

By: King of Zavala, Lucio III

H.B. No. 594

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of hearing instrument fitters and dispensers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 402.003, Occupations Code, is amended to read as follows:

Sec. 402.003. APPLICABILITY OF CHAPTER[~~;~~ ~~EXEMPTIONS~~].

(a) This chapter does not apply to:

(1) a person engaged in the practice of measuring human hearing as a part of the academic curriculum of an accredited institution of higher learning if the person or the person's employees do not sell hearing instruments;

(2) a physician licensed by the Texas Medical [~~State~~] Board [~~of Medical Examiners~~]; [~~or~~]

(3) a person with a master's degree or doctorate in audiology from an accredited college or university who does not sell hearing instruments, to the extent the person engages in the measurement of human hearing by the use of an audiometer or by any other means to make selections and adaptations of or recommendations for a hearing instrument and to make impressions for earmolds to be used as part of a hearing instrument; [~~or~~]

(4) an [~~(b) An~~] audiologist or an audiology intern licensed under Chapter 401, except as may otherwise be provided by the following provisions, which refer to Chapter 401:

- 1                   (A) Section 402.051(a)(1);
- 2                   (B) Section 402.202(b);
- 3                   (C) Section 402.252;
- 4                   (D) Section 402.255(a);
- 5                   (E) Section 402.406(a); and
- 6                   (F) Section 402.451(a)(6); and ~~[is exempt from~~  
7 ~~this chapter.]~~

8                   (5) a ~~[(c) A]~~ student of audiology in an accredited  
9 college or university program, ~~[is exempt from this chapter]~~ if the  
10 student's activities and services are part of the student's  
11 supervised course of study or practicum experience.

12                  (b) A ~~[The]~~ student described by Subsection (a)(5) is  
13 subject to Chapter 401.

14                  SECTION 2. Section 402.202(b), Occupations Code, is amended  
15 to read as follows:

16                  (b) A person licensed under Chapter 401 as an audiologist or  
17 an audiology intern who is applying for a license under this chapter  
18 is exempt from the examination required under this chapter but must  
19 comply with all other requirements under this chapter.

20                  SECTION 3. Section 402.207(c), Occupations Code, is amended  
21 to read as follows:

22                  (c) An apprentice permit holder shall work under the  
23 supervision of a licensed hearing instrument dispenser for at least  
24 one year. During the apprentice year, the apprentice permit holder  
25 shall complete 20 ~~[18]~~ hours of classroom continuing education as  
26 required by Section 402.303 for a license holder ~~[in subjects~~  
27 ~~required by the committee].~~

1 SECTION 4. Section 402.209, Occupations Code, is amended to  
2 read as follows:

3 Sec. 402.209. APPLICATION BY LICENSE HOLDER FROM ANOTHER  
4 STATE [~~LICENSING BY RECIPROCITY~~]. (a) A person licensed to fit and  
5 dispense hearing instruments in another state may apply for a  
6 license under this chapter by submitting an application on a form  
7 prescribed by the committee. [~~On application, the committee shall~~  
8 ~~waive the examination requirement and issue a license under this~~  
9 ~~chapter to a license holder from another state or territory whose~~  
10 ~~licensing requirements are equal to or greater than the licensing~~  
11 ~~requirements of this chapter.~~]

12 (b) An applicant for a license under this section must  
13 complete the application form completely and accurately. The  
14 committee may not consider an incomplete application. If an  
15 applicant fails to provide any information required on the  
16 application form, the committee shall send the applicant a notice  
17 of deficiency that explains the additional information that must be  
18 submitted before the committee may review the application. [~~An~~  
19 ~~application for a license under this section must:~~

20 [~~(1) be in writing and on a form prescribed by the~~  
21 ~~committee,~~

22 [~~(2) be accompanied by documentation showing that the~~  
23 ~~state, territory, or other authority under which the applicant was~~  
24 ~~practicing has minimum requirements equal to or greater than the~~  
25 ~~requirements of this chapter, and~~

26 [~~(3) be filed with the committee.~~]

27 (c) The committee shall require an applicant for a license

1 under this section to provide as part of the application:

2 (1) written verification that the applicant is  
3 licensed in good standing as a fitter and dispenser of hearing  
4 instruments in another state and has held the license for at least  
5 three years preceding the date of application;

6 (2) written verification that:

7 (A) the requirements to obtain a license to fit  
8 and dispense hearing instruments in the state in which the  
9 applicant is licensed include passing an examination approved by  
10 the committee by rule; or

11 (B) the applicant holds a certification from a  
12 professional organization approved by the committee by rule;

13 (3) affirmation that the applicant is a resident of  
14 this state;

15 (4) a written statement from the licensing entity in  
16 the state in which the applicant is licensed that details any  
17 disciplinary action taken by the entity against the applicant; and

18 (5) a statement of the applicant's criminal history  
19 acceptable to the committee [~~In addition to any other documentation~~  
20 ~~required by the committee, the committee shall request all written~~  
21 ~~records regarding the applicant from the state, territory, or other~~  
22 ~~authority under which the applicant was practicing, including:~~

23 ~~[(1) a copy of the written examination;~~

24 ~~[(2) the practicum examination;~~

25 ~~[(3) the outline of the oral examination; and~~

26 ~~[(4) any other information necessary for the~~  
27 ~~committee's decision].~~

1       (d) The committee may deny an application under this section  
2 based on the applicant's criminal history or history of  
3 disciplinary action.

4       (e) If the committee approves an application, on the next  
5 regularly scheduled examination date the applicant may take the  
6 practical section of the examination required under Section 402.202  
7 and a written examination of Texas law administered by the  
8 committee. If the applicant passes the examinations required under  
9 this section, the committee shall issue to the applicant a license  
10 under this chapter.

11       (f) The committee may allow an applicant under this section  
12 who satisfies all application requirements other than the  
13 requirement under Subsection (c)(2) to take all sections of the  
14 examination required under Section 402.202. If the applicant passes  
15 the examination, the committee shall issue to the applicant a  
16 license under this chapter.

17       (g) An applicant under this section who fails an examination  
18 may request in writing, not later than the 30th day after the date  
19 the committee sends the applicant notice of the examination  
20 results, that the committee furnish the applicant with an analysis  
21 of the applicant's performance on the examination.

22       (h) An applicant under this section who fails an examination  
23 may not retake the examination under this section. The person must  
24 comply with the requirements for an applicant for an original  
25 license under this chapter.

26       (i) The committee may not issue a license under this section  
27 to an applicant who is a licensed audiologist in another state. The

1 committee shall refer the applicant to the State Board of Examiners  
2 for Speech-Language Pathology and Audiology.

3 SECTION 5. Section 402.251, Occupations Code, is amended to  
4 read as follows:

5 Sec. 402.251. TEMPORARY TRAINING PERMIT QUALIFICATIONS.

6 (a) The committee shall issue a temporary training permit to a  
7 person who:

8 (1) has never taken the examination administered under  
9 this chapter;

10 (2) possesses the qualifications required under  
11 Section 402.203(a);

12 (3) submits a written application on a form provided  
13 by the committee furnishing sworn evidence that the applicant[+

14 [~~(A)~~] satisfies the requirements of Subdivisions  
15 (1) and (2); and

16 [~~(B) has never held a temporary training permit~~  
17 ~~in this state, and]~~

18 (4) pays the temporary training permit fee.

19 (b) The committee may issue a new temporary training permit  
20 under this section to a person on or after the 365th day after the  
21 person's previous temporary training permit expired.

22 SECTION 6. Section 402.252, Occupations Code, is amended to  
23 read as follows:

24 Sec. 402.252. SUPERVISION AFFIDAVIT. (a) An application  
25 for a temporary training permit must be accompanied by the  
26 affidavit of a person licensed to fit and dispense hearing  
27 instruments under this chapter or Chapter 401, other than a person

1 licensed under Section 401.311 or 401.312 [~~in this state~~].

2 (b) The affidavit must state that:

3 (1) the applicant, if granted a temporary training  
4 permit, will be supervised by the affiant in all work done by the  
5 applicant under the temporary training permit; [~~and~~]

6 (2) the affiant will notify the committee not later  
7 than the 10th day after the date of the applicant's termination of  
8 supervision by the affiant; and

9 (3) if the affiant is licensed under Chapter 401, the  
10 affiant will comply with all provisions of this chapter and rules  
11 adopted under this chapter that relate to the supervision and  
12 training of a temporary training permit holder.

13 SECTION 7. Section 402.255(a), Occupations Code, is amended  
14 to read as follows:

15 (a) A supervisor of a temporary training permit holder must:

16 (1) be [~~a~~] licensed to fit and dispense hearing  
17 instruments under [~~instrument dispenser having the qualifications~~  
18 ~~established by~~] this chapter or Chapter 401, other than Section  
19 401.311 or 401.312;

20 (2) currently practice in [~~and~~]

21 [~~(1) have~~] an established place of business; and

22 (3) [~~(2)~~] be responsible for the direct supervision  
23 and education of a temporary training permit holder.

24 SECTION 8. Section 402.301, Occupations Code, is amended by  
25 amending Subsections (a) and (e) and adding Subsection (f) to read  
26 as follows:

27 (a) A license under this chapter is valid for two years [~~one~~

1 ~~year~~]. The committee shall renew the license every two years  
2 ~~[annually]~~ on payment of the renewal fee unless the license is  
3 suspended or revoked.

4 (e) A person whose license has been expired for two years or  
5 more may not renew the license. The person may obtain a new license  
6 by ~~[submitting to reexamination and]~~ complying with the  
7 requirements and procedures for obtaining an original license.

8 (f) The committee may not renew a license unless the license  
9 holder provides proof that all equipment that is used by the license  
10 holder to produce a measurement in the testing of hearing acuity has  
11 been properly calibrated or certified by a qualified technician.

12 SECTION 9. Section 402.403, Occupations Code, is amended to  
13 read as follows:

14 Sec. 402.403. WRITTEN CONTRACT [BILL OF SALE]. The owner of  
15 a hearing instrument fitting and dispensing practice ~~[(a) A~~  
16 ~~license holder]~~ shall ensure that each client receives a written  
17 contract at the time of purchase of a hearing instrument that  
18 contains ~~[provide a bill of sale to each person supplied with a~~  
19 ~~hearing instrument by the license holder or under the license~~  
20 ~~holder's direction.~~

21 ~~[(b) The bill of sale must contain]:~~

22 (1) the ~~[license holder's]~~ signature of the license  
23 holder who dispensed the hearing instrument;

24 (2) the ~~[license holder's]~~ printed name of the license  
25 holder who dispensed the hearing instrument;

26 (3) the address of the ~~[license holder's]~~ principal  
27 office of the license holder who dispensed the hearing instrument;



1           (4) the [~~license holder's~~] license number of the  
2 license holder who dispensed the hearing instrument;

3           (5) a description of the make and model of the hearing  
4 instrument;

5           (6) the amount charged for the hearing instrument;  
6 [~~and~~]

7           (7) a statement of whether the hearing instrument is  
8 new, used, or rebuilt;

9           (8) notice of the 30-day trial period under Section  
10 402.401; and

11           (9) the name, mailing address, and telephone number of  
12 the committee.

13           SECTION 10. Section 402.406, Occupations Code, is amended  
14 by adding Subsection (c) to read as follows:

15           (c) All of the business's records and contracts are solely  
16 the property of the person who owns the business.

17           SECTION 11. Section 402.501, Occupations Code, is amended  
18 to read as follows:

19           Sec. 402.501. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY  
20 ACTION. The committee may refuse to issue or renew a license,  
21 revoke or suspend a license or permit, place on probation a person  
22 whose license or permit has been suspended, or reprimand a license  
23 or permit holder who:

24           (1) makes a material misstatement in furnishing  
25 information to the committee or to another state or federal agency;

26           (2) violates this chapter or a rule adopted under this  
27 chapter;

1           (3) is convicted of a felony or misdemeanor that  
2 includes dishonesty as an essential element or of a crime directly  
3 related to the practice of fitting and dispensing hearing  
4 instruments;

5           (4) makes a misrepresentation for the purpose of  
6 obtaining or renewing a license, including falsifying the  
7 educational requirements under this chapter;

8           (5) is professionally incompetent or engages in  
9 malpractice or dishonorable, unethical, or unprofessional conduct  
10 that is likely to deceive, defraud, or harm the public;

11           (6) aids or assists another person in violating this  
12 chapter or a rule adopted under this chapter;

13           (7) does not provide information in response to a  
14 written request made by the board within 60 days;

15           (8) directly or indirectly knowingly employs, hires,  
16 procures, or induces a person not licensed under this chapter to fit  
17 and dispense hearing instruments unless the person is exempt under  
18 this chapter;

19           (9) aids a person not licensed under this chapter in  
20 the fitting or dispensing of hearing instruments unless the person  
21 is exempt under this chapter;

22           (10) is habitually intoxicated or addicted to a  
23 controlled substance;

24           (11) directly or indirectly gives to or receives from  
25 a person a fee, commission, rebate, or other form of compensation  
26 for a service not actually provided;

27           (12) violates a term of probation;

1 (13) wilfully makes or files a false record or report;

2 (14) has a physical illness that results in the  
3 inability to practice the profession with reasonable judgment,  
4 skill, or safety, including the deterioration or loss of motor  
5 skills through aging;

6 (15) solicits a service by advertising that is false  
7 or misleading;

8 (16) participates in subterfuge or misrepresentation  
9 in the fitting or dispensing of a hearing instrument;

10 (17) knowingly advertises for sale a model or type of  
11 hearing instrument that cannot be purchased;

12 (18) falsely represents that the service of a licensed  
13 physician or other health professional will be used or made  
14 available in the fitting, adjustment, maintenance, or repair of a  
15 hearing instrument;

16 (19) falsely uses the term "doctor," "audiologist,"  
17 "clinic," "clinical audiologist," "state licensed," "state  
18 certified," "licensed hearing instrument dispenser," "board  
19 certified hearing instrument specialist," "hearing instrument  
20 specialist," or "certified hearing aid audiologist," or uses any  
21 other term, abbreviation, or symbol that falsely gives the  
22 impression that:

23 (A) a service is being provided by a person who is  
24 licensed or has been awarded a degree or title; or

25 (B) the person providing a service has been  
26 recommended by a government agency or health provider;

27 (20) advertises a manufacturer's product or uses a

1 manufacturer's name or trademark in a way that implies a  
2 relationship between a license or permit holder and a manufacturer  
3 that does not exist;

4 (21) directly or indirectly gives or offers to give,  
5 or permits or causes to be given, money or another thing of value to  
6 a person who advises others in a professional capacity as an  
7 inducement to influence the person to influence the others to:

8 (A) purchase or contract to purchase products  
9 sold or offered for sale by the license or permit holder; or

10 (B) refrain from purchasing or contracting to  
11 purchase products sold or offered for sale by another license or  
12 permit holder under this chapter;

13 (22) with fraudulent intent fits and dispenses a  
14 hearing instrument under any name, including a false name or alias;

15 (23) does not adequately provide for the service or  
16 repair of a hearing instrument fitted and sold by the license  
17 holder; or

18 (24) violates a regulation of the federal Food and  
19 Drug Administration or the Federal Trade Commission relating to  
20 hearing instruments.

21 SECTION 12. Section 402.302, Occupations Code, is repealed.

22 SECTION 13. The changes in law made by this Act to Section  
23 402.207(c), Occupations Code, apply only to the holder of an  
24 apprentice permit issued on or after the effective date of this Act.  
25 The holder of an apprentice permit issued before the effective date  
26 of this Act is governed by the law in effect immediately before that  
27 date, and the former law is continued in effect for that purpose.

1           SECTION 14. The changes in law made by this Act to Section  
2 402.209, Occupations Code, apply only to an application submitted  
3 on or after the effective date of this Act. An application submitted  
4 before the effective date of this Act is governed by the law in  
5 effect immediately before that date, and the former law is  
6 continued in effect for that purpose.

7           SECTION 15. The changes in law made by this Act to Section  
8 402.301(a), Occupations Code, apply only to a license that is  
9 issued on or after the effective date of this Act. A license issued  
10 before the effective date of this Act is governed by the law in  
11 effect immediately before that date, and the former law is  
12 continued in effect for that purpose.

13           SECTION 16. This Act takes effect September 1, 2009.