permit shall notify  
12 the board in writing of the address of the place where he engages or intends  
13 to engage in the practice of dispensing hearing aids.

14 (b) Any notice required to be given by the board to a person may be  
15 given by mailing it to him at that address.

16 (c) It shall be the responsibility of every person who holds a license  
17 or training permit to notify the board, by certified letter, of every change  
18 in his office address or place of practice within ten (10) days of such  
19 change."

20

21 SECTION 2. All provisions of this act of a general and permanent nature  
22 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
23 Revision Commission shall incorporate the same in the Code.

24

25 SECTION 3. If any provision of this act or the application thereof to  
26 any person or circumstance is held invalid, such invalidity shall not affect  
27 other provisions or applications of the act which can be given effect without  
28 the invalid provision or application, and to this end the provisions of this  
29 act are declared to be severable.

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31 SECTION 4. All laws and parts of laws in conflict with this act are  
32 hereby repealed.

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