

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1038

H. P. 844

House of Representatives, March 12, 1975

Referred to the Committee on Business Legislation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Silverman of Calais.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Relating to the Licensing of Hearing Aid Dealers and Fitters.

Be it enacted by the People of the State of Maine, as follows:

32 MRSA c. 23-A, as enacted by PL 1969, c. 320, and as amended, is repealed and the following enacted in place thereof:

CHAPTER 23-A

HEARING AND DEALERS AND FITTERS

§ 1658. Definitions

As used in this chapter, unless the context requires otherwise, the following words shall have the following meanings.

1. Board. "Board" shall mean the Board for Licensing Hearing Aid Dealers and Fitters.

2. Calibration. "Calibration" is the objective adjustment of a machine to an accepted standard. The department shall promulgate rules and regulations to define recalibration, accepted standards and calibration check in order to further inform the dealers.

3. Dealer. "Dealer" shall mean any person, duly licensed by the department, who engages in the practice of fitting and dealing in hearing aids, or any person who has a temporary trainee permit issued by the department, pursuant to section 1658-I, to engage in the practice of fitting and dealing in hearing aids.

4. Department. "Department" shall mean the Department of Health and Welfare.

5. Hearing aid. "Hearing aid" shall mean any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing, and any parts, attachments or accessories, including earmold, but excluding batteries and cords.

6. Hearing aid orientation. "Hearing aid orientation" involves 4 basic features, as follows:

- A. Instruction in use and care of the instrument;
- B. Information regarding expectations and limitations;
- C. Instruction in or the informing of the availability of additional services to meet associated needs, auditory rehabilitation, communication therapy and additional special counseling services; and
- D. Information regarding follow-up services, malfunctioning of aid, mechanical adjustment or repair or remakes of hearing aid or earmold.

7. License. "License" shall mean a license issued by the State of Maine under this chapter to hearing aid dealers and fitters.

8. Practice of fitting and dealing in hearing aids. "Practice of fitting and dealing in hearing aids" shall include, but not be limited to, the selection, adaptation or sale of hearing aids, or parts thereof; the testing of hearing by means of an audiometer or equivalent measurement of hearing; the making of impressions for earmolds and hearing aid orientation.

9. Sell or sale. "Sell" or "sale" includes a transfer of title or of the right to use by lease, bailment or any other contract. This excludes wholesale to distributors or dealers.

10. Shall. "Shall" for the purposes of this chapter is a mandatory term.

11. Trainee permit. "Trainee permit" shall mean a temporary permit issued while the applicant is in training to become a licensed hearing aid dealer and fitter.

§ 1658-A. License required to sell or fit hearing aids

No person shall engage in the sale of or practice of fitting and dealing in hearing aids or display a sign or in any other way advertise or represent himself as a person who practices the fitting, dealing and sale of hearing aids after the effective date of this Act, unless he holds an unsuspended, unrevoked license issued by the department as provided in this chapter. The license required by this chapter shall be conspicuously posted in the licensee's office or place of business. Duplicate licenses shall be issued by the department to valid license holders operating more than one office without additional payment. A license issued under this chapter shall confer on the holder the right to select, fit and sell hearing aids.

Any corporation, partnership, trust, association or other like organization engaged in the business of selling or offering for sale hearing aids at retail in the State of Maine shall apply to the department for a license to engage in said business. No such business organization shall engage in the business

of selling or offering for sale hearing aids at retail without a license. Upon receipt of \$100 and a sworn statement from a person with authority from said business entity, which statement shall list the names and addresses of all hearing aid dealers and fitters directly or indirectly employed by said business and shall certify that said business only employs hearing aid dealers and fitters who are duly licensed by the State of Maine, the department shall issue a license signed by the Director of Health. The license shall be effective for 24 months following the date of issuance. Each such business engaged in the fitting and sale of hearing aids shall biennially submit to the department an application for a renewal of its license accompanied by a fee of \$50. A 30-day grace period shall be allowed after the date of expiration, during which time licenses may be renewed on payment of \$100 to the department. After expiration of the grace period, the department may renew such certificates upon the payment of \$200 to the department. The license required by this chapter shall be conspicuously posted in the licensee's office or place of business. Notwithstanding the provisions of this paragraph, the department may, whenever it deems necessary, extend existing licenses so that an equal number expire each month to allow for the equal distribution of relicensure throughout the year.

Any person, corporation, partnership, trust or other like organization, or the officers, partners, directors or trustees thereof, engaged in the business of selling hearing aids or hearing aid equipment in the State of Maine shall not knowingly employ any person who has neither a license nor a trainee permit in the direct sale of hearing aids or hearing aid equipment, nor shall such business entity knowingly permit or advise any of its employees to violate any provision in this chapter or any provision in the rules and regulations; nor shall such business entity employ 2 or more persons in any one-year period concerning whom the department has refused to issue a license. Any violation of this paragraph shall be dealt with according to the penalties prescribed in the following paragraph.

If one or more of the employees of said licensee violates the standards of conduct established in section 1658-M and, if in addition, said business fails to prove that it exercised reasonable care in the hiring, training, instructing and supervising of its employees so as to avoid any violation of section 1658-M, the department, after hearing, may refuse to issue or refuse to renew or the Administrative Court Judge, as designated by Title 5, chapters 301 to 307, may suspend or revoke any license issued under this section for any violation of this section. Penalties provided in section 1661 shall also apply.

§ 1658-B. Trial period, return of hearing aid

No person shall be obligated in any way whatever to purchase, rent or otherwise pay for the use of a hearing aid or hearing aids, unless said equipment is first delivered to the prospective purchaser for a free 10-day trial period. If, at the end of the 10-day trial period, the prospective purchaser does not wish to purchase or otherwise pay for the use of the hearing aid, the hearing aid must be returned upon request to the seller. However, no contract to purchase or rent, either express or implied, can result from the mere failure of the prospective purchaser to make a timely return of said aid.

Within not less than 45 days nor more than 60 days after the purchase of one or more hearing aids, the seller-licensee shall take all reasonable steps to make personal contact with the purchaser and provide, free of charge, any service, fitting or repair that may be necessary for the beneficial and comfortable use of the hearing aid purchased.

Any person who practices the fitting and sale of hearing aids shall, in addition to the notice required in section 1658-C, advise the prospective purchaser in a separate writing of that purchaser's right to use the hearing aid for a 10-day trial period without any obligation to buy the hearing aid or pay for its use during this period. Such writing shall also include notice of the purchaser's right to service of the aid as provided in this section.

Any provision of a contract which limits or conditions in any way the right guaranteed to purchasers by this section shall be deemed to be against public policy and void. Any violation of the requirements of this section shall, in addition to being deemed unethical conduct as defined by the regulations pursuant to section 1658-M, be deemed an unfair or deceptive act or practice in violation of Title 5, section 207.

§ 1658-C. Notice required to be furnished to a person supplied with hearing aid

Any licensee who practices the fitting and dealing or sale of hearing aids shall deliver to each person supplied with a hearing aid a written notice prior to or at the time the hearing aid is purchased, which shall clearly state:

1. Licensee's identification. The licensee's signature, address of place of business and license number.
2. Address of Board of Hearing Aid Dealers and Fitters. The address of the Board of Hearing Aid Dealers and Fitters.
3. Make and model specifications. Specifications as to the make and model of the hearing aid furnished, including:
 - A. Brand name or manufacturer, model and serial number if known prior to the sale; if not, then when the hearing aid is delivered; and
 - B. Condition of the hearing aid; whether such aid is new, used or re-conditioned.
4. Terms of sale. Full terms of sale, including:
 - A. A full and complete disclosure of the cost of financing regarding the purchase of the aid;
 - B. The complete terms of service, including cost of service, what services are available, by whom and for how long such service will be provided, including house or office calls, when applicable, and aftercare fitting;
 - C. Price of the aid furnished. If the initial price of the aid furnished is reduced by trade-in allowance or discount, the notice shall conspicuously state the initial price of the aid before trade-in allowance or discount, the

amount of the trade-in allowance or discount, and the final price to the purchaser; and

D. Whenever any hearing aid, or part or accessory thereof is sold or contracted to be sold as a result of or in connection with a dealer's direct contact with or call on the purchaser without the purchaser's soliciting the contact or call, the dealer shall state in writing to the purchaser that such contract or agreement may be avoided or cancelled by the purchaser by giving written notice of avoidance or cancellation to the hearing aid dealer within 10 full days following the day on which the hearing aid, part or accessory is sold to the purchaser. When such avoidance is made by the purchaser, the dealer shall refund the total purchase price of the aid, part or accessory and shall return any aid, part or accessory traded in within 5 days of receipt of such avoidance notice. Notice of avoidance shall be effective upon deposit in the United States mail. The purchaser, upon receipt of the purchase price, shall within 3 days return the hearing aid, or part or accessory thereof to the dealer without damage.

5. Date of sale. Date of sale.

6. Terms of guarantee or warranty. Terms of guarantee or warranty, including:

A. What characteristics or properties of the hearing aid or parts thereof are covered by or excluded from the guarantee or warranty;

B. The duration of the guarantee or warranty;

C. What, if anything, the purchaser claiming under the guarantee must do before the guarantor or warrantor will fulfill his obligations, such as return the aid or pay for service or labor charges;

D. A precise statement of exactly what the guarantor or warrantor undertakes to do under the guarantee or warranty, to include, but not be limited to, repairing, replacing and refunding;

E. The identity and address of the guarantor or warrantor.

The department, upon written request, will furnish a copy of a model notice complying with the above notice requirements.

7. Substitute models. Any time a purchaser buys a hearing aid which is of different make or model than the aid requested by the purchaser, this fact must be stated to the purchaser.

8. Rules and regulations. The department may promulgate rules and regulations to further define this section in order to provide the consumer with additional information to be contained in the notice provisions.

Such notice must bear in no smaller type than the largest used in the body copy portion the following: "Any examination or examinations or representation or representations made by a licensed hearing aid dealer and fitter in connection with the fitting and selling of such hearing aid or aids is not an examination, diagnosis or prescription by a person licensed to practice

medicine in this State and therefore must not be regarded as medical opinion or advice."

Any person practicing in the fitting and sale of hearing aids shall, when dealing with a child 16 years of age or under, ascertain if the child has seen a physician with specialized training in the field of otolaryngology within 90 days prior to the fitting for his recommendation. If such is not the case, a recommendation to do so shall be made and this fact shall be noted on the receipt.

Whenever any of the medical conditions as defined by the department are found to exist either by observation of the licensee or on the basis of information furnished by the prospective hearing aid user, fitting of the hearing aid shall be delayed until medical opinion has been made, and the recommendation duly noted on the receipt.

Any provision of a contract which limits or conditions in any way the right guaranteed to purchasers by this section shall be deemed to be against public policy and void. Any violation of the requirements of this section shall, in addition to being deemed unethical conduct as defined by the regulations under section 1658-M, be deemed an unfair or deceptive act or practice in violation of Title 5, section 207.

§ 1658-D. Persons and practices not affected

This chapter is not intended to prevent any person from engaging in the practice of measuring human hearing, provided that such person does not intend to sell hearing aids and accessories unless under the direct supervision of a licensee.

This chapter does not apply to a person who is a physician or osteopath duly licensed under the laws of the State of Maine.

Persons holding a master's or doctoral degree from an accredited university program which includes at least 24 credits in audiology at the graduate level and 150 supervised clinical hours in clinical audiology may test or measure human hearing, but shall not demonstrate, with the intent to sell, hearing aids and accessories.

§ 1658-E. Records

1. Departmental records. The department will keep an individual record for each licensed hearing aid dealer and fitter.

A. The file shall include: Application for renewal; statements of periodic calibration checks on hearing testing equipment; may include records for special certification for continuing education; and may include annual reports of numbers of individuals tested and numbers of hearing aids sold.

B. These files shall be available to the licensee for discussion by written request to the Hearing Aid Dealers and Fitters Board.

C. The department, upon written request, will furnish copies of forms for calibration posting and forms for the annual collection of information

regarding numbers of individuals tested and numbers of hearing aids sold, which information shall remain confidential.

2. Dealer records. Each licensed hearing aid dealer shall keep records for at least 6 years on each person who purchases a hearing aid to include: Results of measurement of known hearing; medical clearance for hearing aid where indicated by section 1658-C or purchaser's waiver of need for medical clearance; copy of warranty; date and type of hearing aid sold to purchaser; date and type of replacement aids; type of earmold and other pertinent information such as reports from speech and hearing centers.

§ 1658-F. Calibration

Each audiometer used in the measurement of hearing when testing and fitting a hearing aid must meet calibration standards which shall be defined in the department's rules and regulations. An objective calibration check of a permanently installed audiometer shall be made at least once a year. An objective calibration check shall be made at least twice a year on instruments used outside the listed business address of the hearing aid dealer and fitter. If an objective calibration check shows an audiometer to deviate more than 10 db from the calibration standard, the audiometer must be recalibrated by either a calibration laboratory or the audiometer manufacturer before it may be used to test hearing. The department will supply forms for the reporting of calibration and keep a copy of the statement of calibration in each file of each licensee. Date of last calibration check or recalibration shall be prominently displayed on the audiometer.

§ 1658-G. Issuance of license

The department shall register each applicant without discrimination who satisfactorily passes an examination as provided in section 1658-H and upon the applicant's payment of \$100 shall issue to the applicant a license signed by the Director of Health. The license shall be effective for a period of 24 months.

Whenever the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to this chapter for the practice to fit and sell hearing aids, and that such state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants pursuant to this chapter are qualified to dispense and fit hearing aids, the department may issue certificates of equivalent license to applicants who have current, unsuspended and unrevoked certificates or licenses to fit and sell hearing aids in such other state or jurisdiction. No such applicant for a certificate or equivalent license pursuant to this paragraph shall be required to submit to or undergo a qualifying examination, other than the payment of fees pursuant to this chapter. The holder of a certificate of equivalent license shall be registered in the same manner as holders of a license. Fee, grounds for renewal and procedures for suspension and revocation of certificates of equivalent license shall be the same as for the renewal, suspension or revocation of a license. The fee for an initial certificate of equivalent license shall be the same as the fee for an initial license.

§ 1658-H. License by examination

1. **Qualifications.** Applicants may obtain a license by successfully passing a qualifying examination, provided the applicant:

- A. Is at least 18 years of age;
- B. Is of good moral character and without a violation of another state's statutes regarding hearing aid dealers and fitters;
- C. Has an education equivalent of a 4-year course in an accredited high school; and
- D. Has obtained a trainee permit pursuant to section 1658-I and has received training in the practice of fitting and dealing in hearing aids under the direct supervision of a licensee for at least a 30-day period.

The department or board may require letters of reference, physician's statements of applicant's good health, verification of age or other supportive documents as may be required.

The department may promulgate rules and regulations establishing additional qualifications for applicants in order to insure that only properly qualified persons take the licensing examination.

Any person knowingly furnishing false information or omitting pertinent information from an application to take the qualifying examination for a fitter's and dealer's license shall be denied the right to take the examination for not less than one year nor more than 3 years.

2. **Examination.** The applicant for license by examination shall appear at a time, place and before such persons as the department and board may designate, to be examined by means of written, practical and oral tests in order to demonstrate that he is qualified to practice the fitting and sale of hearing aids. In cooperation with the board, the department may appoint a consultant to assist in preparing the examination itself as well as conducting and supervising the testing. The examination administered as directed by the board constituting standards for licensing shall not be conducted in such a manner that college training be required in order to pass the examination. Nothing in this examination shall imply that the applicant shall possess the degree of medical competence normally expected by physicians.

3. **Time.** The department shall give examinations at least twice a year, with additional dates for examination set at the discretion of the board. The department will give 30 days' public notice of the date, time and place of examination.

§ 1658-I. Temporary trainee permit

An applicant who fulfills the requirements as set forth in section 1658-H, subsection 1, paragraphs A to E, may obtain a trainee permit upon application to the department, accompanied by a fee of \$25 and the signature of the licensed hearing aid dealer and fitter who is responsible for the direct supervision of the trainee.

No person holding a trainee permit shall engage in the practice of dealing in or fitting of hearing aids except while under direct supervision by a licensed hearing aid dealer and fitter.

A person who holds a temporary trainee permit shall be notified and shall take the next scheduled licensing examination. After successfully passing the examination, he shall be issued a license upon the payment of a fee of \$75.

If such holder of a trainee permit fails the examination, he may apply for and be issued a new trainee permit upon payment of an additional fee of \$25. Not more than 3 trainee permits may be issued to any applicant.

§ 1658-J. Scope of examination

The qualifying examination provided in section 1658-H shall consist of, but not be limited to:

1. Areas. Tests of knowledge in the following areas as they pertain to the fitting and sale of hearing aids:

- A. Basic physics of sound;
- B. The anatomy and physiology of the ear;
- C. The function of hearing aids; and
- D. Types of hearing loss and deafness.

2. Practical tests. Practical tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:

- A. Pure tone audiometry, including air conduction testing and bone conduction testing;
- B. Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;
- C. Criteria for masking; cros and bi-cros fittings;
- D. Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing aid;
- E. Taking earmold impressions;
- F. Knowledge of master hearing aid or sound pressure measurement (SPL);
- G. Evidence of knowledge regarding the medical and rehabilitation facilities for children and adults being served;
- H. Evidence of knowledge regarding consumer laws as they apply to licensees and trainees.

3. Rules and regulations. The department may promulgate rules and regulations which further define additional areas to be tested in the qualifying examination in order to promote more knowledgeable practitioners in this field.

§ 1658-K. Notice to department of place of business; notice to holders of license; how given by department

A person who holds a license shall notify the department in writing of the regular address of the place or places where he engages or intends to engage in the fitting or the sale of hearing aids.

The department shall keep a record of the place of business of persons who hold licenses.

Any notice required to be given by the department to a person who holds a license shall be mailed to him by certified mail at the address of the last place of business of which he has notified the department.

§ 1658-L. Biennial renewal of license; fees; effect of failure to renew

Each person, who engages in the fitting and sale of hearing aids, shall biennially according to regulations established by the department submit to the department an application for a renewal of his license, accompanied by a fee of \$50. The licensee shall keep such certificate conspicuously posted in his office or place of business at all times. Where more than one office is operated by the licensee, duplicate certificates shall be issued by the department for posting in each location. A 30-day grace period shall be allowed after the date of expiration, during which time licenses may be renewed on payment of a fee of \$100 to the department. After expiration of the grace period, the department may renew such certificates upon the payment of \$200 to the department. No person who applies for renewal, whose license has expired, shall be required to submit to any examination as a condition to renewal, provided such renewal application is made within 2 years from the date of such expiration. If more than 2 years have passed since the expiration of license, applicant shall apply for temporary trainee permit and shall take the examination.

§ 1658-M. Grounds for suspension of license

The department may refuse to issue or refuse to renew, after hearing, or the Administrative Court Judge, as authorized under Title 5, chapters 301 to 307, may suspend or revoke any license for any one or more of the following causes:

1. Fraud or deceit. Procuring of license by fraud or deceit practiced upon the department or a purchaser;
2. Unethical conduct. The department shall promulgate rules and regulations in conjunction with the board and define unethical conduct for the purposes of this chapter in order to protect the public from unfair or deceptive practices and to effectively promote a high standard of ethics in the hearing aid industry;
3. Falsity. Engaging in the fitting and sale of hearing aids under a false name or alias with fraudulent intent;
4. Without testing. Selling or causing to be sold a hearing aid to any person who has not been given tests, including at least pure tone, air and

bone audiometry. The results of such tests shall be permanently filed according to section 1658-E;

5. Negligence. Incompetence, negligence or neglect in the conduct of the practice of fitting and dealing in hearing aids, including, but not limited to, the improper fitting of a hearing aid, the sale of a hearing aid to a person with normal hearing, making an earmold impression or fitting an earmold without prior inspection of the external ear canal, making earmold impression or fitting an earmold after prior inspection revealed the presence of debris or fluid, or impacted cerumen in the ear canal, failure to indicate the need for medical or audiological evaluation when the prospective purchaser's history reveals a probable risk of disease or progressive hearing impairment, the failure to make the required medical referrals, the incorrect reporting of hearing test results to any person, the failure to be present to fit the final hearing aid on the ear of the purchaser, and the tampering with a satisfactorily performing hearing aid owned by a purchaser or potential purchaser so as to cause such aid to no longer perform correctly; or

6. Violations. For any violation of this chapter or the rules and regulations.

§ 1658-N. Prohibited acts and practices

1. Prohibitions. No person shall:

A. Sell, barter or offer to sell or barter a license;

B. Purchase or procure by barter a license with intent to use it as evidence of the holder's qualification to practice the fitting and sale of hearing aids;

C. Alter a license with fraudulent intent;

D. Use or attempt to use as a valid license a license which has been purchased, fraudulently obtained, counterfeited or materially altered; or

E. Willfully make a false statement in an application for license or application for renewal of a license.

§ 1659. Hearings

Any conflict between this section and the State of Maine Administrative Procedure Act shall be resolved by the provisions of the State of Maine Administrative Procedure Act.

1. Notice; hearing. Every licensee or applicant for license shall be afforded notice and an opportunity to be heard before the department shall have authority to take any action, the effect of which would be:

A. To deny permission to take an examination for which application has been properly made; or

B. To refuse to issue a license after examination for any cause other than failure to pass the examination; or

C. To refuse to renew a license for any cause other than failure to pay a statutory fee.

2. Departmental action; written notice. When the department contemplates taking any action of a type specified in subsection 1, paragraphs A or B, it shall give written notice to the applicant, including a statement:

- A. That the applicant has failed to satisfy the department of his qualifications to be examined or to be licensed, as the case may be; and
- B. Indicating factually in what respects the applicant has failed to satisfy the department; and
- C. That the applicant may secure a hearing before the department by depositing in the mail within 10 days after service of said notice, a registered letter addressed to the department containing a request for a hearing.

In any proceeding involving the denial of a properly made application to take an examination, or refusal to issue a license after an applicant has taken and passed an examination, the burden of satisfying the department of the applicant's qualifications shall be upon the applicant.

3. Hearing before the department. When the department contemplates taking any action of a type specified in subsection 1, paragraph C, it shall give written notice to the licensee containing a statement:

- A. That the department has received sufficient evidence which, if not rebutted or explained, may justify the department in taking the contemplated action under a section of the law;
- B. Indication factually of the nature of the evidence; and
- C. That the applicant may secure a hearing before the department by depositing in the mail within 10 days after the serving of said notice, a registered letter addressed to the department requesting a hearing on the matter provided, however, that where it is mutually agreeable to the department and the license holder, the license holder may elect to voluntarily waive the minimum time limit of such hearing.

4. Procedure upon departmental refusal to issue or renew license. In any hearing before the department involving the refusal to issue or the refusal of the department to renew a license other than for failure to pay the statutory fee, the department shall present competent evidence to justify the action taken or proposed by the department unless an admission of guilt is entered.

5. Procedure for hearing. If the licensee or applicant does not mail a request for a hearing within the time and in the manner detailed in this section, the department may take action contemplated in the notice.

If the licensee or applicant does not mail a request for a hearing as required in this section, the department shall, within 20 days of receipt of such a request, notify the licensee or applicant of the time and place of the hearing, which hearing shall be held not more than 30 days nor less than 10 days from the date of the service of such notice.

6. Procedure for notice. Any notice required by this section shall be served by registered mail or certified mail, with return receipt requested, directed to the licensee or applicant at his last known address as shown by the

records of the department. Notice shall be deemed to have been served on the date borne by the return receipt showing delivery of the notice to the addressee or refusal of the addressee to accept the notice.

7. Number required for board to act. At all hearings at least a majority of the board shall be present to hear and determine the matter, and the department shall also be represented by a least 2 persons designated by the commissioner.

8. Rights of those being heard. A person entitled to be heard shall have the right:

- A. To be represented by counsel;
- B. To cross-examine witnesses;
- C. To present all relevant evidence by means of witnesses and books and papers and documents; and
- D. To have a transcript of the hearing made at his own expense upon written request to the department.

9. Rights of the department. In connection with any hearing, the department shall have the right:

- A. To administer oaths or affirmation of witnesses;
- B. To have counsel to assist in the development of the case;
- C. To take testimony;
- D. To examine and cross-examine witnesses;
- E. To have transcripts made at the department;
- F. To direct a continuance of any case for just cause; and
- G. To temporarily suspend the license of the licensee if the safety or health of a person is seriously endangered.

10. Other powers. The department shall have the power to require the production of books, papers or other documents and may issue subpoenas to compel the defendants or witnesses to testify and produce such books, papers or other documents. The defendant shall also have the same power to issue subpoenas.

11. Rules of evidence not applicable. In all hearings before the department, the rules of evidence shall not apply.

12. Per diem and mileage; witnesses. Witnesses shall be entitled to the same per diem and mileage as witnesses appearing before the District Court.

13. Decision of board. After a hearing has been completed, the members of the department and board who conducted the hearing shall proceed to consider the case and as soon as practicable shall render their decision. Any and all violations of the department's regulations or provisions of chapter 23-A shall be grounds for refusal to issue or renew said license. The decision must be rendered within 90 days after the hearing.

14. Copy of decision. Within 5 days after the decision is rendered, a copy of the same shall be served by registered mail upon the person whose license is involved. It shall be deemed as served on the date borne on the return receipt.

15. Failure to appear. If a person who has requested a hearing does not appear, and no continuance has been granted, the department may hear the evidence of such witnesses as may have appeared, and the department may proceed to consider the matter and dispose of it on the basis of the evidence before it.

16. Procedure to reopen proceedings. Where because of accident, sickness or other reasonable cause a person fails to request a continuance or fails to appear for a hearing which he has requested, the person may within a reasonable length of time apply to the department to reopen the proceedings, and give such person notice thereof. At the time and place fixed, a hearing shall be held at which the person may testify in his own behalf or present such other evidence as may be beneficial to his case. Witnesses, who have previously testified, shall not be required to appear at the 2nd hearing unless subpoenaed by the department or otherwise consent to appear.

17. Decision to reopen proceedings discretionary with department. At any time after the hearing and prior to the service of the department's decision, the person affected may request the department to reopen the case to receive additional evidence or for other just cause. The granting or refusing of such request shall be within the department's discretion.

18. Department may reopen proceedings. The department may reopen the case on its own motion at any time before a petition for a writ of certiorari is filed. Thereafter, it may do so only with the permission of the reviewing court.

§ 166c. Powers and duties of department

1. Powers and duties. The powers and duties of the department are as follows:

- A. To authorize all disbursements necessary to carry out this chapter;
- B. To supervise issuance of licenses "by experience" and to administer qualifying examinations in conjunction with the board to test the knowledge and proficiency of applicants licensed by examination;
- C. To register persons who apply to the department and who are qualified to engage in the fitting and sale of hearing aids;
- D. To purchase and maintain or rent audiometric equipment and other facilities necessary to carry out the examination of applicants in section 1658-H;
- E. To issue and renew licenses;
- F. To take action before the Administrative Court Judge for the suspension or revocation of licenses when there is indication that such is proper;

G. To designate the time and place for examining applicants in conjunction with the board;

H. To appoint representatives to conduct or supervise the examination in conjunction with the board;

I. Following a public hearing, to promulgate, adopt, amend and publish rules and regulations not inconsistent with the laws of this State, which are necessary to carry out the provisions of this chapter. The rules and regulations shall serve to protect the consumer from unethical practices, shall serve to explain or define terms and words contained within this chapter, and shall add to the general understanding of both consumer and practitioner of the provisions of this chapter. Furthermore, the department shall promulgate rules and regulations where specifically authorized in this chapter;

J. To appoint or employ subordinate employees, subject to the Personnel Law;

K. To, during the 2-year period following passage of this Act, redistribute the expiration dates of the existing licenses so that an equal number expire in each month of the year, thus allowing for distributing the work of licensure evenly throughout the year;

L. To notify license holders not less than 30 days prior to the expiration of their licenses and provide them with any necessary relicensure forms; and

M. To effectively carry out the provisions of this chapter where applicable.

§ 1660-A. Board of Hearing Aid Dealers and Fitters

1. Board. There shall be established a Board of Hearing Aid Dealers and Fitters which shall guide, advise and make recommendations to the department handling the licenses under this chapter.

2. Membership. Members of the board shall be residents of the State. The board shall consist of 3 licensed hearing aid dealers and fitters, one licensed physician, one licensed osteopath, an audiologist, a member of the Bureau of Maine's Elderly and 2 citizen consumers. Each hearing aid dealer and fitter on the board shall have had not less than 5 years of experience and shall hold a valid license as a hearing aid dealer and fitter, as provided under this chapter. Exception shall be the hearing aid dealers and fitters of the first board appointed, who shall have had not less than 5 years of experience and shall have fulfilled all qualifications for license by experience as provided under this chapter.

3. Appointment; term of office; chairman. All members of the board shall be appointed by the Commissioner of Health and Welfare pursuant to the recommendation of the Director of Health. The term of office of each member shall be for 4 years, except that of the members of the first board appointed under this chapter, 3 shall be appointed for 2 years, 3 shall be appointed for 3 years and 3 shall be appointed for 4 years. Before a member's term expires, the commissioner shall appoint a successor to assume his duties

at the expiration of his predecessor's term. A vacancy in the office of a member shall be filled by appointment for the unexpired term. The members of the board shall annually designate one such member to serve as chairman and another to serve as secretary-treasurer. No member of the board shall be re-appointed to the board until at least one year after the expiration of his 2nd term of office.

4. Compensation. Members of the board shall receive for each day actually engaged in the duties of his office a per diem of \$40, not to exceed the sum of \$1,000 per year and reimbursement for his actual and necessary travel and other expenses to be paid from appropriations made for this purpose. Expenses of members shall not exceed the limit established by standard travel regulations for state employees in effect at the time of the expenditures.

§ 1660-B. Duties of the board

The board shall have the responsibility and duty of advising the department in all matters relating to this chapter, shall prepare the examinations required by this chapter for the department and shall assist the department in carrying out this chapter.

The department shall consider the recommendations of the board in all matters relating to this chapter.

The board may provide or make available opportunity for lectures, courses or workshops which will be useful and educational to licensees or trainees and may use its funds to sponsor such educational programs.

The board may recommend to the department the preparation and administration of suggested guidelines concerned with the fitting and selection of hearing aids in order that prospective licensees may possess the necessary backgrounds and qualifications to fit and sell hearing aids.

§ 1660-C. Meetings of board

The board shall meet not less than twice each year at a place, day and hour determined by the board. The board shall meet at such other times and places as may be requested by the department.

§ 1660-D. Disposition of receipts; state department, Hearing Aid Account

On or before the 10th day of each month, the department shall pay into the State Treasury all moneys received by the department during the preceding calendar month. The State Treasury shall credit the moneys to the State Department of Health and Welfare, Hearing Aid Account, which account is created. All moneys received under this chapter shall constitute a permanent fund for carrying on the work of the board and department, and for such expenses as may be necessarily incurred from time to time by said department in carrying out this chapter.

§ 1661. Penalties

Violations of any provisions of this chapter or violation of the rules and regulations shall be punishable, upon conviction, by a fine of not more than

\$1,000. The department, in conjunction with the board, may seek to enjoin violations of any of the provisions of this chapter or any of the provisions of the rules and regulations promulgated hereunder by injunction or by any other appropriate proceedings.

§ 1662. Severability

If any section, subsection, part or provision contained in this chapter, or any provision of any rule or regulation promulgated hereunder, is found to be invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

STATEMENT OF FACT

The Legislature of the State of Maine in 1969 enacted Title 32, chapter 23-A, sections 1758 to 1660. The title of that Act was Hearing Aid Dealers and Fitters. Since 1969, the statute has been amended infrequently and several problems exist in its present form. The most realistic and effective manner in which to deal with the many inadequate provisions of said statute is by repealing and replacing it. Approximately $\frac{1}{3}$ of the proposed replacement statute is a verbatim replica of the 1969 version and its amended provisions, while the bulk of the new statute represents a concerned effort by the Department of Health and Welfare, the Board for Licensing Hearing Aid Dealers and Fitters, the Consumer Fraud Division and other interested parties, including audiologists and independent licensees of the hearing aid business. The intent of this statute is to provide for the upgrading of the standards for licensing and practice in the hearing aid profession, and further to provide the public with responsible laws in order to effectively govern the hearing aid industry in Maine. Due to the length of the statute the various sections have been listed below with an explanation of their contents.

Section 1658 defines the various terms used within proposed chapter 23-A and increases the number of definitions from the 7 contained in the prior statute to 11.

Section 1658-A, pertaining to licensing both individuals and businesses incorporates several provisions provided by the Consumer Fraud Division. The primary purpose of this section is to insure that businesses employing hearing aid trainees, dealers and fitters will act in a responsible manner in order to properly safeguard the provisions of chapter 23-A as it relates to the employees of the business.

Although hearing aid dealers and fitters must be licensed to do business in the State of Maine, the State does not have adequate control over businesses which are established for the purpose of selling or fitting hearing aids. Because of this loophole in the law, a business can employ several hearing aid dealers who engage in unethical or illegal conduct and the State's only remedy would be against the individuals and not against the business. The result might well be that certain employees would lose their license to sell hearing aids and the business would be free to recruit new employees to continue the

same practices. This provision provides the State with the added option of pulling the license of any business engaged in unethical or illegal conduct in the selling of hearing aids.

Section 1658-B serves a twofold purpose. First, this section guarantees any person an opportunity to test a hearing aid before incurring any obligation to purchase this expensive piece of equipment. Very often hearing aid consumers are elderly persons who are very anxious to improve their hearing and are easily sold a hearing aid without first testing the aid to see whether it improves their hearing. A 10-day trial period will give a prospective buyer an opportunity to try the hearing aid or aids in a variety of situations in which they wish to communicate and yet will not cause such wear and tear on the aid as to reduce its market value. If the prospective purchaser fails to either return the aid or purchase the aid, the seller may recover his aid in an action for conversion.

Second, this section requires at least one service contact soon after purchase of the aid. An extra benefit of this provision will be to discourage fly-by-night licensees who make a sale and disappear, leaving the purchaser without any follow-up service or repair contact.

Section 4 creates a clear enforcement mechanism for violation of sections 1-3.

Section 1658-C concerns itself with notices to be furnished to purchasers of hearing aids. This section provides the purchaser, often elderly, with a written statement of what he has purchased, from whom, the terms of sale, what service to expect, and the terms of guarantee. A 10 day notice of cancellation provision is included which gives the consumer 7 days more than the 3-day provision contained within the Home Solicitation Sales Act in order to cancel a contract. The 10-day provision is, however, 20 days less than that proposed by the Federal Trade Commission. This extension of time is suggested due to the age of many of the consumers and concomitant physical and mental difficulties which sometimes accompany the aging process.

There have been several complaints filed with the department regarding the contract terms of hearing aid purchases and what the obligations of the seller-dealer encompass. This section would in large measure clear up this frustrating situation.

Furthermore, section 1658-C requires a hearing aid dealer to recommend that a child 16 years of age or younger see a physician trained in otolaryngology if such has not been done previously.

In addition, there exists in this section a clear enforcement mechanism similar to that employed in section 1658-B.

Section 1658-D, entitled persons and practices not affected, remains basically unchanged from its predecessor and is self-explanatory.

Section 1658-E is a totally new provision dealing with records. It is basically an administrative section which requires the hearing aid dealers and fitters and the department to maintain certain information in their respective

files regarding purchasers and licensees. The requirement for records maintenance also reduces the amount of discrepancies should a problem or question arise concerning business transactions in the State of Maine hearing aid industry. This section should also promote better service to purchasers of hearing aids and provide dealers with a readily available history of their old or new clientele.

Section 1658-F, Calibration, represents an effort to promote the usage of a properly calibrated audiometer or other hearing device to measure human hearing.

Section 1658-G, issuance of license, section 1658-L, biennial renewal of license, and 2 paragraphs of section 1660 (K, L) are included in chapter 23-A for the following reasons. The clerical and supportive work associated with the operation of the Board of Licensing of Hearing Aid Dealers and Fitters is currently performed by the Bureau of Health, Department of Health and Welfare. All of these licenses, along with several other one-time activities come due on or about the first of the year at a time when professional and clerical staff are also unusually busy due to the holidays, to preparation and submission of budgets, legislation, and other year end activities. This legislation would change the existing statutes to allow for this licensure process to be staggered throughout the year and thus evenly distribute the workload. It would permit the development of a single efficient unit for all professional licensure activities in the bureau of administration action. It can be managed in such a way as to not increase the cost of licensure for any individual applicant.

Section 1658-H is a fundamentally administrative section stating the qualifications for applicants to take the hearing aid dealers and fitters licensing examination as well as authorizing the department and board to administer the examination. Paragraph F is an important provision for it requires a person to have 30 days of supervised experience in the practice of fitting and dealing in hearing aids before taking the licensing examination. At present time, a person is merely required to take an examination to become licensed without having any actual training in the profession.

Section 1658-I states the requirements for obtaining a trainee permit.

Section 1658-J retains all of the provisions of the prior statute but adds several areas of knowledge to be tested regarding the license examination. This section will serve to provide both the business and private community with better educated, qualified, trained and professional licensed hearing aid dealers and fitters.

Section 1658-K is self-explanatory regarding notice to the department of the licensee's place of business.

Section 1658-L (refer to section 1658-G).

Section 1658-M, entitled grounds for suspension of license, provides the department with the authority to promulgate rules and regulations defining the term "unethical." Several states currently have similar provisions. The department has received many complaints from elderly purchasers of hearing

aids regarding unethical practices which were not covered by the prior statute. This section will serve to place on notice via the rules and regulations those acts which will be deemed to be unethical and which will not be tolerated by the department. It will further enable the department to stem these practices by appropriate sanctions. Other unacceptable acts such as fraud, falsity and negligence are also included herein.

Section 1658-N lists other prohibited acts and practices.

Section 1659 provides a licensee or applicant for license with the opportunity to be heard before the department in certain situations and prescribes the necessary steps to be taken in order to be heard.

Section 1660 states the powers and duties of the department and is self-explanatory.

Section 1660-A defines the make-up of the board for licensing hearing aid dealers and fitters. In addition to 3 licensed hearing aid dealers and fitters, one physician and one osteopath, this provision requires an audiologist, a member of the Bureau of Maine's Elderly, and 2 citizen consumers to be added. This will allow the board to represent a more diverse cross-section of the citizenry.

Section 1660-B defines the duties of the Board of Hearing Aid Dealers and Fitters.

Section 1660-C defines when the board will meet and is self-explanatory.

Section 1660-D provides for the disposition of funds received in accordance with this chapter.

Section 1661 prescribes penalties for violating this chapter and the rules and regulations thereof.

Section 1662 is the separation clause in case any part of chapter 23-A or the rules and regulations are found to be unconstitutional or unlawful.