

## LEGISLATIVE BILL 701

Approved by the Governor April 10, 1986

Introduced by Pappas, 42

AN ACT relating to public health and welfare; to amend sections 71-4701 to 71-4704, 71-4706 to 71-4709, 71-4711, 71-4712, 71-4714, and 71-4715, Reissue Revised Statutes of Nebraska, 1943; to redefine terms; to rename a board; to change provisions relating to hearing aids; to change provisions relating to dispensers and fitters of hearing aids; to eliminate a grace period for renewal of licenses; to provide a fee for examination; to change provisions relating to licenses, permits, and fees; to eliminate a power and duty of the Department of Health; to eliminate a provision relating to issuing a license without examination; to harmonize provisions; and to repeal the original sections, and also section 71-4705, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 71-4701, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-4701. As used in sections 71-4701 to 71-4719, unless the context otherwise requires:

(1) Department shall mean the Department of Health;

(2) License shall mean a license issued by the state under sections 71-4701 to 71-4719 to hearing aid ~~dealers instrument dispensers~~ and fitters;

(3) Temporary permit shall mean a permit issued while the applicant is in training to become a licensed hearing aid ~~dealer instrument dispenser~~ and fitter;

(4) Board shall mean the Board of Hearing Aid ~~Dealers Instrument Dispensers~~ and Fitters;

(5) Hearing aid shall mean any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories, including earmold, but excluding batteries and cords. A hearing aid shall also be known as a hearing instrument;

(6) Practice of fitting and ~~dealing in~~ hearing

aids shall mean the measurement of human hearing by means of a ~~pure tone~~ an audiometer or by other means approved by the board solely for the purpose of making selections, adaptations, or sale of hearing aids. The term also includes the making of impressions for earmolds. A dealer dispenser, at the request of a physician or a member of related professions, may make audiograms for the professional's use in consultation with the hard-of-hearing; and

(7) Sell, or sale, or dispense shall mean any transfer of title or of the right to use by lease, bailment, or any other contract, excluding (a) wholesale transactions with distributors or dealers dispensers and (b) distribution of hearing aids by nonprofit service organizations at no cost to the recipient for the hearing aid.

Sec. 2. That section 71-4702, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-4702. (1) No person shall engage in the sale of or practice of fitting hearing aids or display a sign or in any other way advertise or represent himself or herself as a person who practices the fitting and sale or dispensing of hearing aids after December 25, 1969 unless he or she holds an unsuspended, unrevoked license issued by the department as provided in sections 71-4701 to 71-4719. The license shall be conspicuously posted in his or her office or place of business. Duplicate licenses shall be issued by the department to valid license holders operating more than one office, without additional payment. A license issued under sections 71-4701 to 71-4719 shall confer upon the holder the right to select, fit, and sell hearing aids.

(2) Nothing in sections 71-4701 to 71-4719 shall prohibit a corporation, partnership, trust, association, or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing aids at retail without a license, if it employs only properly licensed natural persons in the direct sale and fitting of such products. Such corporations, partnerships, trusts, associations, or other like organizations shall file annually with the board a list of all licensed hearing aid dealers instrument dispensers and fitters directly or indirectly employed by it. Such organizations shall also file with the board a statement on a form approved by the board that they submit themselves to the rules and regulations of the department and the provisions of sections 71-4701 to

71-4719 which the department shall deem applicable to them.

(3) Nothing in sections 71-4701 to 71-4719 shall prohibit the holder of a license from the fitting and sale of wearable instruments or devices designed for or offered for the purpose of conservation or protection of hearing.

Sec. 3. That section 71-4703, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-4703. (1) Any person who practices the fitting and sale of hearing aids shall deliver to each person supplied with a hearing aid a receipt which shall contain the licensee's signature and show his or her business address and the number of his or her certificate, together with specifications as to the make and model of the hearing aid furnished, and clearly stating the full terms of sale. If an aid which is not new is sold, the receipt and the container thereof shall be clearly marked as used or reconditioned, whichever is applicable, with terms of guarantee, if any.

(2) Such receipt shall bear in no smaller type than the largest used in the body copy portion the following: The purchaser has been advised at the outset of his or her relationship with the hearing aid dealer instrument dispenser that any examination or representation made by a licensed hearing aid dealer instrument dispenser and fitter in connection with the fitting and selling of this hearing aid is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefore must not be regarded as medical opinion or advice.

Sec. 4. That section 71-4704, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-4704. (1) Sections 71-4701 to 71-4719 are not intended to prevent any person from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids if such person or organization employing such person does not sell hearing aids or accessories thereto.

(2) Sections 71-4701 to 71-4719 do not apply to a person who is a physician licensed to practice in this state, except that such physician shall not delegate the authority to fit and dispense hearing aids unless the person to whom the authority is delegated is licensed under sections 71-4701 to 71-4719.

Sec. 5. That section 71-4706, Reissue Revised

Statutes of Nebraska, 1943, be amended to read as follows:

71-4706. (1) Application for a license under sections 71-4701 to 71-4719 shall be made to the department on forms prescribed by the department and shall be accompanied by a fee of thirty to fifty dollars as determined by the board. The department shall, without discrimination, issue a license to any person who meets the experience requirement of section 71-4705 or who passes an examination provided for in section 71-4707. The license shall be effective until December 31 of the year in which issued.

(2) Whenever the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to sections 71-4701 to 71-4719 and that such state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants pursuant to sections 71-4701 to 71-4719 are qualified to fit and sell hearing aids, the department may issue certificates of endorsement to applicants who hold current, unsuspended, and unrevoked certificates or licenses to fit and sell hearing aids in such other state or jurisdiction. No such applicants for certificate of endorsement shall be required to submit to or undergo a qualifying examination, but shall be required to pay fees pursuant to sections 71-4706 and 71-4711. The holder of a certificate of endorsement shall be registered in the same manner as licensees. The fee for an initial certificate of endorsement shall be the same as the fee for an initial license. Fees, grounds for renewal, and procedures for the suspension and revocation of certificates of endorsement shall be the same as for renewal, suspension, and revocation of a license.

Sec. 6. That section 71-4707, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-4707. (1) ~~Applicants who do not meet the experience qualification on December 25, 1969~~ Any person may obtain a license by successfully passing a qualifying examination; if the applicant:

- (a) Is at least twenty-one years of age;
- (b) Is of good moral character;
- (c) Has an education equivalent to a four-year course in an accredited high school; and
- (d) Is free of contagious or infectious disease.

(2) Each applicant for license by examination shall appear at a time and place and before such persons

as the department may designate to be examined by means of written and practical tests in order to demonstrate that he or she is qualified to practice the fitting and sale of hearing aids. The applicant shall pay an examination fee of thirty to fifty dollars as determined by the board. The examination shall not be conducted in such a manner that college training is required in order to pass. Nothing in this examination shall imply that the applicant shall possess the degree of medical competence normally expected of physicians.

(3) The department shall give examinations as required to permit applicants to be examined within thirty days following the submission of the official application form determined by the board, except that a minimum of two examinations shall be offered each calendar year.

Sec. 7. That section 71-4708, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-4708. (1) An applicant who fulfills the requirements regarding age, character, education, and health as set forth in subsection (1) of section 71-4707, may obtain a temporary permit upon application to the department. Previous experience or a waiting period shall not be required to obtain a temporary permit.

(2) Upon receiving an application as provided under this section and accompanied by a fee of thirty to fifty dollars as determined by the board, dollars; the department shall issue a temporary permit which shall entitle the applicant to engage in the fitting and sale of hearing aids for a period of one year. A person holding a valid hearing aid dealers and fitters license shall be responsible for the supervision and training of such applicant and shall maintain adequate personal contact with him or her.

(3) If a person who holds a temporary permit under this section has not successfully passed the licensing examination by December 31 of the year in which it is issued within twelve months of the date of issuance of the temporary permit, the temporary permit may be renewed or reissued once upon payment of a fee of thirty to fifty dollars as determined by the board.

Sec. 8. That section 71-4709, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-4709. The qualifying examination provided in section 71-4707 shall be designed to demonstrate the applicant's adequate technical qualifications by:

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

- (a) Basic physics of sound;
- (b) The anatomy and physiology of the ear; and
- (c) The function of hearing aids; and

(2) Practical tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:

- (a) Pure tone audiometry, including air conduction testing and bone conduction testing;
- (b) Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;
- (c) Masking when indicated;
- (d) Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing aid; and
- (e) Taking earmold impressions.

Sec. 9. That section 71-4711, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-4711. Each person who engages in the fitting and sale of hearing aids shall ~~biennially~~ ~~annually,~~ ~~on or before December 31,~~ pay to the department a fee of ~~sixty to two hundred fifty thirty~~ dollars as determined by the board for a renewal of his or her license and shall keep such license conspicuously posted in his or her office or place of business at all times. Where ~~When~~ more than one office is operated by the licensee, duplicate licenses shall be issued by the department for posting in each location. A ~~thirty-day~~ grace period shall be allowed after December 31, during which time licenses may be renewed on payment of a fee of ~~thirty~~ dollars to the department. After expiration of the grace period, the department may renew such licenses upon payment of an additional fee of ~~thirty~~ dollars to the department. No person who applies for renewal, whose license has expired, shall be required to submit to any examination as a condition to renewal, if such renewal application is made within two years from the date of such expiration.

Sec. 10. That section 71-4712, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-4712. (1) Any person wishing to make a complaint against a licensee under sections 71-4701 to 71-4719 shall reduce the same to writing and file his or her complaint with the department within one year from the date of the action upon which the complaint is

based. If the department determines that the charges made in the complaint are sufficient to warrant a hearing to determine whether the license issued under sections 71-4701 to 71-4719 shall be suspended or revoked, it shall make an order fixing a time and place for a hearing and require the licensee complained against to appear and defend against the complaint. The order shall have attached thereto a copy of the complaint. The order and copy of the complaint shall be served upon the licensee at least twenty days before the date set for hearing, either personally or by certified mail sent to the licensee's last-known address. Continuances or adjournment of the hearing date shall be made if for good cause. At the hearing the licensee complained against may be represented by counsel. The licensee complained against and the department shall have the right to take depositions in advance of the hearing and after service of the complaint, and either may compel the attendance of witnesses by subpoenas issued by the department. Either party taking depositions shall give at least five days' written notice to the other party of the time and place of such depositions, and the other party shall have the right to attend, with counsel if desired, and cross-examine. Appeals from suspension or revocation may be made as provided by Chapter 84, article 9.

(2) Any person licensed under sections 71-4701 to 71-4719 may have his or her license revoked or suspended for a fixed period by the department for any of the following causes:

(a) The conviction of a felony, or a misdemeanor involving moral turpitude. The record of conviction, or a certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had shall be conclusive evidence of such conviction;

(b) Procuring of his or her license by fraud or deceit practiced upon the department; or

(c) Unethical conduct, including:

(i) The obtaining of any fee or the making of any sale by fraud or misrepresentation;

(ii) Knowingly employing directly or indirectly any suspended or unlicensed person to perform any work covered by sections 71-4701 to 71-4719;

(iii) Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading,

deceptive, or untruthful;

(iv) Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type, where when it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised;

(v) Representing that the services or advice of a person licensed to practice medicine or one certified as an audiologist by the American Speech and Hearing Association will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true, or using the words doctor, clinic, clinical audiologist, audiologist, state licensed clinic, state registered, state certified, state approved, or any other term, abbreviation, or symbol, or wearing any costume when it would falsely give the impression that one is being treated medically or professionally or that the licensee's service has been recommended by the state, except that it shall not be unethical or illegal to use the words (A) hearing aid specialist or (B) hearing instrument specialist if such title is granted by a national association;

(vi) Fitting and selling a hearing aid to a child under the age of sixteen who has not been examined and cleared for hearing aid use within a six-month period by an otolaryngologist. This The provisions of this subdivision shall not apply to the replacement with an identical model of any hearing aid within one year of its purchase;

(vii) Selling a hearing aid to any individual who has a significant air bone gap or a unilateral sensori-neural hearing loss unless that individual has been examined by an otolaryngologist within a six-month period or has signed a statement in duplicate, also signed by the retailer, that he has been informed that he may have a medically or surgically remediable hearing loss and should seek the advice of an otolaryngologist. One copy of such statement shall be filed with the department. The provisions of this subdivision shall not apply to the replacement with an identical model of any hearing aid within one year of its purchase;

~~(viii)~~ Habitual intemperance;

~~(viii)~~ ~~(ix)~~ Gross immorality;

~~(ix)~~ ~~(x)~~ Permitting another to use his or her

license;

~~(xi)~~ Selling a hearing aid to an individual



who has not been given the appropriate tests utilizing the procedures and instruments specified by the board except in the case of the same licensee selling a replacement hearing aid within three years;

(x) ~~(xii)~~ Any other condition or acts which violate the Trade Practice Rules for the Hearing Aid Industry of the Federal Trade Commission;

(xi) ~~(xiii)~~ Advertising a manufacturer's product or using a manufacturer's name or trademark which implies a relationship with the manufacturer that does not exist;

(xii) ~~(xiv)~~ Directly or indirectly giving or offering to give, or permitting or causing to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence him or her or have him or her influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dealer instrument dispenser or fitter, or influencing persons to refrain from dealing in the products of competitors;

(xiii) ~~(xv)~~ Conducting business while suffering from a contagious or infectious disease;

(xiv) ~~(xvi)~~ Engaging in the fitting and sale of hearing aids under a false name or alias with fraudulent intent;

(xv) ~~(xvii)~~ Gross incompetence or negligence in fitting and selling hearing aids; or

(xvi) ~~(xviii)~~ Violating any provision of sections 71-4701 to 71-4719.

Sec. 11. That section 71-4714, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-4714. The powers and duties of the department are as follows:

(1) To authorize all disbursements necessary to carry out the provisions of sections 71-4701 to 71-4719;

(2) To supervise issuance of licenses based on experience and administer qualifying examinations to test the knowledge and proficiency of applicants seeking to be licensed by examination;

(3) To register persons who apply to the department and who are qualified to engage in the fitting and selling of hearing aids;

(4) To purchase and maintain or rent audiometric equipment and other facilities necessary to carry out the examination of applicants as provided in section 71-4707;

(5) To issue and renew licenses;

- (5) ~~(6)~~ To suspend or revoke licenses;  
 (6) ~~(7)~~ To designate the time and place for  
 examining applicants;  
 (7) ~~(8)~~ To appoint representatives to conduct  
 or supervise the examination;  
 (8) ~~(9)~~ To make and publish rules and  
 regulations not inconsistent with the laws of this state  
 which are necessary to carry out the provisions of  
 sections 71-4701 to 71-4719; and  
 (9) ~~(10)~~ To appoint or employ subordinate  
 employees.

Sec. 12. That section 71-4715, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-4715. (1) There is hereby established a Board of Hearing Aid ~~Dealers~~ Instrument Dispensers and Fitters which shall guide, advise, and make recommendations to the department.

(2) Members of the board shall be residents of the state. The board shall consist of three hearing aid instrument dispensers ~~dealers~~ and fitters, one otolaryngologist, and one audiologist. Each hearing aid ~~dealer~~ instrument dispenser and fitter on the board shall have not less than five years of experience and shall hold a valid license, as a hearing aid dealer and fitter, as provided under sections 71-4701 to 71-4719, except that the hearing aid dealers and fitters of the first board appointed shall have not less than five years of experience and shall fulfill all qualifications for license by experience as provided under section 71-4705.

(3) All members of such board shall be appointed by the Governor. The term of office of each member shall be for four years, excepting that of the members of the first board appointed under sections 71-4701 to 71-4719, two shall be appointed for two years, two shall be appointed for three years, and one shall be appointed for four years. Before a member's term expires, the Governor shall appoint a successor to take office on the expiration of his or her term. A vacancy in the office of a member shall be filled by appointment for the unexpired term. The members of the board shall annually designate one member to serve as chairperson and another to serve as secretary-treasurer.

No member of the board who has served two or more full terms may be reappointed to the board until at least one year after the expiration of his or her most recent full term of office.

(4) Members of the board shall receive for each day actually engaged in the duties of the office a per diem amount of twenty-five dollars, not to exceed the sum of one thousand dollars per year, and reimbursement for actual and necessary travel and other expenses, as provided in sections 84-306.01 to 84-306.05 for state employees, such remuneration and reimbursement to be paid from appropriations made for this purpose.

Sec. 13. That original sections 71-4701 to 71-4704, 71-4706 to 71-4709, 71-4711, 71-4712, 71-4714, and 71-4715, Reissue Revised Statutes of Nebraska, 1943, and also section 71-4705, Reissue Revised Statutes of Nebraska, 1943, are repealed.