

SENATE BILL 1049

By Tracy

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 63, Chapter 17, relative to hearing instrument specialists.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 4-29-231(a), is amended by deleting subdivision (24) and by substituting instead the following:

(24) Board for licensing hearing instrument specialists, created by § 63-17-202;

SECTION 2. Tennessee Code Annotated, Section 63-17-103, is amended by deleting the language "As used in this chapter" and by substituting instead the language "As used in this part".

SECTION 3. Tennessee Code Annotated, Section 63-17-201, is amended by deleting subdivision (3) and by substituting instead the following:

(3) "Board" means the board for licensing hearing instrument specialists;

SECTION 4. Tennessee Code Annotated, Section 63-17-201, is further amended by deleting subdivision (4) and by renumbering the subsequent subdivisions accordingly.

SECTION 5. Tennessee Code Annotated, Section 63-17-201, is further amended by deleting from present subdivision (7) the language "council-approved" and by substituting instead the language "board-approved".

SECTION 6. Tennessee Code Annotated, Section 63-17-202, is amended by deleting the section and by substituting instead the following:

63-17-202.

(a) There is created a board to be known as the board for licensing hearing instrument specialists, with the duties and powers as provided in § 63-17-203.

(b) (1) The board shall consist of five (5) members who shall possess the following qualifications:

(A) Three (3) members shall be qualified hearing instrument specialists and fitters of hearing instruments who have been duly licensed as such in this state, and who are certified by the National Board for Certification — Hearing Instrument Sciences. Such members may be appointed by the governor from a list of qualified nominees submitted by the Tennessee Hearing Aid Society;

(B) One (1) member shall be a physician who has been duly licensed to practice medicine in this state and who has received certification from the American Council of Otolaryngology. Such member may be appointed by the governor from a list of nominees submitted by the Tennessee Medical Association; and

(C) One (1) member shall be a person who has been a user of hearing instruments for a period of at least five (5) years preceding that person's appointment to the board and who shall never have been engaged in the practice of hearing instrument dispensing and fitting, audiology or medicine. Such member shall be appointed by the governor.

(2) In order that the terms may be appropriately staggered, initial appointments to the board for licensing hearing instrument specialists are for the following terms: one (1) member appointed pursuant to subdivision

(b)(1)(A) shall be appointed to a term of one (1) year; one (1) member appointed pursuant to subdivision (b)(1)(A) shall be appointed for a term of two (2) years; one (1) member appointed pursuant to subdivision (b)(1)(A) shall be appointed for a term of four (4) years; the member appointed pursuant to subdivision (b)(1)(B) shall be appointed to a term of three (3) years; and the member appointed pursuant to subdivision (b)(1)(C) shall be appointed to a term of four (4) years. Thereafter, each member appointed to the board shall be appointed to a term of five (5) years. No person is eligible to serve successive terms on the board; provided, that those members appointed to a one-year or two-year term under this subsection (b) are eligible to succeed themselves for one (1) successive five-year term. In the event of a vacancy on the board, the governor shall appoint a person qualified under the appropriate subdivision of this subsection (b) to fill the unexpired vacancy. The initial appointments to the board shall include the current and immediate past board chair of the licensing board of hearing aid dispensers. In making appointments to the board, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older and that at least one (1) person serving on the board is a member of a racial minority.

(c) Each member of the board shall receive fifty dollars (\$50.00) per diem expenses when actually engaged in the discharge of such member's official duties and, in addition, shall be reimbursed for attending any meeting of the board within this state, in accordance with the comprehensive travel regulations

promulgated by the department of finance and administration and approved by the attorney general and reporter.

(d) Such board shall be administratively attached to the division of health related boards.

SECTION 7. Tennessee Code Annotated, Section 63-17-203, is amended by deleting the section and by substituting instead the following:

63-17-203.

The powers and duties of the board are to:

- (1) Supervise and administer qualifying examinations to test the knowledge and proficiency of applicants for a license;
- (2) License persons who apply to the board and who are qualified to practice the fitting of hearing instruments;
- (3) Purchase and maintain or rent audiometric equipment and facilities necessary to carry out the examination of applicants for license;
- (4) Issue and renew licenses, under the name of the board;
- (5) Deny, suspend or revoke licenses pursuant to this part;
- (6) Appoint representatives to conduct or supervise the examination of applicants for license;
- (7) Designate the time and place for examining applicants for license;
- (8) Make and publish rules and regulations not inconsistent with the laws of this state that are necessary to carry out this part. All rules relating to hearing instrument specialists shall be initiated and approved by a majority of the members of the board of hearing instrument specialists;
- (9) Require an annual calibration of audiometric equipment;

(10) Provide all examinations required by this part. The National Board for Certification of Hearing Instrument Sciences (NBC-HIS) examination is the accepted examination for licensure. The board may contract with other testing organizations for equivalent examinations;

(11) Establish minimum requirements of test procedure and test equipment to be used in the fitting of hearing instruments and also the retention of records of all fittings;

(12) Inspect the facilities or records, or both, of persons who practice the fitting and selling of hearing instruments, upon a showing of probable cause of a violation of this part;

(13) Require lists, set standards and approve programs for trainees as provided in § 63-17-207;

(14) Prescribe regulations requiring continuing education as a prerequisite for renewal of licenses to practice; and

(15) Employ a consultant to assist the board in its duties.

SECTION 8. Tennessee Code Annotated, Section 63-17-204, is amended by deleting the section and by substituting instead the following:

63-17-204. The board shall meet at least once each year at a place and time determined by the chair. The board shall also meet at such other times and places as may be appropriate to carry out the purposes of this part.

SECTION 9. Tennessee Code Annotated, Section 63-17-205, is amended in subsection (a) by deleting the language "issued by the council" and by substituting instead the language "issued by the board".

SECTION 10. Tennessee Code Annotated, Section 63-17-206, is amended in subsection (b) by deleting the language "with the council" and by substituting instead the language "with the board".

SECTION 11. Tennessee Code Annotated, Section 63-17-206, is amended by deleting subsection (c) and by substituting instead the following:

(c) This part shall not be construed to prevent any person who is an audiologist licensed by the board of communication disorders and sciences from engaging in the practice of audiology as defined in § 63-17-103, nor to prevent any person who is a speech-language pathologist licensed by the board of communication disorders and sciences from engaging in the practice of speech language pathology as defined in § 63-17-103.

SECTION 12. Tennessee Code Annotated, Section 63-17-207, is amended in subsection (b) by deleting the language "set by the council" and by substituting instead the language "set by the board".

SECTION 13. Tennessee Code Annotated, Section 63-17-208, is amended by deleting subsection (e) and by substituting instead the following:

(e) Applicants for an apprentice license shall pay the board a nonrefundable examination fee as set by the board.

SECTION 14. Tennessee Code Annotated, Section 63-17-209, is amended by deleting the section and by substituting instead the following:

(a) Upon the payment of an examination fee as set by the board, an applicant for a license who is notified by the board that the applicant has fulfilled the requirements of § 63-17-207 shall appear at a time, place and before such persons as the board may designate to be examined by written and practical tests in order to demonstrate that such applicant is qualified to practice the fitting of hearing instruments.

(b) If the applicant can satisfy the board that such applicant has successfully passed a written examination, whose contents are acceptable to the board, within ninety (90) days of such applicant's application for examination, the board may at its discretion waive such written examination.

(c) The board shall give at least one (1) examination of the type prescribed in this section each year and such additional examinations as the volume of applications may make appropriate.

SECTION 15. Tennessee Code Annotated, Section 63-17-211, is amended by deleting the section and by substituting instead the following:

(a)

(1) Upon payment of an initial license fee as determined by the board, the board shall issue a license to each applicant who passes the examination. Such initial license shall expire as provided by rules and regulations promulgated by the board.

(2) During the second year of a biennial renewal period, the initial license fee shall be one-half ($\frac{1}{2}$) of the biennial renewal fee.

(b) The board may, in its discretion, license as a hearing instrument specialist, without examination, on the payment of a fee as set by the board, an applicant who is a hearing instrument specialist, certified, registered or licensed under the laws of another state or country, if the applicant's qualifications for certification, registration or licensure meet the licensure requirements in force in this state upon the date of the specialist's application for certification, registration or licensure in this state.

SECTION 16. Tennessee Code Annotated, Section 63-17-212, is amended by deleting the section and by substituting instead the following:

63-17-212. Each licensee shall notify the board of any change of address of the licensee's place of business, within thirty (30) days of such change. Failure to give such notice shall be deemed just cause for disciplinary action by the board.

SECTION 17. Tennessee Code Annotated, Section 63-17-213, is amended by deleting the section and by substituting instead the following:

63-17-213. The board shall issue all licenses approved by the board and shall maintain a registry of all license holders. It is the duty of the board to review and approve the qualifications of applicants for certification or renewal as hearing instrument specialists.

SECTION 18. Tennessee Code Annotated, Section 63-17-214, is amended by deleting the section and by substituting instead the following:

63-17-214.

(a)

(1) Each licensed hearing instrument specialist shall pay to the board a biennial renewal fee as set by the board, payable in advance, for the ensuing two (2) years.

(2) The board shall notify each licensee that such renewal is due.

(b) As a condition of renewal, the licensee shall be reexamined by the board and shall pay a reexamination fee as set by the board or shall submit verification of compliance of continuing education requirements as may be set by the board. The reexamination shall consist of all of the areas required pursuant to § 63-17-210.

(c) When any licensed hearing instrument specialist fails to pay the license fee within sixty (60) days after it becomes due, as provided in this section, the license of such person is automatically revoked at the expiration of the sixty (60) days after the renewal fee was required, without further notice or hearing.

(d) Any person whose license is automatically revoked as provided in § 63-17-219 may make application in writing to the board for the reinstatement of such license; and, upon good cause being shown, the board, in its discretion, may reinstate such license upon payment of all past due renewal fees and upon further payment of a sum set by the board.

(e) Any person licensed to practice by this part who has retired or may hereafter retire from such practice in this state shall not be made to register as required by this part if such person files with this board an affidavit on a form to be furnished by the board, which affidavit states the date on which such person retired from such practice and such other facts as tend to verify such retirement as the board deems necessary. If such person thereafter reengages in such practice in this state, such person shall apply for registration with the board as provided by this part and shall meet other requirements as may be set by the board.

(f)

(1) Notwithstanding any provision of this part to the contrary, the division, with the approval of the commissioner, shall establish a system of license renewals at alternative intervals that will allow for the distribution of the license workload as uniformly as is practicable throughout the calendar year. Licenses issued under the alternative method are valid for twenty-four (24) months and expire on the last day of the last month of the license period. However, during a transition period, or at any time thereafter when the board determines that the volume of work for any given interval is unduly burdensome or costly, either the licenses or renewals, or both of them, may be issued for terms of not less than six (6) months nor more than eighteen (18) months. The fee imposed for any license under the alternative interval method for a period of other than twenty-

four (24) months shall be proportionate to the annual fee and modified in no other manner, except that the proportional fee shall be rounded off to the nearest twenty-five cents (25¢).

(2) No renewal application will be accepted after the last day of the month following the license expiration date under the alternative method authorized in this subsection (f).

SECTION 19. Tennessee Code Annotated, Section 63-17-215, is amended by deleting the section and by substituting instead the following:

63-17-215. The fees relating to the practice of dispensing hearing instruments shall be set by the board in an amount sufficient to pay all of the expenses of the board that are directly attributable to the performance of its duties pursuant to this part. Expenditures of the board for investigations and disciplinary actions shall be the financial responsibility of the licensees who are regulated by such board.

SECTION 20. Tennessee Code Annotated, Section 63-17-216, is amended by deleting subdivision (a)(4) and by substituting instead the following:

(4) The name and address of the board and a statement that the board will receive complaints on any matter relating to the fitting and dispensing of hearing instruments.

SECTION 21. Tennessee Code Annotated, Section 63-17-219, is amended by deleting the section and by substituting instead the following:

63-17-219.

(a) Subject to the due process requirements of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, any person registered under this part may have such license denied, revoked or suspended for a fixed period to be determined by the board for any of the following causes:

(1) Conviction of an offense involving moral turpitude. The record of such conviction or certified copy thereof from the clerk of the court where such conviction occurred or by the judge of such court is sufficient evidence to warrant revocation or suspension;

(2) Securing a license under this part through fraud or deceit;

(3) Unethical conduct, gross and/or repeated acts of ignorance or inefficiency in the conduct of such person's practice;

(4) Knowingly practicing while suffering with a contagious or infectious disease;

(5) Use of a false name or alias in the practice of the profession; and

(6) Violating any of the provisions of this part.

(b)

(1) The board for licensing hearing instrument specialists shall promulgate rules governing the assessment of costs against a licensee or other person found by the board to have violated this part. The costs assessed by the board may include only those costs directly related to the prosecution of the charges against the licensee or other person, including investigatory costs where appropriate. The board shall determine the appropriate amount of costs, if any, to be assessed in a contested case. These costs shall be reasonable and proportionate in light of the violation committed by the licensee or other person.

(2)

(A) Any elected officer of the board or any duly appointed or elected chair has the authority to administer oaths to witnesses. Upon probable cause being established, the board, by a vote of two-thirds (2/3) of the members to which the board is entitled, may issue subpoenas for

the attendance of witnesses and the production of documents and records.

(B) Service of a subpoena issued by the board shall be made by the sheriff of the county of residence of the licensee or person upon whom the subpoena is served.

(C)

(i) A licensee or person served by subpoena shall have thirty (30) days to request in writing a hearing before the board for the sole purpose of making a special appearance to quash or modify the subpoena. The subpoena for attendance of the person or the production of books and records shall be stayed until the board votes upon the request to quash or modify the subpoena. A majority vote of the members to which the board is entitled shall be required to quash or modify a subpoena.

(ii) A motion to appeal from a decision by the board regarding a request to quash or modify a subpoena shall be made to the chancery court in Davidson County within fifteen (15) days of such decision.

(D) If any witness fails or refuses to obey a subpoena issued by it, the board is authorized to make application to any court of record in this state within the jurisdiction of which the witness is found or resides, and the court shall have power to attach the body of the witness and compel the witness to appear before the board and give testimony or produce books, records or papers as ordered; and any failure to obey the court order may be punished by the court issuing the order as a civil contempt.

(E) Each witness who appears before the board by order of the board shall receive for attendance the compensation provided by law for attendance of witnesses in a court of record, which shall be paid from the funds of the board in the same manner as all other expenses of the board are paid.

SECTION 22. Tennessee Code Annotated, Section 63-17-220, is amended by deleting the section and by substituting instead the following:

63-17-220.

(a) Except as otherwise provided by § 63-17-214, no license issued pursuant to this part may be suspended, revoked, denied or renewal denied without a hearing before the board or its duly authorized trial examiner, if requested by the certificate holder or applicant, on due notice.

(b) Any action of the board taken pursuant to this part shall be in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 23. Tennessee Code Annotated, Section 63-17-221, is amended by deleting subsection (b) and by substituting instead the following:

(b) The board may seek to enforce this part by petitioning a court of appropriate jurisdiction for an injunction to enjoin continuing violations of this part or by any other appropriate proceeding. No such proceeding is barred by any proceeding had or pending pursuant to § 63-17-214 or by the imposition of any fine or term of imprisonment pursuant thereto.

SECTION 24. Tennessee Code Annotated, Section 63-17-222, is amended in subsection (b) by deleting the language "request to the council" and by substituting instead the language "request to the board".

SECTION 25. The board is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 26. This act shall take effect July 1, 2011, the public welfare requiring it.