

AN ACT

ENTITLED, An Act to provide for the licensure of audiologists and establish a combined board for the regulation of audiologists and hearing aid dispensers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 36-24-1 be amended to read as follows:

36-24-1. Terms used in this chapter mean:

- (1) "Audiogram," a graphic summary of the measurements of hearing loss showing number of decibels loss at each frequency tested;
- (2) "Audiology," the application of principles, methods, and procedures related to hearing and the disorders of hearing and to related language and speech disorders;
- (3) "Board," the South Dakota Board of Hearing Aid Dispensers and Audiologists;
- (4) "Disorders of hearing," any condition, whether of organic or nonorganic origin, peripheral or central, that impedes the normal process of human communication including disorders of auditory sensitivity, acuity, function, or processing;
- (5) "Dispense," any transfer of title, possession, or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with a distributor or dealer;
- (6) "License," any license issued by the board to dispense hearing aids or practice audiology;
- (7) "Provisional license," any license issued to an applicant who is practicing audiology while completing the postgraduate professional experience as required by this Act or a license issued to an applicant as a hearing aid dispenser trainee and supervised by a person who holds a valid hearing aid dispensing license or audiology license;
- (8) "Supervisor," any person who is licensed and accepts the responsibility of overseeing the training of provisional licensees in their respective professions.

Section 2. For the purposes of this Act, a hearing aid is any wearable instrument or device

offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories to the instrument or device, including ear molds, but excluding batteries and cords. The term, hearing aid, does not include cochlear implant or cochlear prosthesis.

Section 3. For the purposes of this Act, an audiologist is any person who engages in the practice of audiology and who meets the qualifications set forth in this Act. A person represents oneself to be an audiologist if that person holds out to the public by any means, or by any service or function performed, directly or indirectly, or by using the terms audiology, audiologist, audiometrist, audiological, hearing therapy, hearing therapist, hearing clinic, hearing clinician, hearing aid audiologist, or any variation that expresses these terms.

Section 4. For the purposes of this Act, a hearing aid dispenser is any person, other than an audiologist, engaged in the evaluation or measurement of the powers or range of human hearing by means of an audiometer, or by any other means devised, and the consequent selection or adaptation or sale of a hearing aid intended to compensate for hearing loss, including the making of an ear impression.

Section 5. For the purposes of this Act, instruction is either of the following:

- (1) Providing audiology services or teaching in an infant or toddler program, a preschool, an elementary school, a secondary school, or a developmental disability program; or
- (2) Teaching students in institutions of higher education.

Section 6. For the purposes of this Act, research is the systematic investigation designed to develop or contribute to generalizable knowledge about human communication, human communication disorders, and evaluation or treatment strategies. Activities which meet this definition constitute research. However, research does not include activities that take place under the auspices of a recognized institutional review board which reviews, approves, and monitors proposals and activities involving human subjects to ensure that the rights and welfare of such

subjects are protected.

Section 7. The scope of practice of audiology includes:

- (1) Activities that identify, assess, diagnose, manage, and interpret test results related to disorders of human hearing, balance, and other neural systems;
- (2) Otoscope examination and external ear canal management for removal of cerumen in order to evaluate hearing or balance, make ear impressions, fit hearing protection or prosthetic devices, and monitor the continuous use of hearing aids;
- (3) The conduct and interpretation of behavioral, electroacoustic, or electrophysiologic methods used to assess hearing, balance, and neural system function;
- (4) Evaluation and management of children and adults with central auditory processing disorders;
- (5) Supervision and conduct of newborn hearing screening programs;
- (6) Measurement and interpretation of sensory and motor evoked potentials, electromyography, and other electrodiagnostic tests for purposes of neurophysiologic intraoperative monitoring and cranial nerve assessment;
- (7) Provision of hearing care by selecting, evaluating, fitting, facilitating adjustment to, and dispensing prosthetic devices for hearing loss, including hearing aids, sensory aids, hearing assistive devices, alerting and telecommunication systems, and captioning devices;
- (8) Assessment of the candidacy of persons with hearing loss for cochlear implants and provision of fitting, programming, and audiological rehabilitation to optimize device use;
- (9) Provision of audiological rehabilitation including speech reading, communication management, language development, auditory skill development, and counseling for psychosocial adjustment to hearing loss for persons with hearing loss and their

families or caregivers;

- (10) Consultation to educators as members of interdisciplinary teams about communication management, educational implications of hearing loss, educational programming, classroom acoustics, and large-area amplification systems for children with hearing loss;
- (11) Prevention of hearing loss and conservation of hearing function by designing, implementing, and coordinating occupational, school, and community hearing conservation and identification programs;
- (12) Consultation and provision of rehabilitation to persons with balance disorders using habituation, exercise therapy, and balance retraining;
- (13) Design and conduct of basic and applied audiologic research to increase the knowledge base, to develop new methods and programs, and to determine the efficacy of assessment and treatment paradigms, and the dissemination of research findings to other professionals and to the public;
- (14) Education and administration in audiology graduate and professional education programs;
- (15) Measurement of functional outcomes, consumer satisfaction, effectiveness, efficiency, and cost-benefit of practices and programs to maintain and improve the quality of audiological services;
- (16) Administration and supervision of professional and technical personnel who provide support functions to the practice of audiology;
- (17) Screening of speech-language, use of sign language, and other factors affecting communication function for the purposes of an audiological evaluation or initial identification of individuals with other communication disorders;
- (18) Consultation about accessibility for persons with hearing loss in public and private

buildings, programs, and services;

- (19) Assessment and nonmedical management of tinnitus using biofeedback, masking, hearing aids, education, and counseling;
- (20) Consultation to individuals, public and private agencies, and governmental bodies, or as an expert witness regarding legal interpretations of audiology findings, effects of hearing loss and balance system disorders, and relevant noise-related considerations;
- (21) Case management and service as a liaison for consumers, families, and agencies in order to monitor audiologic status and management and to make recommendations about educational and vocational programming;
- (22) Consultation to industry on the development of products and instrumentation related to the measurement and management of auditory or balance function; and
- (23) Participation in the development of professional and technical standards.

Section 8. That § 36-24-2 be amended to read as follows:

36-24-2. There is hereby created the South Dakota Board of Hearing Aid Dispensers and Audiologists with the duties and powers as provided in this chapter.

Section 9. That § 36-24-3 be amended to read as follows:

36-24-3. The board shall consist of five members who have been residents of this state for at least one year prior to their appointment. Two members of the board shall be audiologists who are currently practicing audiology or who have two years of experience practicing audiology and who hold active licensure for the practice of audiology in this state. The first audiologist appointed to the board shall meet the eligibility requirements for licensure as specified in this Act. Two members of the board shall be persons with at least two years of experience in the practice of fitting and dispensing hearing aids and who hold an active hearing aid dispensing license. One member of the board shall be a representative of the public who is not associated with or financially interested in the practice or business of hearing aid dispensing or audiology or who

is not a member of a related profession or occupation.

Section 10. That § 36-24-4 be amended to read as follows:

36-24-4. The members of the board enumerated in § 36-24-3 shall be appointed by the Governor from a list of at least five audiologists submitted by the South Dakota Academy of Audiology and a list of at least five hearing aid dispensers submitted by the South Dakota Hearing Aid Dispenser's Association, or from a list of nominees submitted by any member of the public. No member of the board may concurrently serve in an elected, appointed, or employed position in any state professional association or governmental regulatory agency which presents a conflict of interest.

Section 11. That § 36-24-4.1 be amended to read as follows:

36-24-4.1. The membership of the board shall include one lay member who shall be appointed by the Governor and shall have the same term of office as other members of the board.

The lay member of the board shall be a member of the general public who:

- (1) Is not and has never been an audiologist or hearing aid dispenser;
- (2) Has no household member who is an audiologist or hearing aid dispenser;
- (3) Is not and has never been a participant in a commercial or professional field related to audiology or the provisions of hearing aid services;
- (4) Has no household member who participates in a commercial or professional field related to audiology or the provisions of hearing aid services; and
- (5) Has not had, within two years before appointment, a financial interest in a person regulated by the board.

Section 12. That § 36-24-5 be amended to read as follows:

36-24-5. Board members shall be appointed for a term of three years. However, members who are on the board as of the effective date of this Act shall continue to serve until replaced by the Governor. Each member shall serve until a successor has been appointed.

Section 13. That § 36-24-6 be amended to read as follows:

36-24-6. No member of the board may serve more than two consecutive three-year terms or be reappointed to the board until at least one year after the expiration of the member's second term of office. The Governor may remove a member of the board for dishonorable conduct, incompetence, or neglect of duty.

Section 14. That § 36-24-9 be amended to read as follows:

36-24-9. The board shall meet at least once in each fiscal year to conduct business at a place and time it determines. Additional meetings may be convened at the call of the chair to carry out the purposes of this chapter. Four members of the board constitute a quorum to conduct business.

Section 15. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as follows:

Board members shall receive a per diem set pursuant to § 4-7-10.4 and expenses at the same rate as other state employees while actually engaged in official duties. In accordance with chapter 3-6A, the board may hire office personnel necessary to carry on its official duties.

Section 16. That § 36-24-10.1 be amended to read as follows:

36-24-10.1. The South Dakota Board of Hearing Aid Dispensers and Audiologists shall continue within the Department of Commerce and Regulation, and shall retain all its prescribed functions, including administrative functions. The board shall submit such records, information, and reports in the form and at such times as required by the secretary of commerce and regulation. However, the board shall report at least annually.

Section 17. That § 36-24-11 be amended to read as follows:

36-24-11. All moneys coming into the custody of the board, including license fees, renewal fees, penalty fees, reciprocity fees, late fees, and any other payments, shall be paid by the board to the state treasurer on or before the tenth day of each month, and shall consist of all moneys

received by the board during the preceding calendar month. The state treasurer shall credit the moneys to the South Dakota Board of Hearing Aid Dispensers and Audiologists account of the general fund, which account is hereby created. The moneys in the account are hereby continuously appropriated to the board for the purpose of paying the expense of administering and enforcing the provisions of this chapter. The total expenses incurred by the board may not exceed the total moneys collected.

Section 18. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as follows:

The board may:

- (1) Authorize all disbursements necessary to carry out the provisions of this Act;
- (2) Administer, coordinate, and enforce the provisions of this Act, establish licensure fees, evaluate the qualifications of applicants, and issue and renew licenses;
- (3) Prepare, administer, conduct, and supervise the qualifying examinations to test the knowledge and proficiency of hearing aid dispensers, and provide facilities necessary to carry out these examinations;
- (4) Revoke, suspend, refuse to issue or renew a license, issue a letter of reprimand or concern, require restitution of fees, or impose probationary conditions in the manner provided in this Act;
- (5) Issue subpoenas, examine witnesses, administer oaths, conduct hearings and, at its discretion, investigate allegations of violations of this Act and impose penalties if such violations of this Act have occurred;
- (6) Maintain a list of persons currently licensed and registered under the provision of this Act and the clock hours of continuing education submitted by each person;
- (7) Employ personnel as determined by its needs and budget;
- (8) Request legal advice and assistance, as needed, from the Attorney General's Office;

- (9) Enter into contracts as necessary to carry out its responsibilities under this Act;
- (10) Hire legal counsel, if necessary;
- (11) Establish a budget;
- (12) Submit reports of its operations and finances as requested by the Department of Commerce and Regulation;
- (13) Adopt an official seal by which it may authenticate its proceedings, copies of proceedings, records, acts of the board, and licenses;
- (14) Communicate disciplinary actions to relevant state and federal authorities and to other state audiology licensing authorities as necessary;
- (15) Establish continuing education requirements;
- (16) Establish peer review committees within each discipline for review purposes.

Section 19. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as follows:

An audiology aide shall work under the supervision of a licensed audiologist. A licensed audiologist supervising an audiology aide shall:

- (1) Register with the board the name of each aide the audiologist is supervising on a form prescribed by the board;
- (2) Account for the performance and all services provided by the aide, consistent with the designated standards and requirements established by the board; and
- (3) Ensure that persons receiving services from an aide receive prior written notification that services are provided by an aide.

Section 20. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as follows:

The aide may not engage in any of the following activities:

- (1) Interpreting obtained observations or data into diagnostic statements of clinical

- management strategies or procedures;
- (2) Determining case selection;
 - (3) Transmitting clinical information including data or impressions relative to client performance, behavior, or progress either verbally or in writing to anyone other than the professional;
 - (4) Independently composing clinical reports except for progress notes to be held in the client's file;
 - (5) Referring a client to other agencies;
 - (6) Using any title either verbally or in writing other than that determined by the professional; or
 - (7) Providing services in home health agencies.

Section 21. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as follows:

The board shall promulgate rules pursuant to chapter 1-26 defining the role of audiology aides. The rules may cover:

- (1) The supervisory responsibilities of the licensee;
- (2) The ratio of aides to licensees;
- (3) The frequency, duration, and documentation of direct, on-site supervision of the licensee;
- (4) The quantity and content of preservice and inservice instruction;
- (5) The procedures for renewing the registration of aides and terminating their duties; and
- (6) The minimum educational requirements for audiology aides.

Section 22. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as follows:

Nothing in this Act may be construed as preventing or restricting the activities and services

of persons pursuing a course of study leading to a degree in speech-language pathology or audiology at a college or university if these activities and services constitute a part of a planned course of study at that institution and these persons are designated by a title such as intern, trainee, student, volunteer, occupational hearing conservationist, industrial audiometric technician, or by other such title clearly indicating the status appropriate to their level of education and these persons work under the supervision of a person licensed by the state to practice audiology.

Section 23. That § 36-24-16 be amended to read as follows:

36-24-16. No person may engage in the practice of fitting and dispensing hearing aids or audiology, or display a sign, or in any other way advertise or hold oneself out as a person who practices the fitting and dispensing of hearing aids or audiology in the State of South Dakota unless the person holds a current license issued by the board as provided in this chapter.

Section 24. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as follows:

Any applicant pursuant to this Act shall apply on a form prescribed by the board and pay any applicable fees. The applicant shall also meet all other qualifications specified within this Act for each respective profession for which the person seeks licensure.

Section 25. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as follows:

Any applicant for licensure to practice hearing aid dispensing shall:

- (1) Be of good moral character;
- (2) Be eighteen years of age or older;
- (3) Be a high school graduate or the equivalent; and
- (4) Pass an examination approved by the board.

The applicant may not be the holder of an audiology license.

Section 26. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as follows:

To be eligible for licensure by the board as an audiologist, the applicant shall:

- (1) Be of good moral character;
- (2) Possess a master's or doctorate degree in audiology from a regionally accredited educational institution;
- (3) Complete the supervised clinical practicum experience from a regionally accredited educational institution or its cooperating programs;
- (4) Complete a period of supervised graduate professional experience in audiology as recognized by the American Speech-Language-Hearing Association or the American Academy of Audiology; and
- (5) Pass a national standardized examination in audiology as recognized by the American Speech-Language-Hearing Association or the American Academy of Audiology.

Section 27. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as follows:

An applicant who does not meet the provisions of subdivision (4) or (5) of section 26 of this Act may be issued a license to practice as an audiologist pending board approval if the applicant demonstrates the following:

- (1) Has formally and consistently represented oneself to the public as an audiologist;
- (2) Has a master's or doctorate degree in audiology from a regionally accredited educational institution;
- (3) Has spent the majority of working hours in the practice of audiology;
- (4) Passed any board designated written or oral exam for applicants who have not met subdivision (5) of section 26 of this Act;
- (5) Submits an application on a form prescribed by the board by January 1, 1998; and

(6) Pays the application fee set by the board not to exceed three hundred fifty dollars.

Section 28. That § 36-24-18 be amended to read as follows:

36-24-18. An applicant for a hearing aid dispensing license having been notified by the board that the applicant has fulfilled the requirements of this Act shall appear at a time, place, and before such persons as the board may designate, to be examined by written and oral tests to determine that the applicant is qualified to practice the fitting and dispensing of hearing aids.

Section 29. That § 36-24-19 be amended to read as follows:

36-24-19. As the volume of applications may make appropriate, the board shall administer the qualifying examinations throughout the year as the board may designate.

Section 30. That § 36-24-20 be amended to read as follows:

36-24-20. Any applicant who otherwise qualifies for a license to practice hearing aid dispensing is entitled to be examined. The examination shall include the following:

- (1) Tests of knowledge in the following areas as they pertain to the fitting and dispensing of hearing aids:
 - (a) Basic physics of sound;
 - (b) The human hearing mechanism, including the science of hearing and the rehabilitation of abnormal hearing disorders;
 - (c) Structure and function of hearing aids;
- (2) Tests of proficiency in the following techniques as they pertain to the fitting and dispensing of hearing aids:
 - (a) Pure tone audiometry, including air conduction and bone conduction testing;
 - (b) Live voice and recorded voice speech audiometry, including speech threshold testing and speech discrimination testing;
 - (c) Effective masking;
 - (d) Recording and evaluation of audiograms and speech audiometry tests to

determine hearing aid candidacy;

- (e) Selection and adaptation of hearing aids and testing of hearing aids;
- (f) Taking earmold impressions, and proficiency in any other skills as they pertain to the fitting and dispensing of hearing aids.

No test under this section may include any questions requiring a medical or surgical education.

Section 31. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as follows:

The board shall issue a license to any applicant who meets the requirements of this Act and pays the application fee set by the board not to exceed three hundred fifty dollars.

Section 32. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as follows:

Nothing in this Act may be construed as preventing or restricting:

- (1) A person licensed or registered by this state in another profession from practicing the profession for which licensed or registered;
- (2) A person credentialed by this state as a teacher of the hearing impaired providing instruction to the hearing impaired;
- (3) A physician or surgeon licensed by this state from performing tasks directly related to a disorder being treated;
- (4) Any person possessing a valid certificate as a certified industrial audiometric technician or occupational hearing conservationist recognized by the board as meeting Council for Accreditation in Occupational Hearing Conservation Standards if such service is performed in cooperation with either an audiologist licensed under this Act or a licensed physician of this state.

Section 33. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as

follows:

The board shall issue a provisional hearing aid dispensing license, valid until the board receives the results from the next available administration of the examination following a submission of application of license, to an applicant to provide hearing aid services to a person who is waiting to take the hearing aid dispensing examination under this Act. The board may issue a provisional hearing aid dispensing license valid until the board receives the results from the next available administration of the examination, not to exceed a one year period, to provide hearing aid services only to a person who:

- (1) Except for taking and passing an examination under this Act, otherwise qualifies for a hearing aid dispensing license;
- (2) Submits an application on the form prescribed by the board; and
- (3) Pays the application fee set by the board not to exceed one hundred fifty dollars.

If a person who holds a provisional hearing aid dispensing license issued under this section after the date of issue is unable to be present at the board specified examination, the provisional hearing aid dispensing license may not be renewed except for good cause shown to the satisfaction of the board.

While the provisional hearing aid dispensing license is in effect, the holder may provide hearing aid services only while being trained under the supervision of a licensed hearing aid dispenser or licensed audiologist.

Section 34. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as follows:

The board shall issue a provisional audiology license to an applicant who:

- (1) Except for the postgraduate professional experience, meets the academic, practicum, and examination requirements of this Act;
- (2) Applies to the board on a form prescribed by the board, with a plan for the content

of the postgraduate professional experience; and

- (3) Pays to the board the application fee for a provisional license not to exceed one hundred fifty dollars.

A person holding a provisional audiology license is authorized to practice audiology only while working under the supervision of a licensed audiologist under the provisions of this Act. The term for provisional audiology licenses and the conditions for renewal shall be determined by the board by rules promulgated pursuant to chapter 1-26.

Section 35. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as follows:

Pending board approval, the board may issue a hearing aid dispensing license or audiology license to an applicant holding a valid license from another state in the applicant's respective professional area who:

- (1) Applies to the board on a form prescribed by the board;
- (2) Pays to the board the application fee not to exceed three hundred fifty dollars;
- (3) Shows proof of current valid professional licensure;
- (4) Holds a license from a state with equivalent licensure standards; and
- (5) Is practicing audiology or hearing aid dispensing in the state in which the license was issued.

Section 36. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as follows:

The board shall waive the education, practicum, and professional experience requirements for applicants who received a professional education in another country if the board is satisfied that equivalent education and practicum requirements have been met and the applicant passes the national examination in audiology.

Section 37. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as

follows:

A license or provisional license issued under this Act expires annually at a time specified by rules promulgated by the board pursuant to chapter 1-26. A person licensed under this Act shall:

- (1) Pay a renewal license fee established by the board not to exceed three hundred fifty dollars;
- (2) Submit an application for renewal on a form prescribed by the board; and
- (3) Meet the continuing education requirements established by the board.

Licensees are granted a grace period of thirty days beyond the expiration date of the license to renew retroactively as long as licensees are otherwise eligible and pay to the board the renewal fee not to exceed three hundred fifty dollars and any late fee set by the board.

Section 38. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as follows:

A licensee who fails to renew by the end of the thirty-day grace period may have the license reinstated if:

- (1) The person submits an application for reinstatement to the board within three years after the expiration date of the license;
- (2) The person meets the requirements established by the board as conditions for license renewal; and
- (3) The person pays to the board a reinstatement fee that equals the renewal fee not to exceed three hundred fifty dollars in effect on the last regular renewal date immediately preceding the date of reinstatement, plus any late fee set by the board.

Any person who fails to renew a license within three years from the expiration date may not have the license reinstated. The person may apply for and obtain a new license on conditions of the requirements of this Act and pay to the board the appropriate fees.

Section 39. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as

follows:

A suspended license is subject to expiration and may be renewed as provided in this Act, but such renewal does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity or in any other conduct or activity in violation of the order of judgment by which the license was suspended.

A license revoked on disciplinary grounds is subject to expiration as provided in this Act, but it may not be renewed. If such license is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee that shall equal the renewal fee not to exceed three hundred fifty dollars in effect on the last regular renewal date immediately preceding the date of reinstatement, plus any late fee set by the board.

Section 40. That § 36-24-30 be amended to read as follows:

36-24-30. The license required by § 36-24-16 shall be kept conspicuously posted in the licensee's office or place of business at all times. A violation of this section is a Class 2 misdemeanor.

Section 41. That § 36-24-31 be amended to read as follows:

36-24-31. Any person who holds a hearing aid dispensing license or an audiology license shall notify the board in writing of the town and street address of the place where the licensee engages or intends to engage in the practice of the dispensing of hearing aids or audiology. If the place of business is located in, or in connection with, a place of residence, the room to be used as an office shall be clearly designated and identified for the convenience of the public. The board shall keep an up-to-date record of these addresses.

Section 42. That § 36-24-32 be amended to read as follows:

36-24-32. Any notice required to be given by the board to a person who holds a hearing aid dispensing license or an audiology license may be given by mailing it to the licensee at the address of the last place of business of which the licensee has notified the board under

§ 36-24-31. A post office box number may not be the address of a place of business.

Section 43. That § 36-24-33 be amended to read as follows:

36-24-33. Any person who practices the dispensing of hearing aids in the State of South Dakota shall deliver to each person sold a hearing aid a receipt which contains the seller's signature, the business address of the seller, specification of the hearing aid furnished including whether it is new, used, or rebuilt, serial number of the aid, date of sale, and the total purchase price charged for the aid less any allowance for a trade-in, if any, and the net amount paid by the purchaser. A copy of the original sales order constitutes a valid receipt and a legal bill of sale, and the purchaser's signature constitutes full acknowledgment of the terms of the sale. A violation of this section is a Class 2 misdemeanor.

Section 44. That § 36-24-34 be amended to read as follows:

36-24-34. No person may sell, barter, or offer to sell or barter any hearing aid dispensing license or audiology license. A violation of this section is a Class 2 misdemeanor.

Section 45. That § 36-24-35 be amended to read as follows:

36-24-35. No person may purchase a hearing aid dispensing license or an audiology license or procure either license by barter with the intent to use it as evidence of the holder's qualifications to practice the dispensing of hearing aids or to practice audiology. A violation of this section is a Class 2 misdemeanor.

Section 46. That § 36-24-36 be amended to read as follows:

36-24-36. No person may alter a hearing aid dispensing license or an audiology license with fraudulent intent. A violation of this section is a Class 2 misdemeanor.

Section 47. That § 36-24-37 be amended to read as follows:

36-24-37. No person may use or attempt to use a valid hearing aid dispensing license or audiology license which has been purchased, fraudulently obtained, counterfeited, or altered. A violation of this section is a Class 2 misdemeanor.

Section 48. That § 36-24-38 be amended to read as follows:

36-24-38. No person may intentionally make a false statement in an application for a hearing aid dispensing license or an audiology license or for a renewal of either license. A violation of this section is a Class 2 misdemeanor.

Section 49. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as follows:

Conduct which endangers or is likely to endanger the health, welfare, or safety of the public is grounds for disciplinary action and includes the following:

- (1) Aiding or abetting unlicensed practice;
- (2) Using or promoting or causing the use of any misleading, deceiving, improbable, or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation;
- (3) Falsely representing the use or availability or services or advice of a physician;
- (4) Misrepresenting the applicant, licensee, or holder by using the word, doctor, or any similar word, abbreviation, or symbol if the use is not accurate or if the degree was not obtained from a regionally accredited institution;
- (5) Committing any act of dishonorable or unprofessional conduct while engaging in the practice of audiology or hearing aid dispensing;
- (6) Engaging in illegal, incompetent, or habitually negligent practice;
- (7) Providing professional services while mentally incompetent, under the influence of alcohol, using any narcotic or controlled dangerous substance or other drug that is in excess of therapeutic amounts or without valid medical indication or having a serious infectious or contagious disease;
- (8) Providing services or promoting the sale of devices, appliances, or products to a person who cannot reasonably be expected to benefit from such services, devices,

appliances, or products;

- (9) Violating any provision of this Act, any order given by the board, or rule adopted by the board;
- (10) Being convicted of or pleading guilty or nolo contendere to a felony, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;
- (11) Being disciplined by a licensing or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under this section;
- (12) Obtaining any fee or making any sale by fraud or misrepresentation;
- (13) Advertising a particular model, type, or kind of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type, or kind if it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type, or kind than that advertised;
- (14) Permitting another person to use the hearing aid dispensing license or audiology license;
- (15) Defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or falsely disparaging the products of competitors in any respect, or their business methods, selling prices, values, credit terms, policies, or services;
- (16) Displaying competitive products in a show window, shop, or advertisement in such manner as to falsely disparage them;
- (17) Quoting prices of competitive hearing aids or devices without disclosing that they are not the present current prices, or to show, demonstrate, or represent competitive models as being current models when such is not the fact;

- (18) Imitating or simulating the trademarks, trade names, brands, or labels of competitors, with the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers;
- (19) Using any trade name, corporate name, trademark, or other designation, which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the name, nature, or origin of any product of the industry, or of any material used in the product, or which is false, deceptive, or misleading in any other material effect;
- (20) Obtaining information concerning the business of a competitor by bribery of an employee or agent of a competitor, by false or misleading statements or representations, impersonation of one in authority, or by any other unfair means;
- (21) Giving, or offering to give money or anything of value to any person who advises another in a professional capacity as an inducement to influence them or have them influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or audiologist, or to influence persons to refrain from dealing in the products of competitors;
- (22) Use of a false name or alias in the practice of the business.

Section 50. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as follows:

Any person licensed under this Act is subject to the disciplinary actions of this section. Disciplinary actions are subject to contested case procedure in chapter 1-26. The board may impose the following disciplinary actions if an applicant for a license or a licensee is found guilty of conduct which endangered or is likely to endanger the health, welfare, or safety of the public:

- (1) Refuse to issue or renew a license;
- (2) Issue a letter of reprimand or concern;

- (3) Require restitution of fees;
- (4) Impose probationary conditions;
- (5) Suspend or revoke a license.

Section 51. That § 36-24-41 be amended to read as follows:

36-24-41. No hearing aid dispensing license or audiology license issued pursuant to this chapter may be suspended, revoked, or denied , and no renewal may be denied, except in compliance with chapter 1-26.

Section 52. That § 36-24-42 be amended to read as follows:

36-24-42. The board may enforce any provision of this chapter by injunction or by any other appropriate proceeding. No proceeding may be barred by any proceeding which occurred or is pending pursuant to § 36-24-40. However, an action for injunction is alternate to criminal proceedings, and the commencement of one proceeding by the board constitutes an election.

Section 53. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as follows:

The board may apply for relief by injunction, without bond, to restrain any person, partnership, or corporation from engaging in any act or practice which constitutes an offense against this Act. It is not necessary for the board to allege and prove that there is no adequate remedy at law in order to obtain the relief requested. The members of the board are not individually liable for applying for such relief.

Section 54. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as follows:

An applicant shall be issued a South Dakota hearing aid dispensing license if the applicant holds a current and valid South Dakota hearing aid dispenser's license and is not eligible for a South Dakota audiology license prior to the enactment of this legislation.

Section 55. That chapter 36-24 be amended by adding thereto a NEW SECTION to read as

follows:

The board may promulgate rules pursuant to chapter 1-26 to establish application fees, license fees, provisional license fees, renewal fees, penalty fees, reciprocity fees, and late fees. All fees provided under this Act are nonrefundable.

The board may also promulgate rules pursuant to chapter 1-26 for the qualification of applicants, issuance and renewal of licenses, and requirements for continuing education.

Section 56. That § 36-24-10 be repealed.

Section 57. That § 36-24-12 be repealed.

Section 58. That § 36-24-13 be repealed.

Section 59. That § 36-24-15 be repealed.

Section 60. That § 36-24-17 be repealed.

Section 61. That § 36-24-21 be repealed.

Section 62. That § 36-24-22 be repealed.

Section 63. That § 36-24-24 be repealed.

Section 64. That § 36-24-25 be repealed.

Section 65. That § 36-24-28 be repealed.

Section 66. That § 36-24-29 be repealed.

Section 67. That § 36-24-39 be repealed.

Section 68. That § 36-24-40 be repealed.

Section 69. That § 36-24-43 be repealed.

An Act to provide for the licensure of audiologists and establish a combined board for the regulation of audiologists and hearing aid dispensers.

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I certify that the attached Act
originated in the
SENATE as Bill No. 18

Secretary of the Senate

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 18
File No.
Chapter No.

=====
Received at this Executive Office
this ___ day of _____,
19__ at ___ M.

By _____
for the Governor

=====
The attached Act is hereby
approved this _____ day of
_____, A.D., 19__

Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 19__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State