

Introduced by

Government and Veterans Affairs Committee

(At the request of the Board of Hearing Aid Specialists)

1 A BILL for an Act to amend and reenact section 43-33-01, subsection 1 of section 43-33-02,  
2 subsection 1 of section 43-33-03, sections 43-33-04 and 43-33-06, subsection 2 of section  
3 43-33-07, section 43-33-09, subdivision c of subsection 2 of section 43-33-12, subsection 4 of  
4 section 43-33-15, and section 43-33-18 of the North Dakota Century Code, relating to licensing  
5 hearing aid specialists; to repeal section 43-33-08 of the North Dakota Century Code, relating to  
6 temporary trainee permits; and to provide a penalty.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 43-33-01 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **43-33-01. Definitions.**

11 As used in this chapter, unless the context requires otherwise:

- 12 1. "Board" means the board of hearing aid specialists.
- 13 2. "Hearing aid" or "hearing instrument" means any wearable instrument or device  
14 designed for or offered for the purpose of aiding or compensating for impaired human  
15 hearing and any parts, attachments, or accessories including earmold, but excluding  
16 batteries, cords, and earmold tubing.
- 17 3. "License" means a license issued under this chapter to a hearing aid specialist.
- 18 4. "Licensee" means a hearing aid specialist licensed under this chapter.
- 19 5. "Practice of fitting and dispensing hearing instruments" means the measurement of  
20 human hearing to determine hearing loss by means of an audiometer or by any means  
21 solely for the purpose of making selections, adaptations, repairs, or sale of hearing  
22 instruments. The term also includes the making of impressions for earmolds. A  
23 licensee, at the request of a physician or member of related professions, may make

1           audiograms for the professional's use in consultation with the ~~hard-of-hearing~~hearing  
2           impaired.

3           6. "Sell" or "sale" includes a transfer of ~~title~~ownership or of the right to use by lease,  
4           bailment, or any other contract. This excludes wholesale to distributors or dispensers.

5           7. ~~"Trainee permit" means a temporary permit issued while an applicant is in training to~~  
6           ~~become a licensee.~~

7           **SECTION 2. AMENDMENT.** Subsection 1 of section 43-33-02 of the North Dakota Century  
8           Code is amended and reenacted as follows:

9           1. A person may not engage in the sale of or practice of fitting hearing instruments or  
10           display a sign or in any other way advertise or represent that that person practices the  
11           fitting and sale of hearing instruments unless that person holds an unsuspended,  
12           unrevoked license issued by the board as provided in this chapter. The license must  
13           be conspicuously posted in the licensee's primary office or place of business.  
14           ~~Duplicate licenses must be issued by the board to valid licenseholders operating~~If a  
15           licensee operates more than one office ~~for a fee determined by the board~~or place of  
16           business the licensee shall copy the license and shall display the copied license at the  
17           other office or place of business. A license confers upon the holder the right to select,  
18           fit, and sell hearing instruments, and the right to conduct any necessary hearing  
19           testing incident to the selecting, fitting, and selling of hearing instruments.

20           **SECTION 3. AMENDMENT.** Subsection 1 of section 43-33-03 of the North Dakota Century  
21           Code is amended and reenacted as follows:

22           1. Any person who practices the fitting and sale of hearing instruments shall deliver to  
23           each person supplied with a hearing instrument a receipt that contains the licensee's  
24           signature, the licensee's business address, the number of the licensee's certificate, the  
25           serial number and the make and model of the hearing instrument furnished, and the  
26           full terms of the sale. If an instrument that is not new is sold, the receipt and the  
27           instrument's container must be clearly marked as "used" or "reconditioned" whichever  
28           is applicable, with the terms of guarantee, if any.

29           **SECTION 4. AMENDMENT.** Section 43-33-04 of the North Dakota Century Code is  
30           amended and reenacted as follows:

1       **43-33-04. Persons and practices not affected.**

2       This chapter does not prevent or restrict:

- 3       1.    A person from engaging in the practice of measuring human hearing ~~for the purpose of~~  
4           ~~selection of hearing instruments~~ if the person or organization employing that person  
5           does not sell hearing instruments.
- 6       2.    A person employed as a hearing aid specialist by the federal government from  
7           engaging in the practice of fitting and dispensing hearing instruments if the person  
8           performs the practice solely within the confines or under the jurisdiction of the  
9           government of the United States.
- 10      3.    Activities and services of a person pursuing a course of study leading to a graduate  
11           degree in audiology at a college or university if the activities or services are under the  
12           direct supervision of a licensee, constitute a part of a supervised course of study, and  
13           the person is designated an audiology intern or trainee or by another title clearly  
14           indicating the training status appropriate to the level of training.

15      **SECTION 5. AMENDMENT.** Section 43-33-06 of the North Dakota Century Code is  
16      amended and reenacted as follows:

17      **43-33-06. Issuance of license.**

- 18      4.    The board shall register each applicant without discrimination if the applicant passes an  
19      examination as provided in section 43-33-07, and upon the applicant's payment of a fee as  
20      established by the board, shall issue to the applicant a license signed by the secretary of the  
21      board. The license is effective until the expiration date stated on the license ~~and identification-~~  
22      ~~card.~~
- 23      2.    ~~Whenever the board determines that another state or jurisdiction has requirements~~  
24           ~~equivalent to or higher than those in effect pursuant to this chapter for the practice to~~  
25           ~~fit and sell hearing instruments, and that the state or jurisdiction has a program~~  
26           ~~equivalent to or stricter than the program for determining whether applicants pursuant~~  
27           ~~to this chapter are qualified to dispense and fit hearing instruments, the board may~~  
28           ~~issue certificates of endorsement to applicants who hold current, unsuspended and~~  
29           ~~unrevoked certificates or licenses by examination to fit and sell hearing instruments in~~  
30           ~~the other state or jurisdiction. The board may not issue a license to an applicant for a~~  
31           ~~certificate of endorsement if the applicant's license or certificate from the other state or~~

1           ~~jurisdiction was obtained by experience. An applicant for a certificate of endorsement~~  
2           ~~may not be required to submit to or undergo a qualifying examination, but the~~  
3           ~~applicant must pay the fees required by the board. The holder of a certificate of~~  
4           ~~endorsement must be registered in the same manner as holders of a license. The fee~~  
5           ~~for an initial certificate of endorsement must be the same as the fee for an initial~~  
6           ~~license. Fees, grounds for renewal, and procedures for the suspension and revocation~~  
7           ~~of certificates of endorsement must be the same as for renewal, suspension, and~~  
8           ~~revocation of a license.~~

9           **SECTION 6. AMENDMENT.** Subsection 2 of section 43-33-07 of the North Dakota Century  
10 Code is amended and reenacted as follows:

11           2. The applicant for license by examination shall appear at a time, place, and before  
12           such persons as the board designates, to be examined by means of written and  
13           practical tests to demonstrate that the applicant is qualified to practice the fitting and  
14           sale of hearing instruments. The examination administered as directed by the board  
15           constituting standards for licensing may not be conducted in such a manner that  
16           college ~~training~~education is required to pass the examination. The examination may  
17           not imply that the applicant must possess the degree of medical competence normally  
18           expected of physicians.

19           **SECTION 7. AMENDMENT.** Section 43-33-09 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21           **43-33-09. Scope of examination.**

22           1. The qualifying examination provided in section 43-33-07 consists of:  
23           4. a. Tests of knowledge in the following areas pertaining to the fitting and sale of  
24           hearing instruments:  
25           a. (1) Basic physics of sound;  
26           b. (2) The anatomy and physiology of the ear;  
27           c. (3) The function of hearing instruments;  
28           d. (4) Elementary audiology; and  
29           e. (5) Any other requirements established by the board.  
30           2. b. Practical tests of proficiency in the following techniques pertaining to the fitting of  
31           hearing instruments:



1 maintenance, or repair of hearing instruments when that is not true, or using  
2 the word "doctor", "clinic", "audiologist", or similar words, abbreviations, or  
3 symbols which tend to connote the medical profession or ~~audiological-~~  
4 ~~profession~~professional audiologist when that is not accurate, or use of the  
5 titles "hearing instrument specialist", "hearing aid specialist", "board-certified  
6 hearing aid specialist", or "board-certified hearing instrument specialist"  
7 when the qualifying requirements have not been met through the  
8 international hearing society or national board for certification in hearing  
9 instrument sciences.

10 (6) Habitual intemperance.

11 (7) Gross immorality.

12 (8) Permitting another to use the person's license.

13 (9) Advertising a manufacturer's product or using a manufacturer's name or  
14 trademark that implies a relationship with the manufacturer which does not  
15 exist.

16 (10) To directly or indirectly give or offer to give, or permit or cause to be given  
17 money or anything of value to any person who advises another in a  
18 professional capacity as an inducement to influence them or have them  
19 influence others to purchase or contract to purchase products sold or  
20 offered for sale by a licensee, or to influence persons to refrain from dealing  
21 in the products of competitors.

22 (11) Sale of a hearing instrument to a person without adequate and proper  
23 audiometric testing.

24 (12) Sale of a hearing instrument to a person when the need for a hearing  
25 instrument has not been established after adequate and proper audiometric  
26 testing.

27 **SECTION 9. AMENDMENT.** Subsection 4 of section 43-33-15 of the North Dakota Century  
28 Code is amended and reenacted as follows:

- 29 4. Except for the secretary-treasurer, each board member ~~shall serve without~~ is entitled to  
30 receive per diem compensation ~~except~~ in the amount provided for members of the  
31 legislative management under section 54-35-10 and is entitled to receive

1            ~~reimbursement for~~ mileage and travel expenses while engaged in the performance of  
2            ~~the duties of the office as is provided for~~ necessarily incurred in the conduct of board  
3            business at the same rate as state employees. The board shall establish the amount  
4            of compensation for the secretary-treasurer.

5            **SECTION 10. AMENDMENT.** Section 43-33-18 of the North Dakota Century Code is  
6            amended and reenacted as follows:

7            **43-33-18. Violations - Penalty - Injunction.**

8            Any person who fits or dispenses hearing instruments without a license ~~or trainee permit~~ as  
9            provided in this chapter or who violates section 43-33-13 is guilty of a class B misdemeanor.

10          Any person that sells a hearing instrument to an individual located in North Dakota for individual  
11          use is guilty of a class B misdemeanor if the seller does not provide an initial fitting in person by  
12          a licensed hearing aid specialist free of any undisclosed charge to the purchaser. In addition to  
13          the criminal penalties provided, the civil remedy of injunction is available to restrain and enjoin  
14          violations of any provisions of this chapter without proof of actual damages sustained by any  
15          person.

16          **SECTION 11. REPEAL.** Section 43-33-08 of the North Dakota Century Code is repealed.