

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

904A0154

HOUSE ENGROSSED NO. **SB18** - 2/6/97

Introduced by: Senators Johnson (William) and Morford-Burg and Representatives Munson (Donald) and Chicoine at the request of the Interim Government Operations and Audit Committee

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

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

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

5 36-24-1. Terms used in this chapter, ~~unless the context requires otherwise~~, mean:

6 ~~(1) "Board," the South Dakota board of hearing aid dispensers.~~

7 ~~(2) "Certificate of license" includes a permanent or temporary license and or a certificate~~
8 ~~of endorsement.~~

9 ~~(3) "Hearing aid," any instrument or device designed for or represented as aiding or~~
10 ~~improving defective human hearing, and any parts, attachments or accessories of such~~
11 ~~an instrument or device.~~

12 (1) "Audiogram," a graphic summary of the measurements of hearing loss showing
13 number of decibels loss at each frequency tested;

14 (2) "Audiology," the application of principles, methods, and procedures related to hearing

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

16 Section 2. For the purposes of this Act, a hearing aid is any wearable instrument or device
17 offered for the purpose of aiding or compensating for impaired human hearing and any parts,
18 attachments, or accessories to the instrument or device, including ear molds, but excluding
19 batteries and cords. The term, hearing aid, does not include cochlear implant or cochlear
20 prosthesis.

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

1 hearing aid audiologist, or any variation that expresses these terms.

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

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

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

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

18 Section 7. The scope of practice of audiology includes:

- 19 (1) Activities that identify, assess, diagnose, manage, and interpret test results related to
20 disorders of human hearing, balance, and other neural systems;
- 21 (2) Otoscopic examination and external ear canal management for removal of cerumen
22 in order to evaluate hearing or balance, make ear impressions, fit hearing protection
23 or prosthetic devices, and monitor the continuous use of hearing aids;
- 24 (3) The conduct and interpretation of behavioral, electroacoustic, or electrophysiologic
25 methods used to assess hearing, balance, and neural system function;

- 1 (4) Evaluation and management of children and adults with central auditory processing
2 disorders;
- 3 (5) Supervision and conduct of newborn hearing screening programs;
- 4 (6) Measurement and interpretation of sensory and motor evoked potentials,
5 electromyography, and other electrodiagnostic tests for purposes of neurophysiologic
6 intraoperative monitoring and cranial nerve assessment;
- 7 (7) Provision of hearing care by selecting, evaluating, fitting, facilitating adjustment to,
8 and dispensing prosthetic devices for hearing loss, including hearing aids, sensory
9 aids, hearing assistive devices, alerting and telecommunication systems, and
10 captioning devices;
- 11 (8) Assessment of the candidacy of persons with hearing loss for cochlear implants and
12 provision of fitting, programming, and audiological rehabilitation to optimize device
13 use;
- 14 (9) Provision of audiological rehabilitation including speech reading, communication
15 management, language development, auditory skill development, and counseling for
16 psychosocial adjustment to hearing loss for persons with hearing loss and their
17 families or caregivers;
- 18 (10) Consultation to educators as members of interdisciplinary teams about communication
19 management, educational implications of hearing loss, educational programming,
20 classroom acoustics, and large-area amplification systems for children with hearing
21 loss;
- 22 (11) Prevention of hearing loss and conservation of hearing function by designing,
23 implementing, and coordinating occupational, school, and community hearing
24 conservation and identification programs;
- 25 (12) Consultation and provision of rehabilitation to persons with balance disorders using

- 1 habituation, exercise therapy, and balance retraining;
- 2 (13) Design and conduct of basic and applied audiologic research to increase the
3 knowledge base, to develop new methods and programs, and to determine the efficacy
4 of assessment and treatment paradigms, and the dissemination of research findings to
5 other professionals and to the public;
- 6 (14) Education and administration in audiology graduate and professional education
7 programs;
- 8 (15) Measurement of functional outcomes, consumer satisfaction, effectiveness, efficiency,
9 and cost-benefit of practices and programs to maintain and improve the quality of
10 audiological services;
- 11 (16) Administration and supervision of professional and technical personnel who provide
12 support functions to the practice of audiology;
- 13 (17) Screening of speech-language, use of sign language, and other factors affecting
14 communication function for the purposes of an audiological evaluation or initial
15 identification of individuals with other communication disorders;
- 16 (18) Consultation about accessibility for persons with hearing loss in public and private
17 buildings, programs, and services;
- 18 (19) Assessment and nonmedical management of tinnitus using biofeedback, masking,
19 hearing aids, education, and counseling;
- 20 (20) Consultation to individuals, public and private agencies, and governmental bodies, or
21 as an expert witness regarding legal interpretations of audiology findings, effects of
22 hearing loss and balance system disorders, and relevant noise-related considerations;
- 23 (21) Case management and service as a liaison for consumers, families, and agencies in
24 order to monitor audiologic status and management and to make recommendations
25 about educational and vocational programming;

1 (22) Consultation to industry on the development of products and instrumentation related
2 to the measurement and management of auditory or balance function; and

3 (23) Participation in the development of professional and technical standards.

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

5 36-24-2. There is hereby created a ~~board to be known as~~ the "South Dakota Board of
6 Hearing Aid Dispensers" ~~constituted as set out in § 36-24-3~~, and Audiologists with the
7 duties and powers as provided in this chapter.

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

9 36-24-3. The board shall ~~include~~ consist of five professional members, ~~all of whom shall be~~
10 ~~residents of this state, as follows: one member shall be a person licensed to practice medicine in~~
11 ~~this state and who specializes in the practice of otolaryngology; a second member shall be a~~
12 ~~person engaged in practicing the profession of a clinical audiologist; a third member shall be the~~
13 ~~person holding the office of president of the South Dakota Hearing Aid Dealer's Association; the~~
14 ~~remaining two members shall be persons with at least five years' experience in the practice of~~
15 ~~fitting and dispensing of hearing aids, one of whom is established in business east of the Missouri~~
16 ~~River and one of whom is established in business west of the Missouri River, and one of whom~~
17 ~~must be currently certified by the National Hearing Aid Society. All professional members~~
18 ~~appointed to the board, except the otolaryngologist and the clinical audiologist, shall be persons~~
19 ~~who hold a valid license pursuant to this chapter~~ who have been residents of this state for at least
20 one year prior to their appointment. Two members of the board shall be audiologists who are
21 currently practicing audiology or who have two years of experience practicing audiology and
22 who hold active licensure for the practice of audiology in this state. The first audiologist
23 appointed to the board shall meet the eligibility requirements for licensure as specified in this Act.
24 Two members of the board shall be persons with at least two years of experience in the practice
25 of fitting and dispensing hearing aids and who hold an active hearing aid dispensing license. One

1 member of the board shall be a representative of the public who is not associated with or
2 financially interested in the practice or business of hearing aid dispensing or audiology or who
3 is not a member of a related profession or occupation.

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

5 36-24-4. The members of ~~said~~ the board enumerated in § 36-24-3 shall be appointed by the
6 Governor from ~~lists~~ a list of eligible nominees at least five audiologists submitted to ~~him~~ by the
7 South Dakota ~~Medical Association, the South Dakota Speech and Hearing Association and~~
8 Academy of Audiology and a list of at least five hearing aid dispensers submitted by the South
9 Dakota Hearing Aid ~~Dealer's~~ Dispenser's Association, or from a list of nominees submitted by
10 any member of the public. No member of the board may concurrently serve in an elected,
11 appointed, or employed position in any state professional association or governmental regulatory
12 agency which presents a conflict of interest.

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

14 36-24-4.1. The membership of the board shall include one lay member who ~~is a user of the~~
15 ~~services regulated by the board. The term lay member who is a user refers to a person who is not~~
16 ~~licensed by the board but where practical uses the service licensed, and the meaning shall be~~
17 ~~liberally construed to implement the purpose of this section. The lay member shall be appointed~~
18 ~~by the Governor and shall have the same term of office as other members of the board~~ shall be
19 appointed by the Governor and shall have the same term of office as other members of the board.
20 The lay member of the board shall be a member of the general public who:

- 21 (1) Is not and has never been an audiologist or hearing aid dispenser;
- 22 (2) Has no household member who is an audiologist or hearing aid dispenser;
- 23 (3) Is not and has never been a participant in a commercial or professional field related
24 to audiology or the provisions of hearing aid services;
- 25 (4) Has no household member who participates in a commercial or professional field

1 related to audiology or the provisions of hearing aid services; and

2 (5) Has not had, within two years before appointment, a financial interest in a person
3 regulated by the board.

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

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

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

10 36-24-6. No member of the board may serve more than two consecutive three-year terms or
11 be reappointed to the board until at least one year after the expiration of his ~~the member's~~ second
12 term of office. The Governor may remove a member of the board for dishonorable conduct,
13 incompetence, or neglect of duty.

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

15 36-24-9. The board shall meet at least once a in each fiscal year to conduct business at a
16 place and time ~~determined by the chairman. The board shall also meet at such other times and~~
17 ~~places as are specified by the chairman~~ it determines. Additional meetings may be convened at
18 the call of the chair to carry out the purposes of this chapter. Four members of the board
19 constitute a quorum to conduct business.

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

22 Board members shall receive a per diem set pursuant to § 4-7-10.4 and expenses at the same
23 rate as other state employees while actually engaged in official duties. In accordance with chapter
24 3-6A, the board may hire office personnel necessary to carry on its official duties.

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

1 36-24-10.1. The South Dakota Board of Hearing Aid Dispensers and Audiologists shall
2 continue within the Department of Commerce and Regulation, and shall retain all its prescribed
3 functions, including administrative functions. The board shall submit such records, information,
4 and reports in the form and at such times as required by the secretary of commerce and
5 regulation, ~~except that.~~ However, the board shall report at least annually.

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

7 36-24-11. All moneys coming into the custody of the board, including license fees, renewal
8 fees, penalty fees, reciprocity fees, late fees, and any other payments, shall be paid by the board
9 to the state treasurer on or before the tenth day of each month, ~~consisting~~ and shall consist of
10 all moneys received by the board during the preceding calendar month. The state treasurer shall
11 credit the ~~said~~ moneys to the South Dakota Board of Hearing Aid Dispensers and Audiologists
12 account of the general fund, which account is hereby created. The moneys in the ~~said South~~
13 ~~Dakota board of hearing aid dispensers~~ account are hereby continuously appropriated to the
14 board for the purpose of paying the expense of administering and enforcing the provisions of this
15 chapter. The total expenses incurred by the board may not exceed the total moneys collected.

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

18 The board may:

- 19 (1) Authorize all disbursements necessary to carry out the provisions of this Act;
- 20 (2) Administer, coordinate, and enforce the provisions of this Act, establish licensure fees,
21 evaluate the qualifications of applicants, and issue and renew licenses;
- 22 (3) Prepare, administer, conduct, and supervise the qualifying examinations to test the
23 knowledge and proficiency of hearing aid dispensers, and provide facilities necessary
24 to carry out these examinations;
- 25 (4) Revoke, suspend, refuse to issue or renew a license, issue a letter of reprimand or

1 concern, require restitution of fees, or impose probationary conditions in the manner
2 provided in this Act;

3 (5) Issue subpoenas, examine witnesses, administer oaths, conduct hearings and, at its
4 discretion, investigate allegations of violations of this Act and impose penalties if such
5 violations of this Act have occurred;

6 (6) Maintain a list of persons currently licensed and registered under the provision of this
7 Act and the clock hours of continuing education submitted by each person;

8 (7) Employ personnel as determined by its needs and budget;

9 (8) Request legal advice and assistance, as needed, from the Attorney General's Office;

10 (9) Enter into contracts as necessary to carry out its responsibilities under this Act;

11 (10) Hire legal counsel, if necessary;

12 (11) Establish a budget;

13 (12) Submit reports of its operations and finances as requested by the Department of
14 Commerce and Regulation;

15 (13) Adopt an official seal by which it may authenticate its proceedings, copies of
16 proceedings, records, acts of the board, and licenses;

17 (14) Communicate disciplinary actions to relevant state and federal authorities and to other
18 state audiology licensing authorities as necessary;

19 (15) Establish continuing education requirements;

20 (16) Establish peer review committees within each discipline for review purposes.

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

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

25 (1) Register with the board the name of each aide the audiologist is supervising on a form

1 prescribed by the board;

2 (2) Account for the performance and all services provided by the aide, consistent with the
3 designated standards and requirements established by the board; and

4 (3) Ensure that persons receiving services from an aide receive prior written notification
5 that services are provided by an aide.

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

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

9 (1) Interpreting obtained observations or data into diagnostic statements of clinical
10 management strategies or procedures;

11 (2) Determining case selection;

12 (3) Transmitting clinical information including data or impressions relative to client
13 performance, behavior, or progress either verbally or in writing to anyone other than
14 the professional;

15 (4) Independently composing clinical reports except for progress notes to be held in the
16 client's file;

17 (5) Referring a client to other agencies;

18 (6) Using any title either verbally or in writing other than that determined by the
19 professional; or

20 (7) Providing services in home health agencies.

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

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

25 (1) The supervisory responsibilities of the licensee;

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

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

9 Nothing in this Act may be construed as preventing or restricting the activities and services
10 of persons pursuing a course of study leading to a degree in speech-language pathology or
11 audiology at a college or university if these activities and services constitute a part of a planned
12 course of study at that institution and these persons are designated by a title such as intern,
13 trainee, student, volunteer, occupational hearing conservationist, industrial audiometric
14 technician, or by other such title clearly indicating the status appropriate to their level of
15 education and these persons work under the supervision of a person licensed by the state to
16 practice audiology.

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

18 36-24-16. No person ~~shall~~ may engage in the practice of fitting and dispensing hearing aids
19 or audiology, or display a sign, or in any other way advertise or hold ~~himself~~ oneself out as a
20 person who practices the fitting and dispensing of hearing aids or audiology in the State of South
21 Dakota unless ~~he~~ the person holds a current ~~certificate~~ of license issued by the board as provided
22 in this chapter.

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

25 Any applicant pursuant to this Act shall apply on a form prescribed by the board and pay any

1 applicable fees. The applicant shall also meet all other qualifications specified within this Act for
2 each respective profession for which the person seeks licensure.

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

5 Any applicant for licensure to practice hearing aid dispensing shall:

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

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

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

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

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

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

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

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

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

13 36-24-18. An applicant for a hearing aid dispensing license having been notified by the board
14 that ~~he~~ the applicant has fulfilled the requirements of § ~~36-24-17~~ this Act shall appear at a time,
15 place, and before such persons as the board may designate, to be examined by written and oral
16 tests to determine that ~~he~~ the applicant is qualified to practice the fitting and dispensing of
17 hearing aids.

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

19 36-24-19. As the volume of applications may make appropriate, the board shall give
20 administer the said qualifying examinations ~~during the third week in January and July in each~~
21 year throughout the year as the board may designate.

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

23 36-24-20. ~~The qualifying examinations provided for in § 36-24-18~~ Any applicant who
24 otherwise qualifies for a license to practice hearing aid dispensing is entitled to be examined. The
25 examination shall include the following:

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

3 (a) Basic physics of sound;

4 (b) The human hearing mechanism, including the science of hearing and the
5 rehabilitation of abnormal hearing disorders;

6 (c) Structure and function of hearing aids;

7 (2) Tests of proficiency in the following techniques as they pertain to the fitting and
8 dispensing of hearing aids:

9 (a) Pure tone audiometry, including air conduction and bone conduction testing;

10 (b) Live voice and recorded voice speech audiometry, including speech threshold
11 testing and speech discrimination testing;

12 (c) Effective masking;

13 (d) Recording and evaluation of audiograms and speech audiometry tests to
14 determine hearing aid candidacy;

15 (e) Selection and adaptation of hearing aids and testing of hearing aids;

16 (f) Taking earmold impressions, and proficiency in any other skills as they pertain
17 to the fitting and dispensing of hearing aids.

18 ~~The tests~~ No test under this section ~~shall not~~ may include any questions requiring a medical
19 or surgical education.

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

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

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

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

2 (1) A person licensed or registered by this state in another profession from practicing the
3 profession for which licensed or registered;

4 (2) A person credentialed by this state as a teacher of the hearing impaired providing
5 instruction to the hearing impaired;

6 (3) A physician or surgeon licensed by this state from performing tasks directly related
7 to a disorder being treated;

8 (4) Any person possessing a valid certificate as a certified industrial audiometric
9 technician or occupational hearing conservationist recognized by the board as meeting
10 Council for Accreditation in Occupational Hearing Conservation Standards if such
11 service is performed in cooperation with either an audiologist licensed under this Act
12 or a licensed physician of this state.

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

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

22 (1) Except for taking and passing an examination under this Act, otherwise qualifies for
23 a hearing aid dispensing license;

24 (2) Submits an application on the form prescribed by the board; and

25 (3) Pays the application fee set by the board not to exceed one hundred fifty dollars.

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

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

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

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

- 11 (1) Except for the postgraduate professional experience, meets the academic, practicum,
12 and examination requirements of this Act;
- 13 (2) Applies to the board on a form prescribed by the board, with a plan for the content
14 of the postgraduate professional experience; and
- 15 (3) Pays to the board the application fee for a provisional license not to exceed one
16 hundred fifty dollars.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 36-24-30. The ~~certificate~~ of license required by § 36-24-16 shall be kept conspicuously

1 posted in the ~~holder's~~ licensee's office or place of business at all times. A violation of this section
2 is a Class 2 misdemeanor.

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

4 36-24-31. ~~A~~ Any person who holds a ~~certificate of~~ hearing aid dispensing license ~~or an~~
5 audiology license shall notify the board in writing of the town and street address of the place ~~or~~
6 ~~places~~ where ~~he~~ the licensee engages or intends to engage in the practice of ~~fitting and the~~
7 ~~dispensing of~~ hearing aids or audiology. If ~~his~~ the place of business is located in, or in connection
8 with, ~~his~~ a place of residence, the room ~~or rooms~~ to be used as ~~his~~ an office ~~must~~ shall be clearly
9 designated and identified for the convenience of the public. The board shall keep an up-to-date
10 record of these addresses.

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

12 36-24-32. Any notice required to be given by the board to a person who holds a ~~certificate~~
13 ~~of~~ hearing aid dispensing license ~~or an~~ audiology license may be given by mailing it to ~~him~~ the
14 licensee at the address of the last place of business ~~address of which he~~ the licensee has notified
15 the board under § 36-24-31. A post office box number ~~shall~~ may not be ~~considered as~~ the
16 address of a place of business.

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

18 36-24-33. Any person who practices the ~~fitting and~~ dispensing of hearing aids in the State
19 of South Dakota shall deliver to each person sold a hearing aid a receipt which ~~shall contain~~
20 contains the seller's signature, ~~show the address of his place of business~~ the business address of
21 the seller, specification of the hearing aid furnished including whether it is new, used, or rebuilt,
22 serial number of the aid, date of sale, and the total purchase price charged for the aid less any
23 allowance for a trade-in, if any, and the net amount paid by the purchaser. A ~~carbon~~ copy of the
24 original sales order ~~shall constitute~~ constitutes a valid receipt, ~~shall constitute~~ and a legal bill of
25 sale, and the purchaser's signature ~~thereon shall constitute his~~ constitutes full acknowledgment

1 of the terms of the sale. A violation of this section is a Class 2 misdemeanor.

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

3 36-24-34. No person ~~shall~~ may sell, barter, or offer to sell or barter any ~~certificate of license~~
4 hearing aid dispensing license or audiology license. A violation of this section is a Class 2
5 misdemeanor.

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

7 36-24-35. No person ~~shall~~ may purchase a hearing aid dispensing license or an audiology
8 license or procure either license by barter ~~a certificate of license~~, with the intent to use it as
9 evidence of the holder's qualifications to practice the ~~fitting and~~ dispensing of hearing aids or to
10 practice audiology. A violation of this section is a Class 2 misdemeanor.

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

12 36-24-36. No person ~~shall~~ may alter a ~~certificate of hearing aid dispensing license or an~~
13 audiology license with fraudulent intent. A violation of this section is a Class 2 misdemeanor.

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

15 36-24-37. No person ~~shall~~ may use or attempt to use a valid ~~certificate of hearing aid~~
16 dispensing license or audiology license which has been purchased, fraudulently obtained,
17 counterfeited, or altered. A violation of this section is a Class 2 misdemeanor.

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

19 36-24-38. No person ~~shall~~ may intentionally make a false statement in an application for a
20 ~~certificate of hearing aid dispensing license or an audiology license~~ or for a renewal of a
21 ~~certificate~~ either license. A violation of this section is a Class 2 misdemeanor.

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

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

- 1 (1) Aiding or abetting unlicensed practice;
- 2 (2) Using or promoting or causing the use of any misleading, deceiving, improbable, or
3 untruthful advertising matter, promotional literature, testimonial, guarantee, warranty,
4 label, brand, insignia, or any other representation;
- 5 (3) Falsely representing the use or availability or services or advice of a physician;
- 6 (4) Misrepresenting the applicant, licensee, or holder by using the word, doctor, or any
7 similar word, abbreviation, or symbol if the use is not accurate or if the degree was
8 not obtained from a regionally accredited institution;
- 9 (5) Committing any act of dishonorable or unprofessional conduct while engaging in the
10 practice of audiology or hearing aid dispensing;
- 11 (6) Engaging in illegal, incompetent, or habitually negligent practice;
- 12 (7) Providing professional services while mentally incompetent, under the influence of
13 alcohol, using any narcotic or controlled dangerous substance or other drug that is in
14 excess of therapeutic amounts or without valid medical indication or having a serious
15 infectious or contagious disease;
- 16 (8) Providing services or promoting the sale of devices, appliances, or products to a
17 person who cannot reasonably be expected to benefit from such services, devices,
18 appliances, or products;
- 19 (9) Violating any provision of this Act, any order given by the board, or rule adopted by
20 the board;
- 21 (10) Being convicted of or pleading guilty or nolo contendere to a felony, whether or not
22 any appeal or other proceeding is pending to have the conviction or plea set aside;
- 23 (11) Being disciplined by a licensing or disciplinary authority of any other state or country
24 or convicted or disciplined by a court of any state or country for an act that would be
25 grounds for disciplinary action under this section;

- 1 (12) Obtaining any fee or making any sale by fraud or misrepresentation;
- 2 (13) Advertising a particular model, type, or kind of hearing aid for sale when purchasers
3 or prospective purchasers responding to the advertisement cannot purchase or are
4 dissuaded from purchasing the advertised model, type, or kind if it is established that
5 the purpose of the advertisement is to obtain prospects for the sale of a different
6 model, type, or kind than that advertised;
- 7 (14) Permitting another person to use the hearing aid dispensing license or audiology
8 license;
- 9 (15) Defaming competitors by falsely imputing to them dishonorable conduct, inability to
10 perform contracts, questionable credit standing, or by other false representations, or
11 falsely disparaging the products of competitors in any respect, or their business
12 methods, selling prices, values, credit terms, policies, or services;
- 13 (16) Displaying competitive products in a show window, shop, or advertisement in such
14 manner as to falsely disparage them;
- 15 (17) Quoting prices of competitive hearing aids or devices without disclosing that they are
16 not the present current prices, or to show, demonstrate, or represent competitive
17 models as being current models when such is not the fact;
- 18 (18) Imitating or simulating the trademarks, trade names, brands, or labels of competitors,
19 with the capacity and tendency or effect of misleading or deceiving purchasers or
20 prospective purchasers;
- 21 (19) Using any trade name, corporate name, trademark, or other designation, which has
22 the capacity and tendency or effect of misleading or deceiving purchasers or
23 prospective purchasers as to the name, nature, or origin of any product of the
24 industry, or of any material used in the product, or which is false, deceptive, or
25 misleading in any other material effect;

1 (20) Obtaining information concerning the business of a competitor by bribery of an
2 employee or agent of a competitor, by false or misleading statements or
3 representations, impersonation of one in authority, or by any other unfair means;

4 (21) Giving, or offering to give money or anything of value to any person who advises
5 another in a professional capacity as an inducement to influence them or have them
6 influence others to purchase or contract to purchase products sold or offered for sale
7 by a hearing aid dispenser or audiologist, or to influence persons to refrain from
8 dealing in the products of competitors;

9 (22) Use of a false name or alias in the practice of the business.

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

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

16 (1) Refuse to issue or renew a license;

17 (2) Issue a letter of reprimand or concern;

18 (3) Require restitution of fees;

19 (4) Impose probationary conditions;

20 (5) Suspend or revoke a license.

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

22 36-24-41. No ~~certificate of~~ hearing aid dispensing license or audiology license issued
23 pursuant to this chapter may be suspended, revoked, or denied or ~~or~~ and no renewal may be
24 denied, except in compliance with chapter 1-26.

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

1 36-24-42. The board may enforce any provision of this chapter by injunction or by any other
2 appropriate proceeding. No ~~such~~ proceeding ~~shall~~ may be barred by any proceeding ~~had~~ which
3 occurred or is pending pursuant to § 36-24-40. ~~An~~ However, an action for injunction, ~~however,~~
4 ~~shall be an~~ is alternate to criminal proceedings, and the commencement of one proceeding by the
5 board constitutes an election.

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

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

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

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

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

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

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

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

1 ~~— 36-24-10. The compensation and reimbursement of expenses provided by law for members~~
2 ~~of the board shall be paid by the board upon receipt of an authorized, itemized voucher.~~

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

4 ~~— 36-24-12. The board shall have the following powers and duties:~~

5 ~~— (1) — To authorize all disbursements necessary to carry out the provisions of this chapter.~~

6 ~~— (2) — To administer and supervise the qualifying examinations to test the knowledge and~~
7 ~~proficiency of applicants for licensing.~~

8 ~~— (3) — To issue and renew certificates of license.~~

9 ~~— (4) — To suspend and revoke certificates of license in the manner provided in this chapter.~~

10 ~~— (5) — To purchase, or rent, and maintain audiometric equipment and facilities necessary to~~
11 ~~carry out the examination of applicants for license.~~

12 ~~— (6) — To appoint representatives to conduct or supervise the examination of applicants for~~
13 ~~license.~~

14 ~~— (7) — To designate the time and place for examining applicants for license.~~

15 ~~— (8) — To make and publish rules in compliance with chapter 1-26 and not inconsistent with~~
16 ~~the laws of this state which are necessary to carry out the provisions of this chapter.~~

17 ~~— (9) — To require the periodic inspection, by a qualified person or persons designated by the~~
18 ~~board, of audiometric equipment and other testing devices, and to carry out periodic~~
19 ~~inspection of the facilities of persons who hold a certificate of license pursuant to this~~
20 ~~chapter.~~

21 ~~— (10) — To appoint and employ subordinate personnel.~~

22 ~~— (11) — To prepare all examination material required by this chapter, including subject matter~~
23 ~~and procedure.~~

24 ~~— (12) — To promulgate rules for ethical standards of practice pertaining to those persons~~
25 ~~fitting and dispensing hearing aids in the state of South Dakota.~~

1 ~~—(13)— To promulgate rules for the protection of the public, pertaining to the practice of~~
2 ~~fitting and dispensing of hearing aids in the state of South Dakota.~~

3 ~~—(14)— To promulgate rules for continuing education requirements pertaining to those people~~
4 ~~fitting and dispensing hearing aids in the state of South Dakota.~~

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

6 ~~—36-24-13. This chapter shall not apply to a person while he is engaged in the practice of~~
7 ~~fitting hearing aids if his practice is part of the academic curriculum of an accredited institution~~
8 ~~of higher education or a part of a program conducted by a public, charitable institution, or a~~
9 ~~nonprofit organization which is primarily supported by voluntary contributions, unless his~~
10 ~~practice includes the selling of hearing aids.~~

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

12 ~~—36-24-15. As used in this chapter, unless the context requires otherwise "practice of fitting~~
13 ~~and dispensing of hearing aids" means the evaluation or measurement of the powers or range of~~
14 ~~human hearing by means of an audiometer, or by any other means devised, and the consequent~~
15 ~~selection or adaptation or sale of a hearing aid intended to compensate for hearing loss, including~~
16 ~~the making of an ear impression.~~

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

18 ~~—36-24-17. An applicant for a permanent certificate of license shall pay to the board of hearing~~
19 ~~aid dispensers an examination fee of one hundred dollars and shall show to the board's~~
20 ~~satisfaction that he:~~

21 ~~—(1)— Is a resident of the state of South Dakota;~~

22 ~~—(2)— Is eighteen years of age or older;~~

23 ~~—(3)— Is a person of good moral character;~~

24 ~~—(4)— Has an education equivalent to a four-year course in an accredited high school or he~~
25 ~~is to be employed under the supervision and training of a person who holds a current~~

1 license pursuant to this chapter, and as such is applying for a temporary certificate of
2 license subject to the regulations of this chapter.

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

4 ~~— 36-24-21. The board of hearing aid dispensers shall issue a permanent certificate of license~~
5 ~~signed by the chairman and secretary of the board to each applicant, who satisfactorily passes~~
6 ~~the examinations provided for in § 36-24-20 and pays to the board the license fee of one hundred~~
7 ~~dollars per fiscal year. However, after January first of that fiscal year the fee is fifty dollars.~~

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

9 ~~— 36-24-22. The certificate of license shall be effective until July first of the year~~
10 ~~following its date of issue.~~

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

12 ~~— 36-24-24. An applicant who fulfills the requirements of § 36-24-17, who has not previously~~
13 ~~applied to take the qualifying examinations provided for in § 36-24-20, may apply to the board~~
14 ~~for a temporary certificate of license under the following provisions:~~

15 ~~— (1) — Upon receiving an application for a temporary certificate of license, accompanied by~~
16 ~~a fee of fifty dollars, the board shall issue a temporary certificate of license which shall~~
17 ~~entitle the applicant to practice the fitting and dispensing of hearing aids for a period~~
18 ~~ending ten days after the conclusion of the next qualifying examinations given after~~
19 ~~the date of issue of the said temporary certificate of license.~~

20 ~~— (2) — No temporary certificate of license shall be issued by the board under this section~~
21 ~~unless the applicant shows to the satisfaction of the board in his application that he~~
22 ~~is or will be employed, supervised and trained by a person who holds a valid~~
23 ~~certificate of license issued under this chapter.~~

24 ~~— (3) — If a person who holds a temporary certificate of license issued under this section does~~
25 ~~not take the next qualifying examinations given after the date of issue, the temporary~~

1 certificate shall not be renewed except for good cause shown to the satisfaction of the
2 board.

3 ~~—(4)—~~ If a person who holds a temporary certificate of license issued under this section takes
4 and fails to pass the next qualifying examinations given after the date of issue, the
5 board may renew the temporary certificate of license for a period of ten days after the
6 conclusion of the next qualifying examination given after the date of the renewal. The
7 fee for renewal shall be fifty dollars, and in no event shall more than one renewal be
8 permitted.

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

10 ~~—36-24-25. Whenever the board determines that another state or jurisdiction has requirements~~
11 ~~equivalent to or higher than those in effect pursuant to this chapter for the practice of fitting and~~
12 ~~dispensing of hearing aids, and that such state or jurisdiction has a program equivalent to or~~
13 ~~stricter than the program for determining whether applicants pursuant to this chapter are~~
14 ~~qualified to fit and dispense hearing aids, the board may issue a certificate of endorsement to~~
15 ~~applicants therefor who hold a current license to fit and dispense hearing aids in such other state~~
16 ~~or jurisdiction and who have otherwise met the requirements under subdivisions 36-24-17(2) and~~
17 ~~(3). No such applicant for a certificate of endorsement pursuant to this section shall be required~~
18 ~~to submit to or undergo any examination, investigation or other procedure, other than the~~
19 ~~payment of the fees provided for in this chapter. The grounds for renewal and procedures~~
20 ~~therefor, suspension and revocation of certificates of endorsement shall be the same as for~~
21 ~~renewal, suspension and or revocation of a certificate of license.~~

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

23 ~~—36-24-28. Each person who holds a certificate of license shall annually renew the same on~~
24 ~~or before July first of each year by the payment to the board of a fee in such amount as the board~~
25 ~~may determine, not to exceed one hundred dollars. Upon payment of such fee the board shall~~

1 issue a renewal of such certificate for a period of one year. A thirty-day grace period shall be
2 allowed after July first during which a certificate may be renewed upon payment of one hundred
3 five dollars to the board.

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

5 ~~— 36-24-29. The board shall, in compliance with chapter 1-26, suspend the certificate of any~~
6 ~~person who fails to renew his certificate by the expiration date of the thirty-day grace period~~
7 ~~provided in § 36-24-28. After such a suspension the board may renew the certificate so~~
8 ~~suspended only upon the payment of one hundred dollars to the board.~~

9 ~~— No person who applies for renewal, whose certificate has been suspended for the sole reason~~
10 ~~of failure to renew before expiration of the thirty-day grace period, shall be required to submit~~
11 ~~to any further examination as a condition of renewal, provided such person applies for renewal~~
12 ~~within three years from the date of the original suspension.~~

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

14 ~~— 36-24-39. "Unethical conduct" means:~~

15 ~~— (1) — The obtaining of any fee or the making of any sale by fraud or misrepresentation;~~

16 ~~— (2) — Employing directly or indirectly any suspended or unlicensed person to perform any~~
17 ~~work covered by this chapter;~~

18 ~~— (3) — Using or causing or promoting the use of any advertising matter, promotional~~
19 ~~material, testimonial, guarantee, warranty, label, brand, insignia or any other~~
20 ~~representation however disseminated or published, which is misleading, deceiving,~~
21 ~~improbable or not true;~~

22 ~~— (4) — Advertising a particular model, type or kind of hearing aid for sale when purchasers~~
23 ~~or prospective purchasers responding to the advertisement cannot purchase or are~~
24 ~~dissuaded from purchasing the advertised model, type or kind where it is established~~
25 ~~that the purpose of the advertisement is to obtain prospects for the sale of a different~~

- 1 model, type or kind than that advertised;
- 2 ~~(5) Representing that the services or advice of a person licensed to practice medicine will~~
3 ~~be used or made available in the selection, fitting, adjustment, maintenance or repair~~
4 ~~of hearing aids when that is not true, or using the words "Doctor," "clinic" or like~~
5 ~~words, abbreviations or symbols which tend to connote the medical profession when~~
6 ~~such use is not accurate;~~
- 7 ~~(6) Habitual intemperance;~~
- 8 ~~(7) Gross immorality;~~
- 9 ~~(8) Permitting another to use his license;~~
- 10 ~~(9) To defame competitors by falsely imputing to them dishonorable conduct, inability to~~
11 ~~perform contracts, questionable credit standing, or by other false representations, or~~
12 ~~falsely to disparage the products of competitors in any respect, or their business~~
13 ~~methods, selling prices, values, credit terms, policies or services;~~
- 14 ~~(10) To display competitive products in his show window, shop or in his advertising in~~
15 ~~such manner as to falsely disparage them;~~
- 16 ~~(11) To represent falsely that competitors are unreliable but that the disparager is not;~~
- 17 ~~(12) To quote prices of competitive hearing aids or devices without disclosing that they~~
18 ~~are not the present current prices, or to show, demonstrate, or represent competitive~~
19 ~~models as being current models when such is not the fact;~~
- 20 ~~(13) To imitate or simulate the trade-marks, trade names, brands or labels of competitors,~~
21 ~~with the capacity and tendency or effect of misleading or deceiving purchasers or~~
22 ~~prospective purchasers;~~
- 23 ~~(14) To use in his advertising the name, model name, or trademark of a particular~~
24 ~~manufacturer of hearing aids in such manner as to imply a relationship with the~~
25 ~~manufacturer that does not exist, or otherwise to mislead or deceive purchasers or~~

1 prospective purchasers;

2 ~~(15) To use any trade name, corporate name, trade-mark, or other designation, which has~~
3 ~~the capacity and tendency or effect of misleading or deceiving purchasers or~~
4 ~~prospective purchasers as to the name, nature or origin of any product of the industry,~~
5 ~~or of any material used therein, or which is false, deceptive or misleading in any other~~
6 ~~material effect;~~

7 ~~(16) To obtain information concerning the business of a competitor by bribery of an~~
8 ~~employee or agent of such competitor, by false or misleading statements or~~
9 ~~representations, by impersonation of one in authority, or by any other unfair means;~~

10 ~~(17) To directly or indirectly give, or offer to give, or permit or cause to be given money~~
11 ~~or anything of value to any person who advises another in a professional capacity as~~
12 ~~an inducement to influence them or have them influence others to purchase or~~
13 ~~contract to purchase products sold or offered for sale by a hearing aid dispenser, or~~
14 ~~to influence persons to refrain from dealing in the products of competitors.~~

15 ~~Unethical conduct, as herein defined, shall not be the basis for criminal prosecution unless~~
16 ~~otherwise declared unlawful.~~

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

18 ~~36-24-40. Any person licensed under this chapter may have his certificate of license revoked,~~
19 ~~or suspended for a period of time fixed by the board not to exceed six months, for any of the~~
20 ~~following reasons:~~

21 ~~(1) His conviction of a felony, or of an offense involving moral turpitude. The record of~~
22 ~~conviction, or a certified copy thereof, certified by the clerk of court or by the judge~~
23 ~~in whose court the conviction was held, shall be conclusive evidence of such~~
24 ~~conviction.~~

25 ~~(2) When his certificate of license has been secured by fraud or deceit practiced upon the~~

1 board.

2 ~~(3) For unethical conduct, as described in § 36-24-39, or for gross ignorance or~~
3 ~~inefficiency in the conduct of his practice of fitting and dispensing hearing aids as~~
4 ~~determined by the board upon the basis of evidence in writing submitted to it.~~

5 ~~(4) For knowingly practicing while suffering with a contagious or infectious disease.~~

6 ~~(5) For the use of a false name or alias in the practice of his business.~~

7 ~~(6) For violating any provisions of this chapter or rules promulgated thereunder.~~

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

9 ~~36-24-43. Violation of any provision of this chapter is a Class 2 misdemeanor.~~

1 **BILL HISTORY**

2 1/14/97 First read in Senate and referred to Commerce. S.J. 15

3 1/16/97 Scheduled for Committee hearing on this date.

4 1/21/97 Scheduled for Committee hearing on this date.

5 1/21/97 Commerce Do Pass, AYES 5, NAYS 1.

6 1/22/97 Deferred to another day. S.J. 86

7 1/23/97 Senate Do Pass, AYES 30, NAYS 3. S.J. 146

8 1/24/97 First read in House and referred to Commerce. H.J. 119

9 2/4/97 Scheduled for Committee hearing on this date.

10 2/4/97 Commerce Do Pass, AYES 10, NAYS 2. H.J. 288

11 2/5/97 House of Representatives Do Pass Amended, AYES 51, NAYS 15. H.J. 330