

1-1 By: King of Zavala, Lucio III H.B. No. 594  
1-2 (Senate Sponsor - Wentworth)  
1-3 (In the Senate - Received from the House April 20, 2009;  
1-4 April 20, 2009, read first time and referred to Committee on Health  
1-5 and Human Services; May 8, 2009, reported favorably by the  
1-6 following vote: Yeas 9, Nays 0; May 8, 2009, sent to printer.)

1-7 A BILL TO BE ENTITLED  
1-8 AN ACT

1-9 relating to the licensing and regulation of hearing instrument  
1-10 fitters and dispensers.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 402.003, Occupations Code, is amended to  
1-13 read as follows:

1-14 Sec. 402.003. APPLICABILITY OF CHAPTER[; ~~EXEMPTIONS~~].

1-15 (a) This chapter does not apply to:

1-16 (1) a person engaged in the practice of measuring  
1-17 human hearing as a part of the academic curriculum of an accredited  
1-18 institution of higher learning if the person or the person's  
1-19 employees do not sell hearing instruments;

1-20 (2) a physician licensed by the Texas Medical [~~State~~]  
1-21 Board [~~of Medical Examiners~~]; [~~or~~]

1-22 (3) a person with a master's degree or doctorate in  
1-23 audiology from an accredited college or university who does not  
1-24 sell hearing instruments, to the extent the person engages in the  
1-25 measurement of human hearing by the use of an audiometer or by any  
1-26 other means to make selections and adaptations of or  
1-27 recommendations for a hearing instrument and to make impressions  
1-28 for earmolds to be used as part of a hearing instrument; [~~-~~]

1-29 (4) an [~~(b) An~~] audiologist or an audiology intern  
1-30 licensed under Chapter 401, except as may otherwise be provided by  
1-31 the following provisions, which refer to Chapter 401:

1-32 (A) Section 402.051(a)(1);

1-33 (B) Section 402.202(b);

1-34 (C) Section 402.252;

1-35 (D) Section 402.255(a);

1-36 (E) Section 402.406(a); and

1-37 (F) Section 402.451(a)(6); and [~~is exempt from~~  
1-38 ~~this chapter.~~]

1-39 (5) a [~~(c) A~~] student of audiology in an accredited  
1-40 college or university program, [~~is exempt from this chapter~~] if the  
1-41 student's activities and services are part of the student's  
1-42 supervised course of study or practicum experience.

1-43 (b) A [~~The~~] student described by Subsection (a)(5) is  
1-44 subject to Chapter 401.

1-45 SECTION 2. Section 402.202(b), Occupations Code, is amended  
1-46 to read as follows:

1-47 (b) A person licensed under Chapter 401 as an audiologist or  
1-48 an audiology intern who is applying for a license under this chapter  
1-49 is exempt from the examination required under this chapter but must  
1-50 comply with all other requirements under this chapter.

1-51 SECTION 3. Section 402.207(c), Occupations Code, is amended  
1-52 to read as follows:

1-53 (c) An apprentice permit holder shall work under the  
1-54 supervision of a licensed hearing instrument dispenser for at least  
1-55 one year. During the apprentice year, the apprentice permit holder  
1-56 shall complete 20 [~~18~~] hours of classroom continuing education as  
1-57 required by Section 402.303 for a license holder [~~in subjects~~  
1-58 ~~required by the committee~~].

1-59 SECTION 4. Section 402.209, Occupations Code, is amended to  
1-60 read as follows:

1-61 Sec. 402.209. APPLICATION BY LICENSE HOLDER FROM ANOTHER  
1-62 STATE [~~LICENSING BY RECIPROCITY~~]. (a) A person licensed to fit and  
1-63 dispense hearing instruments in another state may apply for a  
1-64 license under this chapter by submitting an application on a form

2-1 prescribed by the committee. [On application, the committee shall  
 2-2 waive the examination requirement and issue a license under this  
 2-3 chapter to a license holder from another state or territory whose  
 2-4 licensing requirements are equal to or greater than the licensing  
 2-5 requirements of this chapter.]

2-6 (b) An applicant for a license under this section must  
 2-7 complete the application form completely and accurately. The  
 2-8 committee may not consider an incomplete application. If an  
 2-9 applicant fails to provide any information required on the  
 2-10 application form, the committee shall send the applicant a notice  
 2-11 of deficiency that explains the additional information that must be  
 2-12 submitted before the committee may review the application. [An  
 2-13 application for a license under this section must:

2-14 [~~(1) be in writing and on a form prescribed by the~~  
 2-15 committee;

2-16 [~~(2) be accompanied by documentation showing that the~~  
 2-17 state, territory, or other authority under which the applicant was  
 2-18 practicing has minimum requirements equal to or greater than the  
 2-19 requirements of this chapter; and

2-20 [~~(3) be filed with the committee.]~~

2-21 (c) The committee shall require an applicant for a license  
 2-22 under this section to provide as part of the application:

2-23 (1) written verification that the applicant is  
 2-24 licensed in good standing as a fitter and dispenser of hearing  
 2-25 instruments in another state and has held the license for at least  
 2-26 three years preceding the date of application;

2-27 (2) written verification that:

2-28 (A) the requirements to obtain a license to fit  
 2-29 and dispense hearing instruments in the state in which the  
 2-30 applicant is licensed include passing an examination approved by  
 2-31 the committee by rule; or

2-32 (B) the applicant holds a certification from a  
 2-33 professional organization approved by the committee by rule;

2-34 (3) affirmation that the applicant is a resident of  
 2-35 this state;

2-36 (4) a written statement from the licensing entity in  
 2-37 the state in which the applicant is licensed that details any  
 2-38 disciplinary action taken by the entity against the applicant; and

2-39 (5) a statement of the applicant's criminal history  
 2-40 acceptable to the committee [In addition to any other documentation  
 2-41 required by the committee, the committee shall request all written  
 2-42 records regarding the applicant from the state, territory, or other  
 2-43 authority under which the applicant was practicing, including:

2-44 [~~(1) a copy of the written examination;~~

2-45 [~~(2) the practicum examination;~~

2-46 [~~(3) the outline of the oral examination; and~~

2-47 [~~(4) any other information necessary for the~~  
 2-48 committee's decision].

2-49 (d) The committee may deny an application under this section  
 2-50 based on the applicant's criminal history or history of  
 2-51 disciplinary action.

2-52 (e) If the committee approves an application, on the next  
 2-53 regularly scheduled examination date the applicant may take the  
 2-54 practical section of the examination required under Section 402.202  
 2-55 and a written examination of Texas law administered by the  
 2-56 committee. If the applicant passes the examinations required under  
 2-57 this section, the committee shall issue to the applicant a license  
 2-58 under this chapter.

2-59 (f) The committee may allow an applicant under this section  
 2-60 who satisfies all application requirements other than the  
 2-61 requirement under Subsection (c)(2) to take all sections of the  
 2-62 examination required under Section 402.202. If the applicant passes  
 2-63 the examination, the committee shall issue to the applicant a  
 2-64 license under this chapter.

2-65 (g) An applicant under this section who fails an examination  
 2-66 may request in writing, not later than the 30th day after the date  
 2-67 the committee sends the applicant notice of the examination  
 2-68 results, that the committee furnish the applicant with an analysis  
 2-69 of the applicant's performance on the examination.

3-1           (h) An applicant under this section who fails an examination  
 3-2 may not retake the examination under this section. The person must  
 3-3 comply with the requirements for an applicant for an original  
 3-4 license under this chapter.

3-5           (i) The committee may not issue a license under this section  
 3-6 to an applicant who is a licensed audiologist in another state. The  
 3-7 committee shall refer the applicant to the State Board of Examiners  
 3-8 for Speech-Language Pathology and Audiology.

3-9           SECTION 5. Section 402.251, Occupations Code, is amended to  
 3-10 read as follows:

3-11           Sec. 402.251. TEMPORARY TRAINING PERMIT QUALIFICATIONS.

3-12           (a) The committee shall issue a temporary training permit to a  
 3-13 person who:

3-14           (1) has never taken the examination administered under  
 3-15 this chapter;

3-16           (2) possesses the qualifications required under  
 3-17 Section 402.203(a);

3-18           (3) submits a written application on a form provided  
 3-19 by the committee furnishing sworn evidence that the applicant[+]

3-20           [~~(A)~~] satisfies the requirements of Subdivisions  
 3-21 (1) and (2); and

3-22           [~~(B) has never held a temporary training permit~~  
 3-23 ~~in this state; and]~~

3-24           (4) pays the temporary training permit fee.

3-25           (b) The committee may issue a new temporary training permit  
 3-26 under this section to a person on or after the 365th day after the  
 3-27 person's previous temporary training permit expired.

3-28           SECTION 6. Section 402.252, Occupations Code, is amended to  
 3-29 read as follows:

3-30           Sec. 402.252. SUPERVISION AFFIDAVIT. (a) An application  
 3-31 for a temporary training permit must be accompanied by the  
 3-32 affidavit of a person licensed to fit and dispense hearing  
 3-33 instruments under this chapter or Chapter 401, other than a person  
 3-34 licensed under Section 401.311 or 401.312 [~~in this state~~].

3-35           (b) The affidavit must state that:

3-36           (1) the applicant, if granted a temporary training  
 3-37 permit, will be supervised by the affiant in all work done by the  
 3-38 applicant under the temporary training permit; [~~and]~~

3-39           (2) the affiant will notify the committee not later  
 3-40 than the 10th day after the date of the applicant's termination of  
 3-41 supervision by the affiant; and

3-42           (3) if the affiant is licensed under Chapter 401, the  
 3-43 affiant will comply with all provisions of this chapter and rules  
 3-44 adopted under this chapter that relate to the supervision and  
 3-45 training of a temporary training permit holder.

3-46           SECTION 7. Section 402.255(a), Occupations Code, is amended  
 3-47 to read as follows:

3-48           (a) A supervisor of a temporary training permit holder must:

3-49           (1) be [~~a~~] licensed to fit and dispense hearing  
 3-50 instruments under [~~instrument dispenser having the qualifications~~  
 3-51 ~~established by]~~ this chapter or Chapter 401, other than Section  
 3-52 401.311 or 401.312;

3-53           (2) currently practice in [~~and+~~

3-54           [~~(1) have~~] an established place of business; and

3-55           (3) [~~(2)~~] be responsible for the direct supervision  
 3-56 and education of a temporary training permit holder.

3-57           SECTION 8. Section 402.301, Occupations Code, is amended by  
 3-58 amending Subsections (a) and (e) and adding Subsection (f) to read  
 3-59 as follows:

3-60           (a) A license under this chapter is valid for two years [~~one~~  
 3-61 ~~year~~]. The committee shall renew the license every two years  
 3-62 [~~annually~~] on payment of the renewal fee unless the license is  
 3-63 suspended or revoked.

3-64           (e) A person whose license has been expired for two years or  
 3-65 more may not renew the license. The person may obtain a new license  
 3-66 by [~~submitting to reexamination and~~] complying with the  
 3-67 requirements and procedures for obtaining an original license.

3-68           (f) The committee may not renew a license unless the license  
 3-69 holder provides proof that all equipment that is used by the license

4-1 holder to produce a measurement in the testing of hearing acuity has  
 4-2 been properly calibrated or certified by a qualified technician.

4-3 SECTION 9. Section 402.403, Occupations Code, is amended to  
 4-4 read as follows:

4-5 Sec. 402.403. WRITTEN CONTRACT [BILL OF SALE]. The owner of  
 4-6 a hearing instrument fitting and dispensing practice ~~[(a) A~~  
 4-7 ~~license holder]~~ shall ensure that each client receives a written  
 4-8 contract at the time of purchase of a hearing instrument that  
 4-9 contains ~~[provide a bill of sale to each person supplied with a~~  
 4-10 ~~hearing instrument by the license holder or under the license~~  
 4-11 ~~holder's direction.~~

4-12 ~~[(b) The bill of sale must contain]:~~

4-13 (1) the ~~[license holder's]~~ signature of the license  
 4-14 holder who dispensed the hearing instrument;

4-15 (2) the ~~[license holder's]~~ printed name of the license  
 4-16 holder who dispensed the hearing instrument;

4-17 (3) the address of the ~~[license holder's]~~ principal  
 4-18 office of the license holder who dispensed the hearing instrument;

4-19 (4) the ~~[license holder's]~~ license number of the  
 4-20 license holder who dispensed the hearing instrument;

4-21 (5) a description of the make and model of the hearing  
 4-22 instrument;

4-23 (6) the amount charged for the hearing instrument;  
 4-24 ~~[and]~~

4-25 (7) a statement of whether the hearing instrument is  
 4-26 new, used, or rebuilt;

4-27 (8) notice of the 30-day trial period under Section  
 4-28 402.401; and

4-29 (9) the name, mailing address, and telephone number of  
 4-30 the committee.

4-31 SECTION 10. Section 402.406, Occupations Code, is amended  
 4-32 by adding Subsection (c) to read as follows:

4-33 (c) All of the business's records and contracts are solely  
 4-34 the property of the person who owns the business.

4-35 SECTION 11. Section 402.501, Occupations Code, is amended  
 4-36 to read as follows:

4-37 Sec. 402.501. GROUND FOR LICENSE DENIAL AND DISCIPLINARY  
 4-38 ACTION. The committee may refuse to issue or renew a license,  
 4-39 revoke or suspend a license or permit, place on probation a person  
 4-40 whose license or permit has been suspended, or reprimand a license  
 4-41 or permit holder who:

4-42 (1) makes a material misstatement in furnishing  
 4-43 information to the committee or to another state or federal agency;

4-44 (2) violates this chapter or a rule adopted under this  
 4-45 chapter;

4-46 (3) is convicted of a felony or misdemeanor that  
 4-47 includes dishonesty as an essential element or of a crime directly  
 4-48 related to the practice of fitting and dispensing hearing  
 4-49 instruments;

4-50 (4) makes a misrepresentation for the purpose of  
 4-51 obtaining or renewing a license, including falsifying the  
 4-52 educational requirements under this chapter;

4-53 (5) is professionally incompetent or engages in  
 4-54 malpractice or dishonorable, unethical, or unprofessional conduct  
 4-55 that is likely to deceive, defraud, or harm the public;

4-56 (6) aids or assists another person in violating this  
 4-57 chapter or a rule adopted under this chapter;

4-58 (7) does not provide information in response to a  
 4-59 written request made by the board within 60 days;

4-60 (8) directly or indirectly knowingly employs, hires,  
 4-61 procures, or induces a person not licensed under this chapter to fit  
 4-62 and dispense hearing instruments unless the person is exempt under  
 4-63 this chapter;

4-64 (9) aids a person not licensed under this chapter in  
 4-65 the fitting or dispensing of hearing instruments unless the person  
 4-66 is exempt under this chapter;

4-67 (10) is habitually intoxicated or addicted to a  
 4-68 controlled substance;

4-69 (11) directly or indirectly gives to or receives from

5-1 a person a fee, commission, rebate, or other form of compensation  
5-2 for a service not actually provided;

5-3 (12) violates a term of probation;

5-4 (13) wilfully makes or files a false record or report;

5-5 (14) has a physical illness that results in the  
5-6 inability to practice the profession with reasonable judgment,  
5-7 skill, or safety, including the deterioration or loss of motor  
5-8 skills through aging;

5-9 (15) solicits a service by advertising that is false  
5-10 or misleading;

5-11 (16) participates in subterfuge or misrepresentation  
5-12 in the fitting or dispensing of a hearing instrument;

5-13 (17) knowingly advertises for sale a model or type of  
5-14 hearing instrument that cannot be purchased;

5-15 (18) falsely represents that the service of a licensed  
5-16 physician or other health professional will be used or made  
5-17 available in the fitting, adjustment, maintenance, or repair of a  
5-18 hearing instrument;

5-19 (19) falsely uses the term "doctor," "audiologist,"  
5-20 "clinic," "clinical audiologist," "state licensed," "state  
5-21 certified," "licensed hearing instrument dispenser," "board  
5-22 certified hearing instrument specialist," "hearing instrument  
5-23 specialist," or "certified hearing aid audiologist," or uses any  
5-24 other term, abbreviation, or symbol that falsely gives the  
5-25 impression that:

5-26 (A) a service is being provided by a person who is  
5-27 licensed or has been awarded a degree or title; or

5-28 (B) the person providing a service has been  
5-29 recommended by a government agency or health provider;

5-30 (20) advertises a manufacturer's product or uses a  
5-31 manufacturer's name or trademark in a way that implies a  
5-32 relationship between a license or permit holder and a manufacturer  
5-33 that does not exist;

5-34 (21) directly or indirectly gives or offers to give,  
5-35 or permits or causes to be given, money or another thing of value to  
5-36 a person who advises others in a professional capacity as an  
5-37 inducement to influence the person to influence the others to:

5-38 (A) purchase or contract to purchase products  
5-39 sold or offered for sale by the license or permit holder; or

5-40 (B) refrain from purchasing or contracting to  
5-41 purchase products sold or offered for sale by another license or  
5-42 permit holder under this chapter;

5-43 (22) with fraudulent intent fits and dispenses a  
5-44 hearing instrument under any name, including a false name or alias;

5-45 (23) does not adequately provide for the service or  
5-46 repair of a hearing instrument fitted and sold by the license  
5-47 holder; or

5-48 (24) violates a regulation of the federal Food and  
5-49 Drug Administration or the Federal Trade Commission relating to  
5-50 hearing instruments.

5-51 SECTION 12. Section 402.302, Occupations Code, is repealed.

5-52 SECTION 13. The changes in law made by this Act to Section  
5-53 402.207(c), Occupations Code, apply only to the holder of an  
5-54 apprentice permit issued on or after the effective date of this Act.  
5-55 The holder of an apprentice permit issued before the effective date  
5-56 of this Act is governed by the law in effect immediately before that  
5-57 date, and the former law is continued in effect for that purpose.

5-58 SECTION 14. The changes in law made by this Act to Section  
5-59 402.209, Occupations Code, apply only to an application submitted  
5-60 on or after the effective date of this Act. An application submitted  
5-61 before the effective date of this Act is governed by the law in  
5-62 effect immediately before that date, and the former law is  
5-63 continued in effect for that purpose.

5-64 SECTION 15. The changes in law made by this Act to Section  
5-65 402.301(a), Occupations Code, apply only to a license that is  
5-66 issued on or after the effective date of this Act. A license issued  
5-67 before the effective date of this Act is governed by the law in  
5-68 effect immediately before that date, and the former law is  
5-69 continued in effect for that purpose.

6-1 SECTION 16. This Act takes effect September 1, 2009.

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