

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 451

Introduced by Campbell, 25.

Read first time January 20, 2009

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to the Hearing Aid Instrument Dispensers and
2 Fitters Practice Act; to amend sections 37-413, 38-101,
3 38-121, 38-167, 38-507, 38-511, 38-512, 38-524, 38-1501,
4 38-1502, 38-1503, 38-1504, 38-1505, 38-1506, 38-1507,
5 38-1508, 38-1509, 38-1510, 38-1511, 38-1512, 38-1513,
6 38-1514, 38-1515, 38-1516, 38-1517, 38-1518, 69-2603, and
7 86-275, Reissue Revised Statutes of Nebraska, and section
8 48-120, Revised Statutes Cumulative Supplement, 2008; to
9 rename the act and the applicable license; to harmonize
10 provisions; and to repeal the original sections.
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 37-413, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 37-413 (1) For the purpose of establishing and
4 administering a mandatory firearm hunter education program for
5 persons twelve through twenty-nine years of age who hunt with
6 a firearm or crossbow any species of game, game birds, or game
7 animals, the commission shall provide a program of firearm hunter
8 education training leading to obtaining a certificate of successful
9 completion in the safe handling of firearms and shall locate
10 and train volunteer firearm hunter education instructors. The
11 program shall provide a training course having a minimum of (a)
12 ten hours of classroom instruction or (b) independent study on
13 the part of the student sufficient to pass an examination given
14 by the commission followed by such student's participation in a
15 minimum of four hours of practical instruction. The program shall
16 provide instruction in the areas of safe firearms use, shooting
17 and sighting techniques, hunter ethics, game identification, and
18 conservation management. The commission shall issue a firearm
19 hunter education certificate of successful completion to persons
20 having satisfactorily completed a firearm hunter education course
21 accredited by the commission and shall print, purchase, or
22 otherwise acquire materials as necessary for effective program
23 operation. The commission shall adopt and promulgate rules and
24 regulations for carrying out and administering such programs.

25 (2) It shall be unlawful for any person twenty-nine years

1 of age or younger to hunt with a firearm or crossbow any species of
2 game, game birds, or game animals except:

3 (a) A person under the age of twelve years who is
4 accompanied by a person nineteen years of age or older having a
5 valid hunting permit;

6 (b) A person twelve through twenty-nine years of age who
7 has on his or her person proof of successful completion of a hunter
8 education course or a firearm hunter education course issued by the
9 person's state or province of residence or by an accredited program
10 recognized by the commission; or

11 (c) A person twelve through twenty-nine years of age who
12 has on his or her person the appropriate hunting permit and an
13 apprentice hunter education exemption certificate issued by the
14 commission pursuant to subsection (3) of this section and who is
15 accompanied as described in subsection (4) of this section.

16 (3) An apprentice hunter education exemption certificate
17 may be issued to a person twelve through twenty-nine years of age,
18 once during such person's lifetime with one renewal, upon payment
19 of a fee of five dollars and shall expire at midnight on December
20 31 of the year for which the apprentice hunter education exemption
21 certificate is issued. The commission may adopt and promulgate
22 rules and regulations allowing for the issuance of apprentice
23 hunter education exemption certificates. All fees collected under
24 this subsection shall be remitted to the State Treasurer for credit
25 to the State Game Fund.

1 (4) For purposes of this section, accompanied means under
2 the direct supervision of a person nineteen years of age or older
3 having a valid hunting permit who is at all times in unaided visual
4 and verbal communication of no more than two persons having an
5 apprentice hunter education exemption certificate. This subsection
6 does not prohibit the use by such person nineteen years of age
7 or older of ordinary prescription eyeglasses or contact lenses or
8 ordinary hearing aids- instruments.

9 Sec. 2. Section 38-101, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 38-101 Sections 38-101 to 38-1,140 and the following
12 practice acts shall be known and may be cited as the Uniform
13 Credentialing Act:

- 14 (1) The Advanced Practice Registered Nurse Practice Act;
15 (2) The Alcohol and Drug Counseling Practice Act;
16 (3) The Athletic Training Practice Act;
17 (4) The Audiology and Speech-Language Pathology Practice
18 Act;
19 (5) The Certified Nurse Midwifery Practice Act;
20 (6) The Certified Registered Nurse Anesthetist Practice
21 Act;
22 (7) The Chiropractic Practice Act;
23 (8) The Clinical Nurse Specialist Practice Act;
24 (9) The Cosmetology, Electrology, Esthetics, Nail
25 Technology, and Body Art Practice Act;

- 1 (10) The Dentistry Practice Act;
- 2 (11) The Emergency Medical Services Practice Act;
- 3 (12) The Environmental Health Specialists Practice Act;
- 4 (13) The Funeral Directing and Embalming Practice Act;
- 5 (14) The Hearing Aid Instrument Dispensers and Fitters
- 6 Specialists Practice Act;
- 7 (15) The Licensed Practical Nurse-Certified Practice Act;
- 8 (16) The Massage Therapy Practice Act;
- 9 (17) The Medical Nutrition Therapy Practice Act;
- 10 (18) The Medical Radiography Practice Act;
- 11 (19) The Medicine and Surgery Practice Act;
- 12 (20) The Mental Health Practice Act;
- 13 (21) The Nurse Practice Act;
- 14 (22) The Nurse Practitioner Practice Act;
- 15 (23) The Nursing Home Administrator Practice Act;
- 16 (24) The Occupational Therapy Practice Act;
- 17 (25) The Optometry Practice Act;
- 18 (26) The Perfusion Practice Act;
- 19 (27) The Pharmacy Practice Act;
- 20 (28) The Physical Therapy Practice Act;
- 21 (29) The Podiatry Practice Act;
- 22 (30) The Psychology Practice Act;
- 23 (31) The Respiratory Care Practice Act;
- 24 (32) The Veterinary Medicine and Surgery Practice Act;
- 25 and

1 (33) The Water Well Standards and Contractors' Practice
2 Act.

3 If there is any conflict between any provision of
4 sections 38-101 to 38-1,139 and any provision of a practice
5 act, the provision of the practice act shall prevail.

6 The Revisor of Statutes shall assign the Uniform
7 Credentialing Act, including the practice acts enumerated in
8 subdivisions (1) through (32) of this section, to consecutive
9 articles within Chapter 38.

10 Sec. 3. Section 38-121, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 38-121 (1) No individual shall engage in the following
13 practices unless such individual has obtained a credential under
14 the Uniform Credentialing Act:

15 (a) Acupuncture;

16 (b) Advanced practice nursing;

17 (c) Alcohol and drug counseling;

18 (d) Asbestos abatement, inspection, project design, and
19 training;

20 (e) Athletic training;

21 (f) Audiology;

22 (g) Speech-language pathology;

23 (h) Body art;

24 (i) Chiropractic;

25 (j) Cosmetology;

- 1 (k) Dentistry;
- 2 (l) Dental hygiene;
- 3 (m) Electrology;
- 4 (n) Emergency medical services;
- 5 (o) Esthetics;
- 6 (p) Funeral directing and embalming;
- 7 (q) Hearing aid instrument dispensing and fitting;
- 8 (r) Lead-based paint abatement, inspection, project
9 design, and training;
- 10 (s) Licensed practical nurse-certified;
- 11 (t) Massage therapy;
- 12 (u) Medical nutrition therapy;
- 13 (v) Medical radiography;
- 14 (w) Medicine and surgery;
- 15 (x) Mental health practice;
- 16 (y) Nail technology;
- 17 (z) Nursing;
- 18 (aa) Nursing home administration;
- 19 (bb) Occupational therapy;
- 20 (cc) Optometry;
- 21 (dd) Osteopathy;
- 22 (ee) Perfusion;
- 23 (ff) Pharmacy;
- 24 (gg) Physical therapy;
- 25 (hh) Podiatry;

- 1 (ii) Psychology;
- 2 (jj) Radon detection, measurement, and mitigation;
- 3 (kk) Respiratory care;
- 4 (ll) Veterinary medicine and surgery;
- 5 (mm) Public water system operation; and
- 6 (nn) Constructing or decommissioning water wells and
- 7 installing water well pumps and pumping equipment.

8 (2) No individual shall hold himself or herself out

9 as any of the following until such individual has obtained a

10 credential under the Uniform Credentialing Act for that purpose:

- 11 (a) Registered environmental health specialist;
- 12 (b) Certified marriage and family therapist;
- 13 (c) Certified professional counselor; or
- 14 (d) Social worker.

15 (3) No business shall operate for the provision of any

16 of the following services unless such business has obtained a

17 credential under the Uniform Credentialing Act:

- 18 (a) Body art;
- 19 (b) Cosmetology;
- 20 (c) Emergency medical services;
- 21 (d) Esthetics;
- 22 (e) Funeral directing and embalming;
- 23 (f) Massage therapy; or
- 24 (g) Nail technology.

25 Sec. 4. Section 38-167, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 38-167 (1) Boards shall be designated as follows:

3 (a) Board of Advanced Practice Registered Nurses;

4 (b) Board of Alcohol and Drug Counseling;

5 (c) Board of Athletic Training;

6 (d) Board of Audiology and Speech-Language Pathology;

7 (e) Board of Chiropractic;

8 (f) Board of Cosmetology, Electrology, Esthetics, Nail

9 Technology, and Body Art;

10 (g) Board of Dentistry;

11 (h) Board of Emergency Medical Services;

12 (i) Board of Registered Environmental Health Specialists;

13 (j) Board of Funeral Directing and Embalming;

14 (k) Board of Hearing Aid Instrument Dispensers and

15 ~~Fitters,~~ Specialists;

16 (l) Board of Massage Therapy;

17 (m) Board of Medical Nutrition Therapy;

18 (n) Board of Medical Radiography;

19 (o) Board of Medicine and Surgery;

20 (p) Board of Mental Health Practice;

21 (q) Board of Nursing;

22 (r) Board of Nursing Home Administration;

23 (s) Board of Occupational Therapy Practice;

24 (t) Board of Optometry;

25 (u) Board of Pharmacy;

- 1 (v) Board of Physical Therapy;
2 (w) Board of Podiatry;
3 (x) Board of Psychology;
4 (y) Board of Respiratory Care Practice;
5 (z) Board of Veterinary Medicine and Surgery; and
6 (aa) Water Well Standards and Contractors' Licensing
7 Board.

8 (2) Any change made by the Legislature of the names of
9 boards listed in this section shall not change the membership of
10 such boards or affect the validity of any action taken by or the
11 status of any action pending before any of such boards. Any such
12 board newly named by the Legislature shall be the direct and only
13 successor to the board as previously named.

14 Sec. 5. Section 38-507, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 38-507 Practice of audiology means the application
17 of evidence-based practice in clinical decisionmaking for
18 the prevention, assessment, habilitation, rehabilitation, and
19 maintenance of persons with hearing, auditory function, and
20 vestibular function impairments and related impairments, including
21 (1) cerumen removal from the cartilaginous outer one-third portion
22 of the external auditory canal when the presence of cerumen may
23 affect the accuracy of hearing evaluations or impressions of the
24 ear canal for amplification devices and (2) evaluation, selection,
25 fitting, and dispensing of hearing ~~aids,~~ instruments, external

1 processors of implantable hearing aids, instruments, and assistive
2 technology devices as part of a comprehensive audiological
3 rehabilitation program. Practice of audiology does not include the
4 practice of medical diagnosis, medical treatment, or surgery.

5 Sec. 6. Section 38-511, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 38-511 Nothing in the Audiology and Speech-Language
8 Pathology Practice Act shall be construed to prevent or restrict:

9 (1) The practice of audiology or speech-language
10 pathology or the use of the official title of such practice by a
11 person employed as a speech-language pathologist or audiologist by
12 the federal government;

13 (2) A physician from engaging in the practice of medicine
14 and surgery or any individual from carrying out any properly
15 delegated responsibilities within the normal practice of medicine
16 and surgery under the supervision of a physician;

17 (3) A person licensed as a hearing aid fitter and
18 dealer instrument specialist in this state from engaging in
19 the fitting, selling, and servicing of hearing aids instruments
20 or performing such other duties as defined in the Hearing Aid
21 Instrument Dispensers and Fitters Specialists Practice Act;

22 (4) The practice of audiology or speech-language
23 pathology or the use of the official title of such practice
24 by a person who holds a valid and current credential as a
25 speech-language pathologist or audiologist issued by the State

1 Department of Education, if such person performs speech-language
2 pathology or audiology services solely as a part of his or her
3 duties within an agency, institution, or organization for which no
4 fee is paid directly or indirectly by the recipient of such service
5 and under the jurisdiction of the State Department of Education,
6 but such person may elect to be within the jurisdiction of the
7 Audiology and Speech-Language Pathology Practice Act;

8 (5) The clinical practice in audiology or speech-language
9 pathology required for students enrolled in an accredited college
10 or university pursuing a major in audiology or speech-language
11 pathology, if such clinical practices are supervised by a person
12 licensed to practice audiology or speech-language pathology and if
13 the student is designated by a title such as student clinician or
14 other title clearly indicating the training status; or

15 (6) The utilization of a speech aide or other personnel
16 employed by a public school, educational service unit, or other
17 private or public educational institution working under the direct
18 supervision of a credentialed speech-language pathologist.

19 Sec. 7. Section 38-512, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 38-512 Any audiologist who engages in the sale of
22 hearing aids instruments shall not be exempt from the Hearing
23 Aid Instrument ~~Dispensers and Fitters~~ Specialists Practice Act.

24 Sec. 8. Section 38-524, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 38-524 An audiology or speech-language pathology
2 assistant shall not:

3 (1) Evaluate or diagnose any type of communication
4 disorder;

5 (2) Evaluate or diagnose any type of dysphagia;

6 (3) Interpret evaluation results or treatment progress;

7 (4) Consult or counsel, independent of the licensed
8 audiologist or speech-language pathologist, with a patient, a
9 patient's family, or staff regarding the nature or degree of
10 communication disorders or dysphagia;

11 (5) Plan patient treatment programs;

12 (6) Represent himself or herself as an audiologist or
13 speech-language pathologist or as a provider of speech, language,
14 swallowing, or hearing treatment or assessment services;

15 (7) Independently initiate, modify, or terminate any
16 treatment program; or

17 (8) Fit or dispense hearing aids-instruments.

18 Sec. 9. Section 38-1501, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 38-1501 Sections 38-1501 to 38-1518 shall be known and
21 may be cited as the ~~Hearing Aid Instrument Dispensers and Fitters~~
22 Specialists Practice Act.

23 Sec. 10. Section 38-1502, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 38-1502 For purposes of the ~~Hearing Aid Instrument~~

1 ~~Dispensers and Fitters~~ Specialists Practice Act and elsewhere
2 in the Uniform Credentialing Act, unless the context otherwise
3 requires, the definitions found in sections 38-1503 to 38-1507
4 apply.

5 Sec. 11. Section 38-1503, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 38-1503 Board means the Board of Hearing Aid Instrument
8 ~~Dispensers and Fitters.~~ Specialists.

9 Sec. 12. Section 38-1504, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 38-1504 Hearing aid instrument means any wearable
12 instrument or device designed for or offered for the purpose of
13 aiding or compensating for impaired human hearing and any parts,
14 attachments, or accessories, including earmold, but excluding
15 batteries and cords. A hearing aid shall also be known as a hearing
16 ~~instrument.~~

17 Sec. 13. Section 38-1505, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 38-1505 Practice of fitting hearing aids instruments
20 means the measurement of human hearing by means of an audiometer or
21 by other means approved by the board solely for the purpose
22 of making selections, adaptations, or sale of hearing aids.
23 instruments. The term also includes the making of impressions for
24 earmolds. A dispenser, at the request of a physician or a member of
25 related professions, may make audiograms for the professional's use

1 in consultation with the hard-of-hearing.

2 Sec. 14. Section 38-1506, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 38-1506 Sell, sale, or dispense means any transfer of
5 title or of the right to use by lease, bailment, or any other
6 contract, excluding (1) wholesale transactions with distributors
7 or dispensers and (2) distribution of hearing ~~aids~~ instruments by
8 nonprofit service organizations at no cost to the recipient for the
9 hearing ~~aid~~ instrument.

10 Sec. 15. Section 38-1507, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 38-1507 Temporary license means a hearing instrument
13 specialist license issued while the applicant is in training to
14 become a licensed hearing aid instrument ~~dispenser and fitter~~.
15 specialist.

16 Sec. 16. Section 38-1508, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 38-1508 The board shall consist of five professional
19 members and one public member appointed pursuant to section 38-158.
20 The members shall meet the requirements of sections 38-164 and
21 38-165. The professional members shall consist of three licensed
22 hearing aid instrument dispensers and fitters, specialists not
23 holding licenses as audiologists, one otolaryngologist, and one
24 audiologist. At the expiration of the four-year terms of the
25 members serving on December 1, 2008, successors shall be appointed

1 for five-year terms.

2 Sec. 17. Section 38-1509, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 38-1509 (1) No person shall engage in the sale of or
5 practice of fitting hearing ~~aids~~ instruments or display a sign or
6 in any other way advertise or represent himself or herself as a
7 person who practices the fitting and sale or dispensing of hearing
8 ~~aids~~ instruments unless he or she holds an unsuspended, unrevoked
9 hearing instrument specialist license issued by the department
10 as provided in the Hearing Aid Instrument ~~Dispensers and Fitters~~
11 Specialists Practice Act. A hearing instrument specialist license
12 shall confer upon the holder the right to select, fit, and sell
13 hearing ~~aids~~ instruments.

14 (2) A licensed audiologist who maintains a practice
15 pursuant to licensure as an audiologist in which hearing ~~aids~~
16 instruments are regularly dispensed or who intends to maintain
17 such a practice shall also be licensed as a hearing instrument
18 specialist pursuant to subsection (4) of section 38-1512.

19 (3) Nothing in the act shall prohibit a corporation,
20 partnership, limited liability company, trust, association, or
21 other like organization maintaining an established business address
22 from engaging in the business of selling or offering for sale
23 hearing ~~aids~~ instruments at retail without a license if it employs
24 only properly licensed natural persons in the direct sale and
25 fitting of such products.

1 (4) Nothing in the act shall prohibit the holder of a
2 hearing instrument specialist license from the fitting and sale of
3 wearable instruments or devices designed for or offered for the
4 purpose of conservation or protection of hearing.

5 Sec. 18. Section 38-1510, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 38-1510 (1) The ~~Hearing Aid Instrument Dispensers and~~
8 ~~Fitters~~ Specialists Practice Act is not intended to prevent any
9 person from engaging in the practice of measuring human hearing for
10 the purpose of selection of hearing ~~aids~~ instruments if such person
11 or organization employing such person does not sell hearing ~~aids~~
12 instruments or accessories thereto.

13 (2) The act shall not apply to a person who is a
14 physician licensed to practice in this state, except that such
15 physician shall not delegate the authority to fit and dispense
16 hearing ~~aids~~ instruments unless the person to whom the authority is
17 delegated is licensed as a hearing instrument specialist under the
18 act.

19 Sec. 19. Section 38-1511, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 38-1511 (1) Any person who practices the fitting and sale
22 of hearing ~~aids~~ instruments shall deliver to each person supplied
23 with a hearing ~~aid~~ instrument a receipt which shall contain the
24 licensee's signature and show his or her business address and the
25 number of his or her certificate, together with specifications as

1 to the make and model of the hearing ~~aid~~ instrument furnished, and
2 clearly stating the full terms of sale. If an ~~aid~~ instrument which
3 is not new is sold, the receipt and the container thereof shall be
4 clearly marked as used or reconditioned, whichever is applicable,
5 with terms of guarantee, if any.

6 (2) Such receipt shall bear in no smaller type than the
7 largest used in the body copy portion the following: The purchaser
8 has been advised at the outset of his or her relationship with the
9 hearing ~~aid~~ instrument dispenser specialist that any examination or
10 representation made by a licensed hearing ~~aid~~ instrument dispenser
11 ~~and fitter~~ specialist in connection with the fitting and selling
12 of this hearing ~~aid~~ instrument is not an examination, diagnosis,
13 or prescription by a person licensed to practice medicine in this
14 state and therefor must not be regarded as medical opinion or
15 advice.

16 Sec. 20. Section 38-1512, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 38-1512 (1) Any person may obtain a hearing instrument
19 specialist license under the Hearing Aid Instrument Dispensers
20 ~~and Fitters~~ Specialists Practice Act by successfully passing a
21 qualifying examination if the applicant:

22 (a) Is at least twenty-one years of age; and

23 (b) Has an education equivalent to a four-year course in
24 an accredited high school.

25 (2) The qualifying examination shall consist of written

1 and practical tests. The examination shall not be conducted in
2 such a manner that college training is required in order to
3 pass. Nothing in this examination shall imply that the applicant
4 is required to possess the degree of medical competence normally
5 expected of physicians.

6 (3) The department shall give examinations approved by
7 the board. A minimum of two examinations shall be offered each
8 calendar year.

9 (4) The department shall issue a hearing instrument
10 specialist license without examination to a licensed audiologist
11 who maintains a practice pursuant to licensure as an audiologist
12 in which hearing aids instruments are regularly dispensed or
13 who intends to maintain such a practice upon application to the
14 department, proof of licensure as an audiologist, and payment of a
15 twenty-five-dollar fee.

16 Sec. 21. Section 38-1513, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 38-1513 (1) The department, with the recommendation of
19 the board, shall issue a temporary license to any person who
20 has met the requirements for licensure as a hearing instrument
21 specialist pursuant to subsection (1) of section 38-1512. Previous
22 experience or a waiting period shall not be required to obtain a
23 temporary license.

24 (2) Any person who desires a temporary license shall
25 make application to the department. The temporary license shall

1 be issued for a period of one year. A person holding a valid
2 license as a hearing instrument specialist shall be responsible for
3 the supervision and training of such applicant and shall maintain
4 adequate personal contact with him or her.

5 (3) If a person who holds a temporary license under
6 this section has not successfully passed the licensing examination
7 within twelve months of the date of issuance of the temporary
8 license, the temporary license may be renewed or reissued for a
9 twelve-month period. In no case may a temporary license be renewed
10 or reissued more than once. A renewal or reissuance may take place
11 any time after the expiration of the first twelve-month period.

12 Sec. 22. Section 38-1514, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 38-1514 The qualifying examination provided in section
15 38-1512 shall be designed to demonstrate the applicant's adequate
16 technical qualifications by:

17 (1) Tests of knowledge in the following areas as they
18 pertain to the fitting and sale of hearing aids+ instruments:

19 (a) Basic physics of sound;

20 (b) The anatomy and physiology of the ear; and

21 (c) The function of hearing aids+ instruments; and

22 (2) Practical tests of proficiency in the following
23 techniques as they pertain to the fitting of hearing aids+
24 instruments:

25 (a) Pure tone audiometry, including air conduction

1 testing and bone conduction testing;

2 (b) Live voice or recorded voice speech audiometry;

3 (c) Masking when indicated;

4 (d) Recording and evaluation of audiograms and speech
5 audiometry to determine proper selection and adaptation of a
6 hearing aid; instrument; and

7 (e) Taking earmold impressions.

8 Sec. 23. Section 38-1515, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 38-1515 An applicant for licensure ~~to practice as a~~
11 hearing aid instrument ~~dispensing and fitting~~ specialist who has
12 met the education and examination requirements in section 38-1512,
13 who passed the examination more than three years prior to the
14 time of application for licensure, and who is not practicing
15 at the time of application for licensure shall present proof
16 satisfactory to the department that he or she has within the three
17 years immediately preceding the application for licensure completed
18 continuing competency requirements approved by the board pursuant
19 to section 38-145.

20 Sec. 24. Section 38-1516, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 38-1516 An applicant for licensure ~~to practice as a~~
23 hearing aid instrument ~~dispensing and fitting~~ specialist who has
24 met the standards set by the board pursuant to section 38-126 for
25 a license based on licensure in another jurisdiction but is not

1 practicing at the time of application for licensure shall present
2 proof satisfactory to the department that he or she has within
3 the three years immediately preceding the application for licensure
4 completed continuing competency requirements approved by the board
5 pursuant to section 38-145.

6 Sec. 25. Section 38-1517, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 38-1517 In addition to the grounds for disciplinary
9 action found in sections 38-178 and 38-179, a credential issued
10 under the Hearing Aid Instrument Dispensers and Fitters Specialists
11 Practice Act may be denied, refused renewal, limited, revoked, or
12 suspended or have other disciplinary measures taken against it in
13 accordance with section 38-196 when the applicant or credential
14 holder is found guilty of any of the following acts or offenses:

15 (1) Fitting and selling a hearing aid instrument to a
16 child under the age of sixteen who has not been examined and
17 cleared for hearing aid instrument use within a six-month period by
18 an otolaryngologist without a signed waiver by the legal guardian.
19 This subdivision shall not apply to the replacement with an
20 identical model of any hearing aid instrument within one year of
21 its purchase;

22 (2) Any other condition or acts which violate the Trade
23 Practice Rules for the Hearing Aid Industry of the Federal Trade
24 Commission or the Food and Drug Administration; or

25 (3) Violation of any provision of the Hearing Aid

1 Instrument ~~Dispensers and Fitters~~ Specialists Practice Act.

2 Sec. 26. Section 38-1518, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 38-1518 The department shall establish and collect fees
5 for credentialing activities under the Hearing Aid Instrument
6 ~~Dispensers and Fitters~~ Specialists Practice Act as provided in
7 sections 38-151 to 38-157.

8 Sec. 27. Section 48-120, Revised Statutes Cumulative
9 Supplement, 2008, is amended to read:

10 48-120 (1)(a) The employer is liable for all reasonable
11 medical, surgical, and hospital services, including plastic surgery
12 or reconstructive surgery but not cosmetic surgery when the injury
13 has caused disfigurement, appliances, supplies, prosthetic devices,
14 and medicines as and when needed, which are required by the nature
15 of the injury and which will relieve pain or promote and hasten
16 the employee's restoration to health and employment, and includes
17 damage to or destruction of artificial members, dental appliances,
18 teeth, hearing aids, instruments, and eyeglasses, but, in the case
19 of dental appliances, hearing aids, instruments, or eyeglasses,
20 only if such damage or destruction resulted from an accident which
21 also caused personal injury entitling the employee to compensation
22 therefor for disability or treatment, subject to the approval of
23 and regulation by the Nebraska Workers' Compensation Court, not to
24 exceed the regular charge made for such service in similar cases.

25 (b) Except as provided in section 48-120.04, the

1 compensation court shall establish schedules of fees for such
2 services. The compensation court shall review such schedules at
3 least biennially and adopt appropriate changes when necessary. The
4 compensation court may contract with any person, firm, corporation,
5 organization, or government agency to secure adequate data to
6 establish such fees. The compensation court shall publish and
7 furnish to the public the fee schedules established pursuant to
8 this subdivision and section 48-120.04. The compensation court may
9 establish and charge a fee to recover the cost of published fee
10 schedules.

11 (c) Reimbursement for inpatient hospital services
12 provided by hospitals located in or within fifteen miles of a
13 Nebraska city of the metropolitan class or primary class and by
14 other hospitals with fifty-one or more licensed beds shall be
15 according to the Diagnostic Related Group inpatient hospital fee
16 schedule established in section 48-120.04.

17 (d) A workers' compensation insurer, risk management
18 pool, self-insured employer, or managed care plan certified
19 pursuant to section 48-120.02 may contract with a provider or
20 provider network for medical, surgical, or hospital services. Such
21 contract may establish fees for services different than the fee
22 schedules established under subdivision (1)(b) of this section or
23 established under section 48-120.04. Such contract shall be in
24 writing and mutually agreed upon prior to the date services are
25 provided.

1 (e) The provider or supplier of such services shall
2 not collect or attempt to collect from any employer, insurer,
3 government, or injured employee or dependent or the estate of any
4 injured or deceased employee any amount in excess of (i) the fee
5 established by the compensation court for any such service, (ii)
6 the fee established under section 48-120.04, or (iii) the fee
7 contracted under subdivision (1)(d) of this section.

8 (2)(a) The employee has the right to select a physician
9 who has maintained the employee's medical records prior to an
10 injury and has a documented history of treatment with the employee
11 prior to an injury or a physician who has maintained the medical
12 records of an immediate family member of the employee prior to an
13 injury and has a documented history of treatment with an immediate
14 family member of the employee prior to an injury. For purposes of
15 this subsection, immediate family member means the employee's
16 spouse, children, parents, stepchildren, and stepparents. The
17 employer shall notify the employee following an injury of such
18 right of selection in a form and manner and within a timeframe
19 established by the compensation court. If the employer fails to
20 notify the employee of such right of selection or fails to notify
21 the employee of such right of selection in a form and manner and
22 within a timeframe established by the compensation court, then the
23 employee has the right to select a physician. If the employee
24 fails to exercise such right of selection in a form and manner and
25 within a timeframe established by the compensation court following

1 notice by the employer pursuant to this subsection, then the
2 employer has the right to select the physician. If selection of the
3 initial physician is made by the employee or employer pursuant to
4 this subsection following notice by the employer pursuant to this
5 subsection, the employee or employer shall not change the initial
6 selection of physician made pursuant to this subsection unless such
7 change is agreed to by the employee and employer or is ordered by
8 the compensation court pursuant to subsection (6) of this section.
9 If compensability is denied by the workers' compensation insurer,
10 risk management pool, or self-insured employer, (i) the employee
11 has the right to select a physician and shall not be made to
12 enter a managed care plan and (ii) the employer is liable for
13 medical, surgical, and hospital services subsequently found to be
14 compensable. If the employer has exercised the right to select
15 a physician pursuant to this subsection and if the compensation
16 court subsequently orders reasonable medical services previously
17 refused to be furnished to the employee by the physician selected
18 by the employer, the compensation court shall allow the employee
19 to select another physician to furnish further medical services.
20 If the employee selects a physician located in a community not the
21 home or place of work of the employee and a physician is available
22 in the local community or in a closer community, no travel expenses
23 shall be required to be paid by the employer or his or her workers'
24 compensation insurer.

25 (b) In cases of injury requiring dismemberment or

1 injuries involving major surgical operation, the employee may
2 designate to his or her employer the physician or surgeon to
3 perform the operation.

4 (c) If the injured employee unreasonably refuses or
5 neglects to avail himself or herself of medical or surgical
6 treatment furnished by the employer, except as herein and otherwise
7 provided, the employer is not liable for an aggravation of such
8 injury due to such refusal and neglect and the compensation court
9 or judge thereof may suspend, reduce, or limit the compensation
10 otherwise payable under the Nebraska Workers' Compensation Act.

11 (d) If, due to the nature of the injury or its occurrence
12 away from the employer's place of business, the employee or the
13 employer is unable to select a physician using the procedures
14 provided by this subsection, the selection requirements of this
15 subsection shall not apply as long as the inability to make a
16 selection persists.

17 (e) The physician selected may arrange for any
18 consultation, referral, or extraordinary or other specialized
19 medical services as the nature of the injury requires.

20 (f) The employer is not responsible for medical services
21 furnished or ordered by any physician or other person selected
22 by the employee in disregard of this section. Except as otherwise
23 provided by the Nebraska Workers' Compensation Act, the employer is
24 not liable for medical, surgical, or hospital services or medicines
25 if the employee refuses to allow them to be furnished by the

1 employer.

2 (3) No claim for such medical treatment is valid and
3 enforceable unless, within fourteen days following the first
4 treatment, the physician giving such treatment furnishes the
5 employer a report of such injury and treatment on a form prescribed
6 by the compensation court. The compensation court may excuse the
7 failure to furnish such report within fourteen days when it finds
8 it to be in the interest of justice to do so.

9 (4) All physicians and other providers of medical
10 services attending injured employees shall comply with all the
11 rules and regulations adopted and promulgated by the compensation
12 court and shall make such reports as may be required by it at
13 any time and at such times as required by it upon the condition
14 or treatment of any injured employee or upon any other matters
15 concerning cases in which they are employed. All medical and
16 hospital information relevant to the particular injury shall,
17 on demand, be made available to the employer, the employee,
18 the workers' compensation insurer, and the compensation court.
19 The party requesting such medical and hospital information shall
20 pay the cost thereof. No such relevant information developed in
21 connection with treatment or examination for which compensation is
22 sought shall be considered a privileged communication for purposes
23 of a workers' compensation claim. When a physician or other
24 provider of medical services willfully fails to make any report
25 required of him or her under this section, the compensation court

1 may order the forfeiture of his or her right to all or part of
2 payment due for services rendered in connection with the particular
3 case.

4 (5) Whenever the compensation court deems it necessary,
5 in order to assist it in resolving any issue of medical fact or
6 opinion, it shall cause the employee to be examined by a physician
7 or physicians selected by the compensation court and obtain from
8 such physician or physicians a report upon the condition or matter
9 which is the subject of inquiry. The compensation court may charge
10 the cost of such examination to the workers' compensation insurer.
11 The cost of such examination shall include the payment to the
12 employee of all necessary and reasonable expenses incident to such
13 examination, such as transportation and loss of wages.

14 (6) The compensation court shall have the authority
15 to determine the necessity, character, and sufficiency of any
16 medical services furnished or to be furnished and shall have
17 authority to order a change of physician, hospital, rehabilitation
18 facility, or other medical services when it deems such change is
19 desirable or necessary. Any dispute regarding medical, surgical,
20 or hospital services furnished or to be furnished under this
21 section may be submitted by the parties, the supplier of such
22 service, or the compensation court on its own motion for informal
23 dispute resolution by a staff member of the compensation court or
24 an outside mediator pursuant to section 48-168. In addition,
25 any party or the compensation court on its own motion may

1 submit such a dispute for a medical finding by an independent
2 medical examiner pursuant to section 48-134.01. Issues submitted
3 for informal dispute resolution or for a medical finding by an
4 independent medical examiner may include, but are not limited
5 to, the reasonableness and necessity of any medical treatment
6 previously provided or to be provided to the injured employee. The
7 compensation court may adopt and promulgate rules and regulations
8 regarding informal dispute resolution or the submission of disputes
9 to an independent medical examiner that are considered necessary to
10 effectuate the purposes of this section.

11 (7) For the purpose of this section, physician has the
12 same meaning as in section 48-151.

13 (8) The compensation court shall order the employer to
14 make payment directly to the supplier of any services provided
15 for in this section or reimbursement to anyone who has made any
16 payment to the supplier for services provided in this section. No
17 such supplier or payor may be made or become a party to any action
18 before the compensation court.

19 (9) Notwithstanding any other provision of this section,
20 a workers' compensation insurer, risk management pool, or
21 self-insured employer may contract for medical, surgical, hospital,
22 and rehabilitation services to be provided through a managed care
23 plan certified pursuant to section 48-120.02. Once liability for
24 medical, surgical, and hospital services has been accepted or
25 determined, the employer may require that employees subject to

1 the contract receive medical, surgical, and hospital services in
2 the manner prescribed in the contract, except that an employee
3 may receive services from a physician selected by the employee
4 pursuant to subsection (2) of this section if the physician so
5 selected agrees to refer the employee to the managed care plan
6 for any other treatment that the employee may require and if
7 the physician so selected agrees to comply with all the rules,
8 terms, and conditions of the managed care plan. If compensability
9 is denied by the workers' compensation insurer, risk management
10 pool, or self-insured employer, the employee may leave the managed
11 care plan and the employer is liable for medical, surgical, and
12 hospital services previously provided. The workers' compensation
13 insurer, risk management pool, or self-insured employer shall give
14 notice to employees subject to the contract of eligible service
15 providers and such other information regarding the contract and
16 manner of receiving medical, surgical, and hospital services under
17 the managed care plan as the compensation court may prescribe.

18 Sec. 28. Section 69-2603, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 69-2603 Assistive device means any device, including a
21 demonstrator, that a consumer purchases or accepts transfer of in
22 this state which is used for a major life activity, including,
23 but not limited to, manual wheelchairs, motorized wheelchairs,
24 motorized scooters, and other aides that enhance the mobility of
25 an individual; hearing aids, instruments, telephone communication

1 devices for the deaf (TTY), assistive listening devices, and
2 other aides that enhance an individual's ability to hear; voice
3 synthesized computer modules, optical scanners, talking software,
4 braille printers, and other devices that enhance a sight-impaired
5 individual's ability to communicate; environmental control units;
6 and any other assistive device that enables a person with a
7 disability to communicate, see, hear, or maneuver.

8 Sec. 29. Section 86-275, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 86-275 Electronic, mechanical, or other device means
11 any device or apparatus which can be used to intercept a wire,
12 electronic, or oral communication other than:

13 (1) Any telephone or telegraph instrument, equipment, or
14 facility, or any component thereof, (a) furnished to the subscriber
15 or user by a provider in the ordinary course of its business and
16 being used by the subscriber or user in the ordinary course of its
17 business or furnished by such subscriber or user for connection
18 to the facilities of such service and used by the subscriber or
19 user in the ordinary course of its business or (b) being used
20 by a provider in the ordinary course of its business or by an
21 investigative or law enforcement officer in the ordinary course of
22 his or her duties; or

23 (2) A hearing aid instrument or similar device being used
24 to correct subnormal hearing to not better than normal.

25 Sec. 30. Original sections 37-413, 38-101, 38-121,

LB 451

LB 451

1 38-167, 38-507, 38-511, 38-512, 38-524, 38-1501, 38-1502, 38-1503,
2 38-1504, 38-1505, 38-1506, 38-1507, 38-1508, 38-1509, 38-1510,
3 38-1511, 38-1512, 38-1513, 38-1514, 38-1515, 38-1516, 38-1517,
4 38-1518, 69-2603, and 86-275, Reissue Revised Statutes of Nebraska,
5 and section 48-120, Revised Statutes Cumulative Supplement, 2008,
6 are repealed.