

SESSION OF 2006

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2285

As Amended by Senate Committee on
Public Health and Welfare

Brief*

The bill would rename, amend several statutes in, and add new sections to the Hearing Aid Act. The Act would become the Hearing Instrument Act. The bill would rename and address the composition of the Board of Examiners in Fitting and Dispensing of Hearing Instruments, establish new disciplinary and licensing procedures and criteria, prohibit certain acts, establish new administrative procedures and clarify that licensed audiologists also must be licensed under the Act if they fit or dispense hearing instruments. Finally, the bill would give the Board broader rule making authority with which to implement the Act.

In regard to Board composition, the bill would:

- Repeal a requirement that Board members belong to a state association and have national certification and replace those criteria with a requirement that three of the five Board members be Board licensees;
- Require that one of the three licensees on the Board be an audiologist who is licensed as a hearing instrument dispenser and one would have to be a hearing instrument dispenser who is not an audiologist;
- Require that two of the gubernatorial appointees to the Board be from lists of nominees submitted by the Kansas Hearing Aid Association and the Kansas Speech Language and Hearing Association (Those association nominees would have to be licensees of the Board.);
- Require that the third gubernatorial appointee be chosen at large;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Require that the two non-licensee Board members be persons who do not have a current or previous affiliation with a dispenser of hearing instruments; and
- Provide that the office of any Board member appointed prior to the effective date of the Act shall not be affected by the changes in the Board composition.

In regard to disciplinary procedure, the bill would:

- Authorize the Board to take disciplinary action, including imposing censure, administrative fines and conditions on licenses, in addition to license suspension or revocation;
- Authorize the Board to issue cease and desist orders against people practicing without a license;
- Repeal specific authority for the Board to take testimony regarding granting of licenses and authorize the Board to take testimony in connection with any disciplinary action;
- Create new grounds for denial or action against a licensee, including: commission of a misdemeanor related to the practice; unprofessional conduct; an attempt to obtain a license fraudulently; false, misleading advertising practices; any violation of a Board rule or regulation; and negligent or incompetent practice or supervision. Grounds for disciplinary action against a temporary licensee would be the same as those for a permanent licensee;
- Authorize the Board to seek an injunction against a person who has engaged in or who is about to engage in an action that would violate the Act;
- Authorize the Board to revoke a license voluntarily surrendered pending investigation of charges of misconduct; and
- Provide any licensee the opportunity to be heard under the provisions of the Administrative Procedure Act.

In regard to licensing, the bill would:

- Authorize the Board to grant licenses rather than certificates of

registration and "grandfather" certificates issued prior to the effective date of the Act;

- Grant the Board broader rule and regulation authority, including the authority to adopt rules and regulations defining the practice of fitting and dispensing hearing instruments; establishing initial training and continuing education requirements; and establishing continuing education requirements that must be met by licensees who have been on inactive status for less than two years in order to resume practice;
- Specify titles that may be used only by licensees;
- Specifically include graduation from an accredited high school, in addition to having an equivalent degree, as a qualification for licensure;
- Include fulfillment of Board-established training requirements as a criterion for licensure;
- Provide that licensed audiologists would be eligible for licensure by the Board without passing the Board's examination if they hold a doctoral degree, or its equivalent, in audiology from a nationally or regionally accredited college or university in a program with educational standards consistent with those of the state universities in Kansas (All other requirements for licensure by the Board would apply to audiologists.);
- Prohibit persons who have held temporary licenses within the prior three years from reapplying for a temporary license;
- Require issuance of a license to any temporary licensee who passes the next examination, and who pays the required fee;
- Include new items in the list of subjects to be covered on the license examination;
- Repeal the provision permitting the Board to issue certificates of endorsement to applicants certified or licensed in another state (That provision would be replaced by authorization for the Board to issue a license to a licensee from another state if the Board determines that the licensee has been continuously licensed for the preceding five years with the minimum professional experience established by the Board and that the licensee has not been subject to serious disciplinary action in the other state.);

- Require licensees to notify the Board within 10 days of any change of business name. Temporary licensees also would be required to notify the board of any change of supervisor and remit a "change of supervisor" fee;
- Require the Board to provide written notice of renewal to all licensees by June 1 each year;
- Authorize the Board to require testing, education, or training of persons whose license has expired and who apply for reinstatement within two years of expiration;
- Create a new designation of inactive license that would be available only to licensees who are not and who do not represent themselves as being engaged in practice (A person who holds an inactive license would not be able to practice nor would that person be required to complete continuing education requirements. The annual fee for an inactive license would be a maximum of \$25. Inactive licensees could reactivate their licenses by applying to the Board, paying the conversion fee, a maximum of \$150, and submitting documentation that their audiometric testing equipment has been tested and verified as accurate.); and
- Authorize the Board to require licensees who have been on inactive status for more than two years to be tested or receive additional training and education.

New prohibited acts would include:

- Selling instruments via mail, courier or delivery service, internet, telephone, or electronically without prior fitting and testing by a licensee (The prohibition would not apply to replacement hearing instruments that were previously fitted and tested by a licensee.); and
- Making false material statements in an application for license reinstatement.

In regard to administration, the bill would:

- Authorize the Board's Executive Officer rather than the Secretary-Treasurer to make expenditures on behalf of the Board or to designate someone to perform that function;
- Authorize the Board to contract with, as well as employ, agents, attorneys, and inspectors;
- Repeal a list of authorized expenditures and replace it with general expenditure authority; and
- Require Board records of disciplinary actions to be maintained in accordance with the Open Records Act.

Background

The Board of Examiners in Fitting and Dispensing of Hearing Aids requested introduction of the bill by the House Health and Human Services Committee. Representatives of the Board presented testimony in support of the bill at the House Committee hearing. The Board's testimony to the Committee noted that, among other things, the bill would update language in existing law. A representative of the Kansas Speech Language Hearing Association presented testimony requesting an amendment to the bill that would grant licensed audiologists a license to fit and dispense hearing instruments under the Act.

The House Committee of the Whole amended the bill to exempt licensed audiologists from the Board's testing requirement. A House amendment also provided an exception to the general prohibition against mail-order sale of hearing instruments for those instruments previously fitted and tested by a licensee.

The bill was amended further by the Senate Committee on Public Health and Welfare to provide for current members of the Board to serve until their terms expire. The Committee also amended the provisions for licensed audiologists seeking licensure from the Board to require the audiologist to hold a doctoral degree, or its equivalent, in audiology. Technical amendments also were made to update language in the existing law.

The fiscal note prepared by the Division of the Budget on the introduced version of the bill states that the Board could implement the

bill within its current approved operating budget. The Board estimates that additional revenues of less than \$200 per year could result from minor fee changes in the bill. Any fiscal effect resulting from the passage of HB 2285 is not included in *The FY 2006 Governor's Budget Report*.