

By: Wentworth

S.B. No. 1194

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. Sections 402.207(a) and (c), Occupations Code,
21 are amended to read as follows:

22 (a) The committee shall issue an apprentice permit to fit
23 and dispense hearing instruments to a temporary training permit
24 holder who has:

25 (1) passed all parts of the examination ~~[with a score~~
26 ~~of 70 percent or greater];~~

27 (2) paid the required fees; and

1 (3) met all requirements of this chapter.

2 (c) An apprentice permit holder shall work under the
3 supervision of a licensed hearing instrument dispenser for at least
4 one year. During the apprentice year, the apprentice permit holder
5 shall complete 20 [~~18~~] hours of classroom continuing education as
6 required by Section 402.303 for a license holder [~~in subjects~~
7 ~~required by the committee~~].

8 SECTION 4. Section 402.209, Occupations Code, is amended to
9 read as follows:

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

19 (b) An applicant for a license under this section must
20 complete the application form completely and accurately. The
21 committee may not consider an incomplete application. If an
22 applicant fails to provide any information required on the
23 application form, the committee shall send the applicant a notice
24 of deficiency that explains the additional information that must be
25 submitted before the committee may review the application. [~~An~~
26 ~~application for a license under this section must:~~

27 [~~(1) be in writing and on a form prescribed by the~~

1 ~~committee,~~

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

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

7 (c) The committee shall require an applicant for a license
8 under this section to provide as part of the application:

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

13 (2) written verification that:

14 (A) the requirements to obtain a license to fit
15 and dispense hearing instruments in the state in which the
16 applicant is licensed include passing an examination approved by
17 the committee by rule; or

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

20 (3) affirmation that the applicant is a resident of
21 this state;

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

25 (5) a statement of the applicant's criminal history
26 acceptable to the committee ~~[In addition to any other documentation~~
27 ~~required by the committee, the committee shall request all written~~

1 ~~records regarding the applicant from the state, territory, or other~~
2 ~~authority under which the applicant was practicing, including:~~

- 3 ~~(1) a copy of the written examination;~~
4 ~~(2) the practicum examination;~~
5 ~~(3) the outline of the oral examination; and~~
6 ~~(4) any other information necessary for the~~
7 ~~committee's decision].~~

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

11 (e) If the committee approves an application, on the next
12 regularly scheduled examination date the applicant may take the
13 practical section of the examination required under Section 402.202
14 and a written examination of Texas law administered by the
15 committee. If the applicant passes the examinations required under
16 this section, the committee shall issue to the applicant a license
17 under this chapter.

18 (f) The committee may allow an applicant under this section
19 who satisfies all application requirements other than the
20 requirement under Subsection (c)(2) to take all sections of the
21 examination required under Section 402.202. If the applicant passes
22 the examination, the committee shall issue to the applicant a
23 license under this chapter.

24 (g) An applicant under this section who fails an examination
25 may request in writing, not later than the 30th day after the date
26 the committee sends the applicant notice of the examination
27 results, that the committee furnish the applicant with an analysis

1 of the applicant's performance on the examination.

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

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

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

12 Sec. 402.251. TEMPORARY TRAINING PERMIT QUALIFICATIONS.

13 (a) The committee shall issue a temporary training permit to a
14 person who:

15 (1) has never taken the examination administered under
16 this chapter;

17 (2) possesses the qualifications required under
18 Section 402.203(a);

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

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

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

25 (4) pays the temporary training permit fee.

26 (b) The committee may issue a new temporary training permit
27 under this section to a person on or after the 365th day after the

1 person's previous temporary training permit expired.

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

4 Sec. 402.252. SUPERVISION AFFIDAVIT. (a) An application
5 for a temporary training permit must be accompanied by the
6 affidavit of a person licensed to fit and dispense hearing
7 instruments under this chapter or Chapter 401, other than a person
8 licensed under Section 401.311 or 401.312 [~~in this state~~].

9 (b) The affidavit must state that:

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

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

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

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

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

23 (1) be [~~a~~] licensed to fit and dispense hearing
24 instruments under [~~instrument dispenser having the qualifications~~
25 ~~established by~~] this chapter or Chapter 401, other than Section
26 401.311 or 401.312;

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

1 ~~[(1) have]~~ an established place of business; and
2 (3) ~~[(2)]~~ be responsible for the direct supervision
3 and education of a temporary training permit holder.

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

7 (a) A license under this chapter is valid for two years ~~[one~~
8 ~~year]~~. The committee shall renew the license every two years
9 ~~[annually]~~ on payment of the renewal fee unless the license is
10 suspended or revoked.

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

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

19 SECTION 9. Section 402.403, Occupations Code, is amended to
20 read as follows:

21 Sec. 402.403. WRITTEN CONTRACT ~~[BILL OF SALE]~~. The owner of
22 a hearing instrument fitting and dispensing practice ~~[(a) A~~
23 ~~license holder]~~ shall ensure that each client receives a written
24 contract at the time of purchase of a hearing instrument that
25 contains ~~[provide a bill of sale to each person supplied with a~~
26 ~~hearing instrument by the license holder or under the license~~
27 ~~holder's direction.~~

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

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

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

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

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

10 (5) a description of the make and model of the hearing
11 instrument;

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

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

16 (8) notice of the 30-day trial period under Section
17 402.401; and

18 (9) the name, mailing address, and telephone number of
19 the committee.

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

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

24 SECTION 11. Section 402.501, Occupations Code, is amended
25 to read as follows:

26 Sec. 402.501. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY
27 ACTION. The committee may refuse to issue or renew a license,

1 revoke or suspend a license or permit, place on probation a person
2 whose license or permit has been suspended, or reprimand a license
3 or permit holder who:

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

6 (2) violates this chapter or a rule adopted under this
7 chapter;

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

12 (4) makes a misrepresentation for the purpose of
13 obtaining or renewing a license, including falsifying the
14 educational requirements under this chapter;

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

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

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

22 (8) directly or indirectly knowingly employs, hires,
23 procures, or induces a person not licensed under this chapter to fit
24 and dispense hearing instruments unless the person is exempt under
25 this chapter;

26 (9) aids a person not licensed under this chapter in
27 the fitting or dispensing of hearing instruments unless the person

1 is exempt under this chapter;

2 (10) is habitually intoxicated or addicted to a
3 controlled substance;

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

7 (12) violates a term of probation;

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

9 (14) has a physical illness that results in the
10 inability to practice the profession with reasonable judgment,
11 skill, or safety, including the deterioration or loss of motor
12 skills through aging;

13 (15) solicits a service by advertising that is false
14 or misleading;

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

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

19 (18) falsely represents that the service of a licensed
20 physician or other health professional will be used or made
21 available in the fitting, adjustment, maintenance, or repair of a
22 hearing instrument;

23 (19) falsely uses the term "doctor," "audiologist,"
24 "clinic," "clinical audiologist," "state licensed," "state
25 certified," "licensed hearing instrument dispenser," "board
26 certified hearing instrument specialist," "hearing instrument
27 specialist," or "certified hearing aid audiologist," or uses any

1 other term, abbreviation, or symbol that falsely gives the
2 impression that:

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

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

7 (20) advertises a manufacturer's product or uses a
8 manufacturer's name or trademark in a way that implies a
9 relationship between a license or permit holder and a manufacturer
10 that does not exist;

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

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

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

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

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

25 (24) violates a regulation of the federal Food and
26 Drug Administration or the Federal Trade Commission relating to
27 hearing instruments.

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

2 SECTION 13. The changes in law made by this Act to Section
3 402.207(c), Occupations Code, apply only to the holder of an
4 apprentice permit issued on or after the effective date of this Act.
5 The holder of an apprentice permit issued before the effective date
6 of this Act is governed by the law in effect immediately before that
7 date, and the former law is continued in effect for that purpose.

8 SECTION 14. The changes in law made by this Act to Section
9 402.209, Occupations Code, apply only to an application submitted
10 on or after the effective date of this Act. An application submitted
11 before the effective date of this Act is governed by the law in
12 effect immediately before that date, and the former law is
13 continued in effect for that purpose.

14 SECTION 15. The changes in law made by this Act to Section
15 402.301(a), Occupations Code, apply only to a license that is
16 issued on or after the effective date of this Act. A license issued
17 before the effective date of this Act is governed by the law in
18 effect immediately before that date, and the former law is
19 continued in effect for that purpose.

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