

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1907

H. P. 1643

House of Representatives, May 29, 1975

Reported by Mrs. Boudreau from Committee on Business Legislation and printed under Joint Rules No. 18.

EDWIN H. PERT, Clerk

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:

Sec. 1. 5 MRSA § 2301, sub-§ 1, as last amended by PL 1973, c. 788, § 24, is further amended by inserting after the 9th paragraph the following new paragraph:

Board of Hearing Aid Dealers and Fitters;

Sec. 2. 5 MRSA § 2301, sub-§ 1, ¶ K is enacted to read:

K. Hearing aid dealers and fitters licensed under Title 32, chapter 23-A.

Sec. 3. 32 MRSA c. 23-A, as enacted by PL 1969, c. 320, and as amended, is repealed and the following enacted in place thereof: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 AID 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 of 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 ear mold, 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. Information regarding 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 hearing aids, mechanical adjustment or repair or remakes of hearing aids or ear molds.

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; and the making of impressions for ear molds 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, between a dealer and a purchaser, but does not include wholesale transactions.

10. 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

1. License for person. 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 a valid 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. The department shall, without requiring additional payment, issue duplicate licenses to license holders operating more than one office. A license issued under this chapter shall confer on the holder the right to select, fit and sell hearing aids.

2. License for business organization. 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 shall apply to the department for a license to engage in said business. No business entity shall so engage in the business of selling or offering for sale hearing aids without a license to do so. The department shall issue a license signed by the Director of Health, upon payment by the business entity of a fee of \$100 and upon filing of a sworn statement from a person with authority from the business entity. Such sworn statement shall list the names and addresses of all hearing aid dealers and fitters directly or indirectly employed by said entity and shall certify that the entity employs only hearing aid dealers and fitters who are duly licensed by the State. 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 subsection, 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.

3. Violations by business organizations. 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 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 subsection shall be dealt with according to the penalties prescribed in subsection 4.

4. Penalties. If one or more of the employees of such licensee violates the standards of conduct established in section 1658-N and if, in addition, said licensee 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-N, 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 1660-E shall also be applicable.

§ 1658-B. Payment; trial period

At the time of purchase of one or more hearing aids, the seller-licensee may demand and accept no more than 50% of the purchase price. Not less than 20 days nor more than 35 days after the purchase of one or more

hearing aids, the seller-licensee shall 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. The purchaser, during this trial period, may cancel the transaction by notifying the seller-licensee on or before the day of personal service contact and shall have the right to a refund. If at the time the seller-licensee makes personal contact with the purchaser, the purchaser in writing expresses his satisfaction with the hearing aid, then the balance of the purchase price is due and payable to the seller-licensee. If service or repair of the hearing aid is necessary, there shall be a further trial period of the same duration, with the same right of cancellation.

In the event of cancellation pursuant to this section, the seller-licensee, at the time he makes the personal contact required by this section, shall refund the downpayment less 10% of the purchase price of one hearing aid and less the reasonable price of the ear mold or ear molds. In the event of cancellation pursuant to this section, the purchaser shall return the hearing aid to the seller-licensee at the time of the personal contact and the seller-licensee shall return to the purchaser all hearing aid or aids, devices, accessories and ear molds that the seller-licensee has received from the purchaser.

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 cancel the transaction and right to have a refund of the downpayment made less 10% of the purchase price of one hearing aid and less the reasonable price of the ear mold or ear molds.

Any provision of a contract which limits or conditions in any way the rights 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-N, constitute a violation of Title 5, chapter 10, Unfair Trade Practices Act.

§ 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. Such notice shall include all of the provisions prescribed in this section. The department shall prepare a model notice containing all the requirements of this section, and shall furnish copies upon request.

1. Licensee's identification. The notice shall state the licensee's signature, address of place of business and license number.

2. Address of Board of Hearing Aid Dealers and Fitters. The notice shall state the address of the Board of Hearing Aid Dealers and Fitters.

3. Make and model specifications. The notice shall state specifications as to the make and model of the hearing aid furnished, including:

- A. The brand name or manufacturer's name, and the model;
 - B. The serial number, notification of which shall be given in writing later if not known at the time of the notice; and
 - C. The condition of the hearing aid, whether new, used or reconditioned.
4. Terms of sale. The notice shall state the full terms of sale, including the following terms:
- A. There shall be a full and complete disclosure of the cost of financing the purchase of the aid.
 - B. The notice shall state 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 the terms of aftercare fitting.
 - C. 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 consumer.
 - D. The notice shall state that the purchaser may cancel the transaction if he consults an audiologist or a physician with specialized training in the field of otolaryngology who in writing states that the hearing aid is not advisable and in writing specifies the audiological or medical reason or both therefor. If the purchaser cancels a transaction pursuant to this paragraph, the seller-licensee shall within 60 days of the notice of the cancellation and the return by the purchaser of the hearing aid or aids refund to the purchaser the amount paid less 10% of the purchase price of one hearing aid and less the reasonable price of the ear mold or molds.
5. Date of sale. The notice shall state the date of the sale.
6. Terms of guarantee or warranty. The notice shall state the terms of guarantee or warranty, including:
- A. The characteristics or properties of the hearing aid or parts thereof covered by or excluded from the guarantee or warranty;
 - B. The duration of the guarantee or warranty;
 - C. The conditions, if any, that the purchaser must fulfill before the guarantor or warrantor must perform his obligations;
 - D. The obligations of the guarantor or warrantor, including obligations as to repair or replacement of hearing aids and refunding of the purchase price or part thereof;
 - E. The identity and address of the guarantor or warrantor.
7. Substitute models. Whenever a person practicing the fitting and sale of hearing aids furnishes to a purchaser a hearing aid of a different make, model or specification than requested, the notice shall include a statement of this fact.

8. Medical opinion. The notice shall conspicuously state 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.”

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

10. Limits or conditions. 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-N, constitute a violation of Title 5, chapter 10, Unfair Trade Practices Act.

§ 1658-D. Medical or audiological examination

1. Minors. No dealer may sell or furnish a hearing aid to a person of 18 years or less without a written statement, signed by a physician with specialized training in the field of otolaryngology or by an audiologist, that such person has had an ear or hearing examination within 90 days of the purchase or furnishing of a hearing aid and that a hearing aid is recommended for such person.

2. Adults. The department shall by regulation list and define certain medical conditions affecting hearing. If a dealer has notice of the existence of any one or more of such conditions in the case of a prospective purchaser of a hearing aid, whether by the dealer's observation of the prospective purchaser or by information furnished by the prospective purchaser, fitting of the hearing aid shall be delayed until the purchaser has had an ear or hearing examination administered by a physician with specialized training in the field of otolaryngology or by an audiologist who, as a result of such examination, recommends in writing a hearing aid for the prospective purchaser.

§ 1658-E. 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, except ear molds.

Nothing in this chapter shall be construed to require an ear or hearing examination by a physician or audiologist of a person who objects thereto on the ground that such examination conflicts with the tenets and practices of a church or religious denomination of which he is a member or adherent.

§ 1658-F. Records

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

A. The file shall include the application for renewal and 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 ear mold and other pertinent information such as reports from speech and hearing centers. The audiogram or statements of results of other measurement of known hearing shall be signed by the purchaser.

§ 1658-G. 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-H. Issuance of license

The department shall register each applicant without discrimination who satisfactorily passes an examination as provided in section 1658-I 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-I. 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 record of 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 to further define the qualifications in this section 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-J. Temporary trainee permit

An applicant who fulfills the requirements as set forth in section 1658-I, 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-K. Scope of examination

The qualifying examination provided in section 1658-I 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 ear mold 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-L. 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-M. 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-N. 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 ear mold impression or fitting an ear mold without prior inspection of the external ear canal, making ear mold impression or fitting an ear mold 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-O. 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 regis-

tered 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 at 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.

§ 1660. 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-I;
- 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 5 licensed hearing aid dealers and fitters, one licensed physician, an audiologist, a member of the Maine Committee on Aging, and one citizen consumer. 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 Governor with the consent of the Executive Council. 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 reappointed 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.

§ 1660-E. 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.

§ 1660-F. 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 new draft clarifies the language and, in some places, the section numbering of the bill.

The new draft clarifies the circumstances in which a hearing aid cannot be sold without a medical or audiological recommendation. Such recommendations are necessary for minors and for adults with certain medical conditions.

The new draft changes the provisions of section 1658-B on terms of payment and the mandatory trial period. A dealer cannot accept more than one-half the purchase price as a down payment. Within 20 to 35 days, he must check with the purchaser for fitting and service. The purchaser may cancel during this period and is entitled to a refund of the down payment, less 10% of the purchase price of an aid, in effect a rental fee, and less the cost of ear molds.