

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: H2/26/99

A Bill

Act 592 of 1999
HOUSE BILL 1652

5 By: Representative Horn
6
7

For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF THE HEARING AID
10 DISPENSERS LAW; AND FOR OTHER PURPOSES."

Subtitle

14 "AN ACT TO AMEND VARIOUS SECTIONS OF THE
15 HEARING AID DISPENSERS LAW."

16
17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code 17-84-101 is amended to read as follows:

21 "17-84-101. Definitions.

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

23 (1) 'Board' means the Arkansas Board of Hearing Aid Instrument
24 Dispensers;

25 (2) 'License' and '~~permit~~ internship' mean, respectively, license
26 as provided for in § 17-84-306, and ~~training permit as provided for in § 17-~~
27 ~~84-307~~ internship as provided for in § 17-84-304;

28 (3) 'Current' means valid, effective, unexpired, or unsuspended
29 and unrevoked with reference to a license or ~~permit~~ internship;

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

31 (5) 'Hearing aid instrument' means any instrument or device worn
32 in or behind the ear designed for or represented as aiding, improving,
33 amplifying, or correcting ~~defective~~ human hearing and any parts, attachments,
34 or accessories of such an instrument or device;

35 (6) 'Practice of dispensing hearing aids instruments' means
36 conducting and interpreting hearing tests for purposes of identifying the type

1 and degree of hearing loss and making proper recommendations based on those
2 results, selecting suitable hearing ~~aids~~ instruments, making earmolds or ear
3 impressions, and providing appropriate counseling pertaining to the selling,
4 renting, leasing, pricing, delivery, and warranty of hearing ~~aids~~ instruments;

5 (7) 'Established place of business' means a place of business at
6 a permanent address in the State of Arkansas or, if outside the state, within
7 seventy-five (75) miles of the Arkansas state line which is open to the public
8 during normal business hours ~~for fitting and dispensing hearing aids~~ at least
9 thirty-five (35) hours per week;

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

11 (A) Obtaining any fee or making any sale by fraud or
12 misrepresentation;

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

15 (C) Using or causing or promoting the use of any
16 advertising matter, promotional literature, testimonial, guarantee, warranty,
17 label, brand, insignia, or any other representation, however made, which is
18 misleading or untruthful;

19 (D) Advertising a particular model, type, or kind of
20 hearing ~~aid~~ instrument for sale when prospective purchasers responding to the
21 advertisement cannot purchase or are dissuaded from purchasing the advertised
22 model, type, or kind if the purpose of the advertisement is to obtain
23 prospects for the sale of a model, type, or kind other than that advertised;

24 (E) Falsely representing that the services or advice of a
25 person licensed to practice medicine will be used or made available in the
26 selection, fitting, adjustment, maintenance, or repair of hearing ~~aids~~
27 instruments or using the words 'doctor', 'audiologist', or 'clinic', or like
28 words, abbreviations, or symbols which suggest the medical profession when
29 such use is not accurate;

30 (F) Permitting another to use the holder's license or
31 ~~permit~~ internship certificate;

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

36 (H) In any manner using, imitating, or simulating the

1 trademark, trade name, corporate name, brand, model name, or number or label
 2 of any competitor, manufacturer, or product when it implies or represents a
 3 relationship that does not exist;

4 (I) Obtaining information concerning the business of a
 5 competitor by bribery of any employee or agent of the competitor, by the
 6 impersonation of one in authority, or by any other unfair or deceptive means;
 7 and

8 (J) Directly or indirectly giving or offering to give
 9 anything of value to any person who advises others in a professional capacity
 10 as an inducement to influence others to purchase products sold by a hearing
 11 ~~aid instrument~~ dispenser or to refrain from dealing with a competitor; and

12 (9) 'Sponsor' means a licensed person who trains and directly
 13 supervises ~~a training permit holder.~~ an intern; and

14 (10) 'In-office assembled hearing instrument' means an instrument
 15 built by the hearing instrument dispenser, or under his supervision, from
 16 components, including a pre-manufactured faceplate and a shell made by the
 17 dispenser or made under his supervision."

18
 19 SECTION 2. Section 17-84-102 is amended to read as follows:

20 "17-84-102. Applicability and construction.

21 (a) *This chapter shall not apply to an audiologist who ~~does not sell or~~*
 22 *~~repair hearing aids~~ is licensed under the provisions of the Licensure Act of*
 23 *Speech-Language Pathologists and Audiologists, beginning at § 17-100-101, or*
 24 *to any person while engaged in the practice of recommending hearing aids*
 25 *instruments as part of the academic curriculum of an accredited institution of*
 26 *higher education or part of a program conducted by a public charitable*
 27 *institution or nonprofit organization which is primarily supported by*
 28 *voluntary contributions.*

29 (b) This chapter shall not be construed to prohibit any doctor who
 30 holds a valid license issued by the Arkansas State Medical Board, specializing
 31 in otology or otolaryngology, from treating or fitting hearing ~~aids~~
 32 instruments to the human ear, or to prohibit any corporation, partnership,
 33 trust, association, or other like organization from engaging in the business
 34 of fitting and selling hearing ~~aids~~ instruments at retail, if it employs only
 35 natural persons licensed under this chapter in the direct fitting and sale of
 36 such products.

1 ~~(c) Nothing in this chapter shall be construed as preventing or~~
 2 ~~restricting the activities and services of a person pursuing a course of study~~
 3 ~~leading to a degree in audiology in a college or university, which is an~~
 4 ~~accredited institution of higher education, if such activities and services~~
 5 ~~constitute a part of a supervised course of study and the person is designated~~
 6 ~~as an audiology intern, audiology trainee, or by any other such titles clearly~~
 7 ~~indicating the training status appropriate to his level of training."~~

8
 9 SECTION 3. Article 17-84-104 is amended to read as follows:

10 "17-84-104. Bills of sale and instruction booklets.

11 (a) Whether supplied by him the dispenser or at his the dispenser's
 12 order or direction, any person who practices the dispensing of hearing aids
 13 instruments shall deliver to each person supplied with a hearing aid
 14 instrument a bill of sale or comparable document containing the following:

15 (1) ~~A bill of sale containing his~~ The dispenser's signature;

16 (2) The address and telephone number of his the dispenser's
 17 established place of business;

18 (3) The number of ~~his the dispenser's~~ license;

19 (4) A description of the make, model, and condition of the
 20 hearing aid instrument stating furnished and whether it is new, used, or
 21 rebuilt, or in-office assembled, identifying the manufacturer, rebuilder, or
 22 in-office assembler, together with a description of any warranties covering
 23 the instrument; and

24 (5) The amount charged.

25 (b) Additionally, the dispenser of an in-office assembled hearing
 26 instrument shall deliver to the person supplied with the in-office assembled
 27 hearing instrument an instruction booklet for the instrument."

28
 29 SECTION 4. Arkansas Code 17-84-201 is amended to read as follows:

30 "17-84-201. Creation and composition.

31 (a) There is created the Arkansas Board of Hearing Aid Instrument
 32 Dispensers.

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

35 (1) At least four (4) of the members shall be hearing aid
 36 instrument dispensers licensed under this chapter, who have held a valid

1 license for at least three (3) years. The Governor shall consider nominations
2 from the Arkansas Hearing Aid Society and the Arkansas Speech, Hearing and
3 Language Association;

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

6 (3) At least one (1) member shall be an audiologist holding a
7 master's degree or doctoral degree in audiology from a recognized college or
8 university;

9 (4) ~~One (1) member~~ Two (2) members shall not be actively engaged
10 in or retired from the practice of dispensing hearing aids instruments. ~~The~~
11 One member shall represent consumers, and one (1) member shall be sixty (60)
12 years of age or older and shall represent the elderly. ~~The member~~ Both
13 members shall be appointed from the state at large subject to confirmation by
14 the Senate and shall be a full voting ~~member~~ members but shall not participate
15 in the grading of examinations.

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

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

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

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

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

23 (f) Any board member who was appointed to a seven-year term or to fill
24 a vacancy for the remainder of a seven-year term shall not have his or her
25 term reduced to a three-year term as provided for in subsection (b) of this
26 section."

27
28 SECTION 5. Arkansas Code 17-84-203 is amended to read as follows:

29 "17-84-203. Powers and duties.

30 The powers and duties of the Arkansas Board of Hearing Aid Instrument
31 Dispensers are:

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

34 (2) To furnish a list of study materials for applicants to use in
35 preparing for qualifying examinations;

36 (3) To prepare, supervise, and administer, at least once each

1 year, a qualifying examination based on nationally accepted norms to test the
2 knowledge and proficiency of applicants;

3 (4) To register, issue, and renew licenses and ~~permits~~
4 internships to persons qualified under this chapter and to suspend, revoke, or
5 refuse to renew licenses and ~~permits~~ internships pursuant to this chapter;

6 ~~(5) To purchase and maintain or rent audiometric equipment and~~
7 ~~facilities necessary to carry out the examination of applicants for licenses;~~

8 ~~(6)(5)~~ To make rules and regulations not inconsistent with the
9 laws of this state which are necessary for the enforcement and orderly
10 administration of this chapter. However, no rule or regulation shall be
11 promulgated which in any manner serves to restrict the number of licenses
12 which may be issued in any city, town, or county of this state;

13 ~~(7)(6)~~ To require the periodic inspection and calibration of
14 audiometric testing equipment and to carry out the periodic inspection of
15 facilities of persons who practice the fitting or selling of hearing ~~aids~~
16 instruments;

17 ~~(8)(7)~~ To employ and retain the services of attorneys,
18 accountants, and other necessary assistants in carrying out the provisions of
19 this chapter;

20 ~~(9)(8)~~ To require, if the board deems necessary, an applicant,
21 dealer, or licensee to furnish a surety bond, in an amount fixed by the board,
22 for the benefit of any person damaged as the result of a violation of this
23 chapter. All requirements pertaining to the surety bond may be promulgated by
24 regulation of the board; ~~and~~

25 ~~(10)(9)~~ To set the following fees:

26 (A) An application fee not to exceed ~~one hundred dollars~~
27 ~~(\$100)~~ one hundred fifty dollars (\$150);

28 (B) An examination fee not to exceed ~~seventy-five dollars~~
29 ~~(\$75.00)~~ one hundred fifty dollars (\$150);

30 (C) A reexamination fee not to exceed ~~seventy-five dollars~~
31 ~~(\$75.00)~~ one hundred fifty dollars (\$150);

32 (D) A permanent registration fee not to exceed ~~thirty-five~~
33 ~~dollars (\$35.00)~~ fifty dollars (\$50.00);

34 (E) An annual license fee not to exceed ~~one hundred fifty~~
35 ~~dollars (\$150)~~ two hundred dollars (\$200);

36 (F) A late penalty of ten percent (10%) of the annual

1 license fee if paid within thirty (30) days after expiration;

2 (G) A license reinstatement fee ~~not to exceed~~ of one and
3 one-half (1.5) times the annual license fee, if the renewal fee is not paid
4 within the thirty-day grace period; and

5 (H) ~~A training permit~~ An internship fee not to exceed
6 ~~seventy-five dollars (\$75.00)~~ one hundred fifty dollars (\$150).;

7 (10) To employ investigators, issue subpoenas, and perform all
8 activities necessary to effectively investigate claims and pursue disciplinary
9 action against licensees; and

10 (11) To establish the standards of practice for hearing
11 instrument dispensers in the State of Arkansas."

12
13 SECTION 6. Arkansas Code 17-84-302 is amended to read as follows:

14 "17-84-302. License or training permit required.

15 No person shall engage in the sale of hearing ~~aids~~ instruments, or
16 display a sign or in any other way advertise or hold himself or herself out as
17 a person who practices the dispensing of hearing ~~aids~~ instruments unless he or
18 she is licensed under this chapter or is the holder of ~~a training permit~~
19 ~~issued under § 17-84-307~~ an internship as provided for in § 17-84-304 and has
20 his or her license or training permit conspicuously posted in his or her
21 office or place of business."

22
23 SECTION 7. Arkansas Code 17-84-304 is amended to read as follows:

24 "17-84-304. Internship and Applications - Qualifications of applicants.

25 (a) Prior to applying for licensure, each applicant other than those
26 meeting the requirements of 17-87-304(b)(2) or (3) must complete a one-year
27 employment internship during which he or she is under the direct personal and
28 physical supervision of a sponsor who has continuously held in good standing
29 for a period of not less than three (3) years either a valid Arkansas hearing
30 instrument dispenser's license or a valid Arkansas audiology license. An
31 internship will only be valid if, prior to beginning the internship period,
32 the applicant makes application for internship approval on forms supplied by
33 the Board, pays the internship fees prescribed by the Board pursuant to this
34 chapter, and shows to the satisfaction of the Board that, during the period of
35 the internship, he or she will be under the direct personal and physical
36 supervision of a sponsor who has continuously held a valid Arkansas hearing

1 instrument dispenser's or Arkansas audiologist's license for a period of not
 2 less than three (3) years.

3 (b) It shall be a violation of this chapter for any person during the
 4 course of his or her internship to practice the dispensing of hearing
 5 instruments except under the direct personal and physical supervision of a
 6 person who has continuously held a valid Arkansas hearing instrument
 7 dispenser's or Arkansas audiologist's license for a period of not less than
 8 three (3) years.

9 (c) It shall be a violation of this chapter for any sponsor of an
 10 intern to knowingly allow or require that intern to practice the dispensing of
 11 hearing instruments except under the sponsor's direct personal and physical
 12 supervision.

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

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

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

18 (3) Show to the satisfaction of the board that ~~he~~ the applicant:

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

20 (B) Has an education equivalent to ~~a four-year course in an~~
 21 ~~accredited high school~~ two (2) years of accredited college-level course work
 22 from a regionally accredited college or university;

23 (C) Is of good moral character; and

24 (D) Has satisfactorily passed the examination in the form
 25 and within the time prescribed by the board.

26 (b)(e) Prior to applying for a license under this chapter, an applicant
 27 may elect to apply for a training permit as provided for in § 17-84-307. must:

28 (1) Complete a one-year internship as provided for in § 17-84-
 29 304; or

30 (2) Hold National Board of Certified Hearing Instrument Sciences
 31 Certification; or

32 (3) Be registered as a hearing instrument dispenser in good
 33 standing in another state whose licensing requirements meet or exceed the
 34 licensing requirements of the State of Arkansas at the time of his or her
 35 application; or

36 (4) Be a graduate of an American Conference of Audioprosthology

1 program."

2
3 SECTION 8. Arkansas Code 17-84-305 is amended to read as follows:
4 "17-84-305. Examinations.

5
6 (a) The examination provided for in § 17-84-304 shall be given by the
7 board at least once each year.

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

10 (1) Tests of knowledge in the following areas as they pertain to
11 the fitting of hearing ~~aids~~ instruments:

12 (A) Basic physics of sound;

13 (B) The human hearing mechanism, including the science of
14 hearing and the causes and rehabilitation of abnormal hearing and hearing
15 disorders;

16 (C) Structure and function of hearing ~~aids~~ instruments;

17 (D) Pure tone audiometry, including air conduction testing
18 and bone conduction testing;

19 (E) Live voice or recorded voice speech audiometry,
20 including speech reception, threshold testing, and speech discrimination
21 testing;

22 (F) Effective masking;

23 (G) Recording and evaluation of audiograms and speech
24 audiometry to determine hearing ~~aid~~ instrument candidacy;

25 (H) Selection and adaptation of hearing ~~aids~~ instruments;
26 and

27 (I) Taking earmold impressions;

28 (2) Testing of other knowledge and skills as may be required to
29 determine an applicant's ability and suitability for the practice of
30 dispensing hearing ~~aids~~ instruments to the public.

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

33 (d) Applicants who fail to pass the required examination may retake the
34 examination by paying a reexamination fee, as prescribed by the board pursuant
35 to this chapter, for each additional examination taken. After three (3)
36 failed attempts to pass the examination, the applicant must repeat the

1 internship described in § 17-84-304."

2
3 SECTION 9. Arkansas Code 17-84-306(d) is amended to read as follows:

4 "(d)(1) The board shall require that all applicants seeking renewal of
5 their licenses shall show proof of attending, during the preceding year, a
6 minimum of ~~ten (10)~~ twelve (12) hours of board-approved continuing education
7 in the methods and techniques of testing for and fitting hearing aids
8 instruments, including at least one (1) hour of ethics.

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

12 (3) The board shall require that all new applicants and all
13 applicants seeking renewal of their license shall state whether they are
14 engaged in the practice of dispensing in-office assembled hearing
15 instruments."

16
17 SECTION 10. Arkansas Code 17-84-307 is repealed.

18 ~~"17-84-307. Training permits.~~

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

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

32 ~~(c) It shall be a violation of this chapter for any sponsor of a~~
33 ~~temporary permit holder to knowingly allow or require that temporary permit~~
34 ~~holder to practice the dispensing of hearing aids except under the sponsor's~~
35 ~~direct supervision."~~

36

1 SECTION 11. Arkansas Code 17-84-308 is amended to read as follows:

2 "17-84-308. Suspension, revocation, non-issuance, or nonrenewal.

3 (a) The board may suspend, revoke, or refuse to issue or renew the
4 license or ~~permit~~ internship of any person for any of the following causes:

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

9 (2) Securing a license or ~~training permit~~ internship under this
10 chapter through fraud or deceit;

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

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

14 (5) Violation of any provision of this chapter; or

15 (6) Failure ~~of~~ to comply with any of the requirements for
16 issuance of the license or ~~training permit~~ internship.

17 (b) The board may, in addition to acting against a license or
18 internship or in lieu of acting against a license or internship, fine the
19 individual in an amount not to exceed two thousand dollars (\$2,000) for each
20 offense.

21 (c) The board may dismiss any complaint or charges which it finds to be
22 unfounded or trivial. The board may settle any complaint or charges without
23 holding a hearing."

24
25 SECTION 12. Arkansas Code 17-84-309 is amended to read as follows:

26 "17-84-309. Notification and use of business address.

27 (a) Every person who holds a license or ~~training permit~~ internship
28 shall notify the board in writing of the address of ~~the place where he engages~~
29 ~~or intends to engage in the practice of dispensing hearing aids~~ his or her
30 established place of business and all satellite locations.

31 (b) Any notice required to be given by the board to a person may be
32 given by mailing it to ~~him at that address~~ him or her at the address of his or
33 her established place of business.

34 (c) It shall be the responsibility of every person who holds a license
35 or ~~training permit~~ internship to notify the board, by certified letter, of
36 every change in ~~his office address or place of practice~~ his or her established

1 place of business and all satellite locations within ten (10) days of such
2 change."

3
4 SECTION 13. All provisions of this act of a general and permanent
5 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
6 Code Revision Commission shall incorporate the same in the Code.

7
8 SECTION 14. If any provision of this act or the application thereof to
9 any person or circumstance is held invalid, such invalidity shall not affect
10 other provisions or applications of the act which can be given effect without
11 the invalid provision or application, and to this end the provisions of this
12 act are declared to be severable.

13
14 SECTION 15. All laws and parts of laws in conflict with this act are
15 hereby repealed.

16
17 SECTION 16. EMERGENCY CLAUSE. It is hereby found and determined by the
18 Eighty-second General Assembly that the existing permits for hearing
19 instrument dispensers expire on June 30, 1999; this act makes various changes
20 in that law; that the board needs to implement this act on July 1, 1999; and
21 that substantial lead time will be necessary in order to have this act
22 implemented by July 1, 1999. Therefore, an emergency is declared to exist and
23 this act being immediately necessary for the preservation of the public peace,
24 health and safety shall become effective on the date of its approval by the
25 Governor. If the bill is neither approved nor vetoed by the Governor, it
26 shall become effective on the expiration of the period of time during which
27 the Governor may veto the bill. If the bill is vetoed by the Governor and the
28 veto is overridden, it shall become effective on the date the last house
29 overrides the veto.

30 /s/ Horn

31
32
33 APPROVED: 3/15/1999