

- SUBJECT:** Revising regulation of hearing aid fitters and dispensers
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 9 ayes — Kolkhorst, Naishtat, J. Davis, Gonzales, Hopson, S. King, McReynolds, Truitt, Zerwas
- 0 nays
- 2 absent — Coleman, Laubenberg
- WITNESSES:** For — Scott Pospisil, Texas Hearing Aid Association; (*Registered, but did not testify*: Brad Shields, Texas Academy of Audiology)
- Against — None
- On — Joyce Parsons, Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, Department of State Health Services; (*Registered, but did not testify*: Lawrence Higdon, Texas Speech-Language-Hearing Association)
- BACKGROUND:** The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments regulates hearing instrument dispensers. The State Board of Examiners for Speech-Language Pathology and Audiology licenses and regulates speech-language pathologists and audiologists.
- Hearing aid fitters measure human hearing for the purpose of making selections, adaptations, or sales of hearing instruments. That process also includes the making of impressions for earmolds to be used as a part of the hearing instruments and any necessary post-fitting counseling for the purpose of fitting and dispensing hearing instruments.
- An audiologist provides examination, counseling, habilitative and rehabilitative services for persons who have or are suspected of having hearing disorders. Those with an audiology license under Occupations Code, chapter 401, also are authorized to fit, dispense, and sell hearing aids.

In 1999, the statutes regulating audiologists and hearing instrument fitters and dispensers were codified as Occupations Code, chapter 401 and chapter 402, respectively.

Out-of-state applicants. Under Texas Administrative Code, sec. 141.10, the committee considers an application for a Texas license to fit and dispense hearing instruments by the holder of an out-of-state permit on the basis of reciprocity. Occupations Code, sec. 402.209 requires that the committee waive the exam requirement and issue a license to an applicant from another state whose licensing requirements are equal to or greater than those of Texas.

Texas Administrative Code, sec. 141.10 requires that an out-of-state applicant:

- complete the application form for a Texas license completely and accurately;
- provide documentation of being fully licensed for at least three years in another state;
- provide written verification that the other jurisdiction requires passing the International Licensing Examination for Hearing Dispenser (ILE) written examination;
- hold a current certification from the Board of Certification for Hearing Instrument Sciences (BC-HIS); and
- pass the practical examination and written test required by the Texas committee.

The applicant additionally must provide information about any disciplinary actions by the other state's regulatory board and a criminal background history.

If an out-of-state applicant does not meet the requirements or fails the exam, the applicant must apply for a temporary training permit or an apprentice permit. An out-of-state applicant who fails an exam may request an exam performance analysis within 30 days.

Texas Administrative Code, sec. 14.10 forbids licensing a person with an audiologist license from another state as a hearing instruments fitter or dispenser. These applicants must go to the State Board of Examiners for Speech-Language Pathology and Audiology for an audiologist license under Occupations Code, chapter 401.

Occupations Code, sec. 402.302 requires that hearing instrument fitters and dispensers seeking to renew their license provide certification that all testing equipment has been calibrated within one year before the renewal date.

DIGEST: CSHB 594 would amend Occupations Code, chapter 402 to:

- change provisions for application for a Texas license by an out-of-state hearing instrument fitter and dispenser;
- identify references to chapter 401 audiologists within chapter 402; and
- change education requirements and term of license and other sections of chapter 402.

Out-of-state applicants. CSHB 594 would delete references in Occupations Code, sec. 402.209 to licensing by reciprocity and would eliminate the requirement that the committee waive the examination and grant a license to an applicant from a state or territory whose licensing requirements are equal to or greater than the Texas requirements.

CSHB 594 generally would adopt the procedures for written application and testing requirements in Texas Administrative Code, sec. 141.10. The bill would delete the sec. 141.10 requirement of documentation that the other state's examination meets the same standards as the Texas test and would delete specific references to ILE or BC-HIS certification, requiring only certification from organizations approved by the committee. However, the bill would allow an out-of-state applicant to take the Texas examination even if the information of the other state's examination was not available.

The bill also would place in statute the administrative requirements in sec. 141.10 that an applicant failing an examination could not retake that version of the test and would have to reapply under the requirements for an original license and that the committee would have to furnish an analysis of a failing test grade within 30 days. Also, it would continue the prohibition against licensing out-of-state audiologists as hearing instrument fitters or dispensers and would require applications through the State Board of Examiners for Speech-Language Pathology and Audiology as provided in Occupations Code, chapter 401.

Audiologist permits. CSHB 594 would provide exceptions to provisions that generally exclude audiologists and audiology interns licensed under Occupations Code, chapter 401 from the licensing and other requirements of ch. 402 for hearing instrument fitters and dispensers. These exceptions would include audiologists specially mentioned in chapter 402 as the audiologist who is a member of State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments; those audiologists exempted from the hearing instrument fitters and dispensers examination; supervisors of temporary training permit holders; and owners of dispensing practices.

Other provisions. CSHB 594 would increase the requirement for an apprentice permit holder from 18 to 20 classroom hours a year, the same as a full license holder, and would permit the committee to issue a new temporary training permit for another year after its expiration. The bill would change the term for renewal of a license from one to two years. Other provisions would require that each client of a hearing instrument fitting and dispensing practice receive a written contract with the license holder's signature, printed name, and address as well as a notice of the 30-day trial period and the name, mailing address, and telephone number of the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments. The bill would require that all business records and contracts be the sole property of the business owner.

Other provisions would make it ground for license denial or other disciplinary action to claim falsely that one was a doctor, audiologist, clinic, clinical audiologist, state licensed, state certified, licensed hearing instrument dispenser or board certified hearing instrument specialist or, otherwise, use any term, abbreviation, or symbol that falsely claimed a license, degree, title, or recommendation from a government agency or health provider.

CSHB 594 would repeal Occupations Code, sec. 402.302 requiring certification that all portable and stationary testing equipment has been calibrated within one year before the license holder's renewal date. It would amend chapter 402.301 to require that a license holder seeking a renewal of a license show that all equipment used to test hearing acuity has been properly calibrated or certified by a qualified technician.

CSHB 529 would apply to apprentice permit applicants or out-of-state license holders making an application or an existing license holders seeking renewals on or after the bill's effective date of September 1, 2009.

**SUPPORTERS
SAY:**

CSHB 594 would clarify the existing statute concerning hearing instrument fitters and dispensers and conform its provisions to changes in technology and to how hearing instrument fitters and dispensers actually practice their profession. The bill would reflect commonly understood and accepted regulatory procedures by replacing some antiquated portions of Occupations Code, ch. 401, which were originally adopted in 1993. The Legislature's decision last session to delay Sunset Commission review of both the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments and State Board of Examiners for Speech-Language Pathology and Audiology until 2013 means that the statute will not have been substantially reviewed and revised in more than two decades without the updates included in CSHB 594.

CSHB 594 would provide a practical standard for licensing out-of-state hearing instrument fitters and dispensers to practice in Texas. The new standard would eliminate the idea of reciprocity based on an impossible-to-verify guideline of being "equal to or greater than" the Texas licensing requirements. Effectively, there now is no reciprocity; no other state automatically accepts the Texas credential. Jurisdictions closely guard their testing instruments for confidentiality and security reasons, and no comparison is possible among the examinations administered by other states. The bill would provide a rigorous — but easily understood — process to provide licenses for out-of-state practitioners wanting to move to Texas.

Harmonizing the differences between the regulations for hearing instrument fitters and dispensers and for audiologists would benefit all who provide needed services for Texans with hearing disorders. Many audiologists, particularly in rural areas, would like to expand their business and want to add a hearing instrument fitting or dispensing specialist to their staffs. The bill would provide clear guidance and authority for those wanting to train and supervise those new to the profession.

CSHB 594 would address topics on which there is a general consensus among hearing instrument fitters and dispensers and audiologists. The bill does not deal with potentially controversial questions such as those

involving scope of practice and the differences among the regulated communities. Those debates would be best reserved for the Sunset review process, but should not delay needed, agreed-to changes.

CSHB 594 would provide an appropriate balance between placing licensing requirements in statute and allowing them to be set by administrative regulation. The Legislature should stress a proactive policy in defining its intent through legislation, rather than leaving those decisions on how to implement and interpret legislation to regulatory bodies or the courts. It is not enough to rely on prevailing practice in the profession in making public policy on regulation. CSHB 594 would give the Legislature an opportunity to approve the regulations adopted by the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.

OPPONENTS
SAY:

CSHB 594 would do little more than ratify what the hearing instrument fitters and dispensers and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments already are doing. Occupations Code chapters 401 and 402 already provide audiologists sufficient authority to fit and dispense hearing instruments. If the larger questions about scope of practice and other aspects of regulation can wait until the 2013 Sunset Commission review, so could the proposed changes in this bill.

Codifying specific regulations into state law would make those rules difficult to revise and would create more of the inflexibility already found in the statute.

NOTES:

The committee substitute deleted a requirement in the filed bill that an apprentice permit holder be required to pay all license and fees and score at least 70 percent on a qualifying examination to receive a temporary training permit.

The companion bill, SB 1194 by Wentworth, was heard by the Senate Health and Human Services Committee on April 4 and left pending.