

OCCUPATIONS AND PROFESSIONS

CHAPTER 390

H. B. No. 181

(Bunker, Seibel, Sandness, Aamoth)

ABSTRACTERS' FEES AND LIABILITY POLICIES

AN ACT

To provide for a limitation of actions against abstracters; to amend and reenact section 43-01-18 of the North Dakota Century Code, relating to the fees of abstracters; and to amend and reenact section 43-01-11 of the North Dakota Century Code, relating to bonds or liability policies of abstracters.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Amendment.) Section 43-01-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-18. Fees Chargeable by Abstracter.) An abstracter may charge the following fees, and no more for making and certifying to an abstract:

1. For the first entry on an abstract or continuation thereof, two dollars;
2. For every entry other than the first entry, one dollar and fifty cents;
3. For a complete certification covering the records of the several county offices, for the period immediately preceding the certification date of one year or less, ten dollars; for complete certification covering the records of the several county offices for a period immediately preceding the certification date of over one year, twelve dollars and fifty cents; for a certification covering lands in excess of one quarter section in the same Abstract of Title an additional fee of five dollars, for each quarter section or portion thereof in excess of one, may be

charged; for a certification covering premises in more than one block in any subdivision in the same Abstract of Title, an additional fee of five dollars, for such premises in each additional block in excess of one, may be charged;

4. For each name searched for judgments, real estate taxes, bankruptcy proceedings, federal tax liens, state tax liens, mechanic's liens and mechanic's lien notices, seventy-five cents;
5. For all miscellaneous instruments, one dollar and twenty-five cents for the first one hundred words, and fifty cents for each additional hundred words or fraction thereof;
6. Such fees as may be fixed by special statute.

Section 2. Amendment.) Section 43-01-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-01-11. Bonds or Liability Policy—Deductible Policy Permitted.) Before a certificate of authority shall be issued, the applicant therefor shall file a surety bond running to the state of North Dakota, or abstractor's liability policy to be approved by the abstractors' board of examiners as to form, sufficiency, and surety thereof and written by a company authorized to write such insurance in this state, in a penal sum or limit of liability equal to ten thousand dollars for each ten thousand inhabitants, or major fraction thereof, residing in the county in which the applicant's office is maintained, as shown by the last official federal or state census preceding the filing of the bond or abstractor's liability policy. Such bond, or abstractor's liability policy, however, shall not be less than ten thousand dollars. The bond or liability policy shall be conditioned for the payment by the abstractor of any liability imposed upon him by law for damages arising from any claim against him that may be sustained by or that shall accrue to any person by reason or on account of any negligent act, error or omission in any abstract or certificate of title, or continuation thereof, made and issued by the abstractor. Said board shall file all surety bonds in the office of the county auditor of the county in which the applicant has his place of business. All abstractors' liability policies shall be endorsed to provide that cancellation cannot be effected by

either the abstracter or the insurance company without ten days' written notice to the abstracters' board of examiners, who shall file said endorsed policy or a certificate thereof in the office of the county auditor of the county in which the applicant has his place of business. It shall be permissible under this section to file an abstracter's liability policy in the deductible form, provided that the deductible provision shall not exceed five hundred dollars.

Section 3. Limitation of Action Against Abstracter.) An action founded upon an error or omission in an abstract may be commenced against an abstracter at any time within twenty years after the date of the certificate of the abstract.

Approved March 14, 1969.

CHAPTER 391

H. B. No. 112

(J. Peterson, Backes, Haugland, Anderson)

(Aas, Emerson)

LICENSING OF CONTRACTORS

AN ACT

To amend and reenact sections 43-07-02, 43-07-04, 43-07-07, 43-07-10, 43-07-13, and section 43-07-11 of the North Dakota Century Code, relating to the licensing of contractors and enforcement of the chapter.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Amendment.) Section 43-07-02 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-02. License Required—Enjoining Operation Without License.) No person shall engage in the business nor act in the capacity of a contractor within this state when the original contract or subcontract cost, value, or price exceeds the sum of five hundred dollars without first having a license as provided in this chapter. The secretary of state may request the attorney general to bring an action to enjoin any person from engaging in the business or acting in the capacity of a contractor within this state when the original contract or subcontract cost, value, or price exceeds the sum of five hundred dollars, unless the person is properly licensed.

Section 2. Amendment.) Section 43-07-04 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-04. License—How Obtained.) To obtain a license under this chapter, an applicant shall submit, on such forms as the registrar shall prescribe, an application under oath containing a statement of the applicant's experience and qualifications as a contractor, and the value and character of the contract work completed by him during the one year preceding the date of such application, and the names of the persons for whom such work was done. The applicant shall obtain a use tax account number from the office of the state tax commissioner and report such

number on the application. A bond, as hereinafter prescribed, shall be filed with the application and the contractor shall submit a statement from the North Dakota workmen's compensation bureau that the contractor has secured workmen's compensation coverage satisfactory to that bureau along with such other information as may be required by the registrar to assist him in determining the applicant's fitness to act in the capacity of a contractor. The application shall contain a statement that the applicant desires the issuance of a license under the terms of this chapter, and shall specify the class of license sought. Any person refused a license by the registrar shall have a right of appeal from such refusal to the district court of Burleigh County, North Dakota, if a nonresident, or to the district court of the county of his residence, if a resident of North Dakota.

Section 3. Amendment.) Section 43-07-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-07. License Fees.) At the time of making application for a license as described and required in this chapter, the applicant shall pay to the registrar the following fees:

1. For a class A license, the sum of two hundred fifty dollars;
2. For a class B license, the sum of one hundred fifty dollars;
3. For a class C license, the sum of one hundred dollars; and
4. For a class D license, the sum of twenty-five dollars.

All moneys collected by the registrar under this chapter shall be deposited by him with the state treasurer, who shall credit them to the general fund of the state.

Section 4. Amendment.) Section 43-07-10 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-10. Renewal of License.) Any license issued under the provisions of this chapter may be renewed for each successive calendar year by obtaining from the registrar a certificate of renewal thereof. For the purpose of obtaining such certificate of renewal, the licensee shall file with the registrar an applica-

tion therefor, which application shall be accompanied by a list in duplicate showing each contract or subcontract obtained by the licensee during the preceding calendar year in North Dakota for which a license was required under this chapter, the nature of the work contracted or subcontracted, and, if a performance bond was required by the contract, the name and address of the corporation or other person who issued the bond. The registrar shall within a reasonable time forward one copy of such list to the state tax commissioner and shall also indicate whether or not the license of the applicant was renewed by him. The application for such certificate of renewal must be made to the registrar on or before the first day of April of each successive calendar year. Such renewal certificate shall be good for the then current calendar year. At the time of filing the application for a certificate of renewal, the applicant shall pay to the registrar a license fee equal to twenty percent of the license fee for the original license. If any applicant for a certificate of renewal shall apply for a renewal under a class different from the license theretofore issued to him, such new license shall be issued only upon the showing and under the terms and conditions and upon the payment of the same fee required for the issuance of an original license of the class applied for. All certificates of renewal wherein the applicant does not apply for a change in the class of license shall be issued by the registrar to the applicant when the application is properly filed and the license renewal fee is paid.

Section 5. Amendment.) Section 43-07-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-13. Records and Certified Copies Thereof.) The registrar shall maintain in his office, open to public inspection during office hours, a complete indexed record of all applications and all licenses issued and all certificates of renewal and of cancellations or suspensions. He shall furnish a certified copy of any license issued, of any renewal certificate, or of the cancellation or suspension thereof, upon receipt of the sum of two dollars. Such certified copy shall be received in all courts and elsewhere as prima facie evidence of the facts stated therein.

Section 6. Amendment.) Section 43-07-11 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-11. Contractor's Bond—Requirements.) Every contractor as hereinbefore defined shall be required to execute and file with the application for license required by this chapter a good and valid bond issued by a surety company authorized to do business in this state or, in the case of class D contractors only, a personal bond with two sureties who are acceptable to the registrar and who are residents of the state of North Dakota. Every such bond for a class A contractor shall be written in the amount of two thousand dollars; bonds for class B, C, and D contractors shall be in the amount of one thousand dollars, each running to the state of North Dakota and conditioned upon the payment of all taxes, including the premiums under the workmen's compensation law and contributions due under the unemployment compensation law of the state of North Dakota, all use taxes required to be paid by the contractor to the state of North Dakota and all income taxes withheld or required to be withheld from employees pursuant to chapter 57-38, which may accrue to the state of North Dakota or the political subdivisions thereof on account of the execution and performance of the construction contract or subcontract; provided that any bond required by this section shall be in addition to any bond required by the provisions of section 48-01-05 and shall also be in addition to the obligation imposed by the provisions of section 57-40-17 upon a surety company to the state of North Dakota. Every contractor, as hereinbefore defined, upon making application for renewal of his license shall not be required to furnish a contractor's bond; however, the secretary of state as registrar shall not issue a certificate of renewal to any contractor upon notification by any department or agency of the state or political subdivision thereof, any secrecy provisions contained in the North Dakota tax laws notwithstanding, that the contractor has not paid a tax or other obligation presently due to the state of North Dakota or its political subdivisions. Upon notification that the contractor has been delinquent in the payment of any tax or other obligation to the state of North Dakota or the political subdivisions thereof, the secretary of state shall require the bond specified herein prior to the renewal of the license.

Approved March 14, 1969.

CHAPTER 392

S. B. No. 169
(Decker, Thoreson, Lowe)

**CONTRACTOR TO HAVE TAX CLEARANCE BEFORE
CONTRACTING WITH STATE**

AN ACT

To amend and reenact subsection 1 of section 43-07-11.1 of the North Dakota Century Code, relating to income, sales and use tax clearance to be obtained for individuals, corporations and others performing contracts for the state of North Dakota or any political subdivision or governmental subdivision thereof.

**Be It Enacted by the Legislative Assembly of the State of
North Dakota:**

Section 1. Amendment.) Subsection 1 of section 43-07-11.1 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. No contractor, resident or nonresident shall be eligible to enter into a public contract with any department of the state of North Dakota, nor any political or governmental subdivision of the state until satisfactory showing is made that said contractor has paid all delinquent income, sales or use taxes, if any, owed to the state pursuant to the provisions of the income, sales or use tax laws, and which have been assessed either by the filing of an income or sales and use tax return by the contractor, or by an assessment of additional income, sales or use taxes against the contractor by the commissioner that has become finally and irrevocably fixed, before the date that the contract was executed by the parties thereto. "Contractor" and "public contract" shall have the same definition for purposes of this section as in chapter 43-07 relating to issuance of licenses to contractors.

Approved March 10, 1969.

CHAPTER 393

S.B. No. 71

(Lips)

BOARD OF HAIRDRESSERS AND COSMETOLOGISTS

AN ACT

To amend and reenact sections 43-11-06 and 43-11-16 of the North Dakota Century Code, relating to the compensation of the members of the board of hairdressers and cosmetologists, and the qualifications for registration of a school for hairdressers and cosmetologists.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Amendment.) Section 43-11-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-06. Compensation of Members of Board—How Paid.)

Each member of the board shall receive twenty-five dollars for each day employed in the actual discharge of duties and necessary expenses so incurred. The secretary of the board shall receive an annual salary of not more than five thousand two hundred dollars to be fixed by the board, and necessary expenses actually incurred in the performance of official duties. The compensation and expenses of all members of the board shall be paid from the fund in the state treasury to the use of the board on requisition signed by the president and the secretary of the board and the warrant of the state auditor.

Section 2. Amendment.) Section 43-11-16 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-16. Registered Schools—Qualifications for Registration.) A certificate of registration shall be granted to a school for hairdressers and cosmetologists upon an application to the board and the payment of the annual registration fee, if the school:

1. Is operated and maintained in premises entirely distinct and permanently separated from any hairdressing, beauty, or cosmetologist shop;

2. No school of cosmetology shall be granted a certificate of registration unless it shall require one thousand five hundred hours of training and instruction in cosmetology, and unless it shall attach to its staff as a lecturer and consultant a person licensed by this state to practice an unlimited or limited branch of medicine and employ at least two full-time licensed instructors for the first twenty-five students enrolled and one additional instructor for each additional twenty-five students enrolled or fraction thereof after such school's enrollment has reached fifty students; shall possess apparatus and equipment sufficient for the proper and full teaching of all subjects of its curriculum; shall keep a daily record of the attendance of each student which shall not be in excess of eight hours per day; maintain regular class and instruction hours to include practical demonstrations and theoretical studies supplemented by audio-visual aids, and studies in sanitation, sterilization and other safety measures and the use of antiseptics, cosmetics, and electrical appliances consistent with the practical and theoretical requirements as applicable to cosmetology or any practice thereof as provided in this chapter. No school may conduct a clinical department for fees after registration by the board, until such school has been operating for a period of at least twenty percent of the total hours of instruction required by this chapter. No student shall be permitted to practice on any person not an instructor or registered student of such school until such student has completed at least twenty percent of the total hours of instruction required by this chapter. No school shall compensate any of its basic students in any way. No school shall make appointments for clinical services, except during the last three hundred hours of the student's training, or advertise the fees charged for clinical service. Each school, at the time of application for its license and upon the renewal of such license, shall furnish to the board, and maintain in force at all times the license is in effect, a bond in the penal sum of ten thousand dollars. Such bond shall run in favor of the board, as agent of the state, and shall be furnished by a surety company authorized to do business in this state. It shall be conditioned upon such bonded school's providing its registered students with the full course

of instruction required under the provisions of this chapter and shall provide for a refund of a proportionate amount of each student's tuition fee upon default. Any such school that shall enroll student instructors shall set up an adequate course of training as such, with the approval of the board and shall not have at any one time more than one such student instructor for each licensed instructor actively engaged in such school.

Approved February 22, 1969.

CHAPTER 394

H. B. No. 73
(Boustead, Kelsch)

EXAMINATION OF PROFESSIONAL NURSES

AN ACT

To amend and reenact section 43-12-13 of the 1967 Supplement to the North Dakota Century Code, relating to examination of professional nursing applicants.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Amendment.) Section 43-12-13 of the 1967 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12-13. Examination Required—Application—Fee for Examination—Qualifications for Examination.) Any person who desires to practice professional nursing in this state shall pass the examination given by the board before a certificate of licensure shall be issued. Such person shall make an application for licensure to the executive secretary of the board at least three weeks prior to the date set for the examination and shall pay to the treasurer of the board at the time of making such application the sum of twenty dollars. Enclosed with such application, proof shall be submitted that the applicant has the following qualifications:

1. Is a citizen of the United States provided, however, that if the applicant is not at the time a citizen of the United States, he or she shall be permitted to write the examination and upon passing may be granted a temporary license valid for not to exceed six years. Such license may be converted by the board into a permanent license only upon his or her acquiring full United States citizenship before the expiration of such period and only if, during the entire period from the issuance of such license until the acquisition of citizenship, he or she has practiced the profession of nursing, and has resided continuously within this state;
2. Is of good moral character;
3. Has received the preliminary education required in section 43-12-09 for admission to a school of nursing; and
4. Has successfully completed the required accredited professional nursing education programs.

Approved March 8, 1969.

CHAPTER 395

H. B. No. 201

(DeKrey, Sanstead, Glaspey, Hickle, Simonson)

LICENSING OSTEOPATHIC PHYSICIANS

AN ACT

To create and enact section 43-17-39 of the North Dakota Century Code, providing that doctors of osteopathy may elect to come under the jurisdiction of the state board of medical examiners; and to amend and reenact sections 43-17-01, 43-17-02, 43-17-03, 43-17-04, subsections 1 and 2 of section 43-17-18, and section 43-17-31 of the North Dakota Century Code, providing that osteopathic physicians may engage in the practice of medicine, that one osteopathic physician shall be appointed to an expanded state board of medical examiners, and that the state board of medical examiners may refuse to grant a license to practice medicine to an osteopathic physician who fails to designate his osteopathic school of practice, and to repeal chapter 43-14 of the North Dakota Century Code, relating to the practice of osteopathy.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Amendment.) Section 43-17-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-17-01. Definitions.)

1. "Physician" shall include physician and surgeon (M.D.) and osteopathic physician and surgeon (D.O.);
2. "Practice of medicine" shall include the practice of medicine, surgery, and obstetrics. The following persons shall be regarded as practicing medicine:
 - a. One who holds himself out to the public as being engaged within this state in the diagnosis or treatment of diseases or injuries of human beings;
 - b. One who suggests, recommends, or prescribes any form of treatment for the intended relief or cure of any physical or mental ailment of any person, with the intention of receiving, directly or indirectly, any fee, gift, or compensation;

- c. One who maintains an office for the examination or treatment of persons afflicted with disease or injury of the body or mind;
 - d. One who attaches the title M.D., surgeon, doctor, D.O., osteopathic physician and surgeon, or any other similar word or words or abbreviation to his name, indicating that he is engaged in the treatment or diagnosis of the diseases or injuries of human beings shall be held to be engaged in the practice of medicine;
3. "Board" shall mean the state board of medical examiners.

Section 2. Amendment.) Section 43-17-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-17-02. Persons Exempt from The Provisions of Chapter.) The provisions of this chapter shall not apply to the following:

1. Students who have had training in approved schools of medicine or osteopathy and who are continuing and confining their training and performing the duties of an intern or a resident in any hospital or institution maintained and operated by a state or territory of the United States, or in any hospital within a state or territory operating under the supervision of a staff of physicians, the members of which are licensed to practice medicine and which hospital is approved for internships and residences by the appropriate accrediting agency;
2. Any physician residing on the border of a neighboring state and duly licensed under the laws thereof, who does not open an office or appoint a place to meet patients or to receive calls within this state;
3. The domestic administration of family remedies;
4. Dentists practicing their profession when properly licensed;

5. Optometrists practicing their profession when properly licensed;
6. The practice of christian science or other religious tenets or religious rules or ceremonies as a form of religious worship, devotion, or healing, if the person administering, making use of, assisting in, or prescribing, such religious worship, devotion, or healing does not prescribe or administer drugs or medicines and does not perform surgical or physical operations, and if he does not hold himself out to be a physician or surgeon;
7. Commissioned medical officers of the armed forces of the United States, the United States public health service, and medical officers of the veterans' administration of the United States, in the discharge of their official duties, and licensed physicians from other states or territories if called in consultation with a person licensed to practice medicine in this state;
8. Doctors of chiropractic duly licensed to practice in this state pursuant to the statutes regulating such profession;
9. Chiropodists practicing their profession when properly licensed.

Section 3. Amendment.) Section 43-17-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-17-03. State Board of Medical Examiners—How Appointed—Qualifications.) The governor shall appoint a state board of medical examiners consisting of ten members, nine of whom shall be M.D.'s and one of whom shall be a D.O., each of whom shall have the following qualifications:

1. Be a practicing physician of integrity and ability;
2. Be a resident of and duly licensed to practice medicine and surgery in this state, provided, however, that the D.O. on the board must be licensed to practice medicine pursuant to this chapter;
3. Be a graduate of a medical or osteopathic school of high educational requirements and standing;

4. Have been engaged in the active practice of his profession within this state for a period of at least five years.

A person appointed to the board shall qualify by taking the oath required of civil officers.

Section 4. Amendment.) Section 43-17-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-17-04. Term of Office.) The term of office of each member of the board shall be three years and until his successor is appointed and qualified. The terms shall be so arranged that no more than four terms shall expire on the thirty-first of July of each year. The governor shall fill all vacancies by appointment but in case of a vacancy before the expiration of a term, the appointment shall be for the residue of the term only. No member of the board shall serve thereon for more than two successive terms.

Section 5. Amendment.) Subsections 1 and 2 of section 43-17-18 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. That he has attended some reputable medical or osteopathic college or colleges approved by the board for four college years of at least eight months each;
2. That he is a graduate of some reputable medical or osteopathic college approved by the board;

Section 6. Amendment.) Section 43-17-31 of the North Dakota Century Code is hereby amended and reenacted by creating a new subsection thereto:

Failure of a doctor of osteopathy to designate his school of practice in the professional use of his name by such terms as "osteopathic physician and surgeon", "doctor of osteopathy", "D.O.", or similar terms.

Section 7.) Section 43-17-39 of the North Dakota Century Code is hereby created and enacted to read as follows:

43-17-39. Qualified Doctors of Osteopathy May Be Licensed.)

On the effective date of this Act, doctors of osteopathy who were licensed under chapter 43-14, and who were practicing in the state one year immediately preceding July 1, 1969, shall come under the jurisdiction of the state board of medical examiners and shall be issued a license to practice medicine. Applications from those holding a currently valid physician's license from another state shall be considered in the manner set forth in section 43-17-21.

Applicants not issued a license to practice in accordance with the above shall be issued a license to practice medicine upon passing the next regular examination of the state board of medical examiners.

Section 8. Repeal.) Chapter 43-14 of the North Dakota Century Code is hereby repealed.

Approved March 18, 1969.

CHAPTER 396

H. B. No. 249
(Connolly)

DEFINITION OF OIL, GAS, OR MINERAL BROKER

AN ACT

To amend and reenact subsection 1 of section 43-22-01 of the North Dakota Century Code, relating to the definition of an oil, gas, or mineral broker.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Amendment.) Subsection 1 of section 43-22-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Oil, gas, or mineral broker shall mean any person, co-partnership, association, or corporation engaged in the business of buying leases, mineral rights, royalties, or other interests in oil or gas properties or in properties containing or presumed to contain uranium or other fissionable materials or metalliferous element,

or non-metalliferous element, whether for himself or as agent of others. A single act performed, or isolated transactions in the buying of, or offering to buy, leases, mineral rights, royalties, or other interests in oil or gas properties or in properties containing or presumed to contain uranium or other fissionable material, or metalliferous element, or non-metalliferous element, shall not constitute the person, copartnership, association, or corporation, performing the act or transactions, an oil, gas, or mineral broker within the meaning of this chapter. A transaction shall be deemed isolated if the person, copartnership, association or corporation has not bought interests as described above in more than two other transactions within this state within the twelve-month period immediately prior to the date of such transaction.

Section 2. Amendment.) Section 43-22-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-22-05. Bond Covers Agent.) The bond or deposit furnished by an oil, gas, or mineral broker shall cover the acts of his duly authorized employees or agents. Any such employee or agent need not furnish a separate bond but the burden of proof shall rest upon any person not himself bonded to establish that he was duly authorized by a bonded broker. An oil, gas, or mineral broker registered under this chapter shall certify to the commissioner the names, business addresses and residence addresses of any regular employees or agents employed in the business of buying oil and gas leases, mineral rights, royalties, or other interests in properties at the time of registration or renewal thereof and shall certify the names, business and residence addresses of any such employees or agents within ninety days of their employment by such oil, gas, or mineral broker.

Approved March 25, 1969.

CHAPTER 397

S. B. No. 307
(Wilhite, Lips)

REGULATION OF HEARING AID DEALERS

AN ACT

To create a board of hearing aid dealers and fitters to provide for licensure of persons who are dealers and fitters of hearing aids; to provide for the regulation of dispensing and fitting of hearing aids to the public; and to provide for penalties and punishment for violation of this Act.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Definitions.) As used in this Act, unless the context requires otherwise:

1. "Department" shall mean office of attorney general charged with administering the Act in the state.
2. "License" shall mean a license issued by the state under this Act to hearing aid dealers and fitters.
3. "Trainee permit" shall mean a temporary permit issued while the applicant is in training to become a licensed hearing aid dealer and fitter.
4. "Board" shall mean the board for licensing hearing aid dealers and fitters.
5. "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 earmold, but excluding batteries and cords.
6. "Practice of fitting and dealing in hearing aids" shall mean the measurement of human hearing by means of an audiometer or by any means solely for the purpose of making selections, adaptations or sale of hearing aids. The term also includes the making of impressions for earmolds. A dealer, at the request of a physician or a member of related professions,

may make audiograms for the professional's use in consultation with the hard-of-hearing.

7 "Sell" or "Sale" includes a transfer of title or of the right to use by lease, bailment, or any other contract. This excludes wholesale to distributors or dealers.

Section 2. License Required to Sell or Fit Hearing Aids.)

1. No person shall engage in the sale of or practice of fitting hearing aids or display a sign or in any other way advertise or represent himself as a person who practices the fitting and sale of hearing aids after July 1, 1969, unless he holds an unsuspended, unrevoked license issued by the department as provided in this Act. The license required by this Act shall be conspicuously posted in his office or place of business. Duplicate licenses shall be issued by the department to valid license holders operating more than one office without additional payment. A license under this Act shall confer upon the holder the right to select, fit, and sell hearing aids.

2. Nothing in this Act shall prohibit a corporation, partnership, trust, association, or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing aids at retail without a license, provided that it employs only properly licensed natural persons in the direct sale and fitting of such products. Such corporations, partnerships, trusts, associations, or other like organizations shall file annually with the board a list of all licensed hearing aid dealers and fitters directly or indirectly employed by it. Such organizations shall also file with the board a statement on a form approved by the board that they submit themselves to the rules and regulations of the department and the provisions of this Act which the department shall deem applicable to them.

Section 3. Receipt Required To Be Furnished to a Person Supplied With Hearing Aid.)

1. Any person who practices the fitting and sale of hearing aids shall deliver to each person supplied with a hearing aid a receipt which shall contain the licensee's signature and show his business address and the number of his certificate, together with specifications as to the make and model of the hearing aid furnished, full terms of the sale clearly stated. If an aid which

is not new is sold, the receipt and the container thereof must be clearly marked as "used" or "reconditioned" whichever is applicable, with the terms of guarantee, if any.

2. Such receipt must bear in no smaller type than the largest used in the body copy portion the following: Any examination(s) or representation(s) made by a licensed hearing aid dealer and fitter in connection with the fitting and selling of this hearing aid(s) 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.

Section 4. Persons and Practices Not Affected.)

1. This Act is not intended to prevent any person from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids provided this person or organization employing such person does not sell hearing aids or accessories thereto.

2. This Act does not apply to a person who is a licensed physician and surgeon or osteopath.

Section 5. License by Experience.) An applicant for a license without examination as a "Hearing Aid Dealer and Fitter" shall:

1. Have been principally engaged as a hearing aid dealer and fitter for a total period of at least two years, within a period of five years immediately prior to the effective date of this Act.

2. Be a person of good moral character.

3. Be 21 years of age or older.

4. Be free of contagious or infectious disease.

Method of granting a license by experience shall be terminated six (6) months after July 1, 1969.

Section 6. Issuance of License.)

1. The department shall register each applicant without

discrimination or examination who satisfactorily passes the experience requirement as provided in section "License by Experience" or passes an examination as provided in section "License by Examination" and upon the applicant's payment of fifty dollars, shall issue to the applicant a license signed by the department. The license shall be effective until January 30 of the year following the year in which it is issued.

2. Whenever the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to this Act 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 Act are qualified to dispense and fit hearing aids, the department may issue certificates of endorsement to applicants who hold current, unsuspended and unrevoked certificates or licenses to fit and sell hearing aids in such other state or jurisdiction. No such applicants for a certificate of endorsement pursuant to this subsection shall be required to submit to or undergo a qualifying examination, but must pay the fees required by this Act. The holder of a certificate of endorsement shall be registered in the same manner as holders of a license. The fee for an initial certificate of endorsement shall be the same as the fee for an initial license. Fees, grounds for renewal and procedures for the suspension and revocation of certificates of endorsement shall be the same as for renewal, suspension and revocation of a license.

Section 7. License by Examination.)

1. Applicants who do not meet the experience qualification on the effective date of this Act may obtain a license by successfully passing a qualifying examination, provided the applicant:

- a. Be at least 21 years of age.
- b. Be of good moral character.
- c. Has an education equivalent to a four-year course in an accredited high school.
- d. Is free of contagious or infectious disease.

2. The applicant for license by examination shall appear at a time, place and before such persons as the department may designate, to be examined by means of written and practical tests in order to demonstrate that he is qualified to practice the fitting and sale of hearing aids. The examination administered as directed by the board constituting standards for licensing shall not be conducted in such 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. The department shall give examinations as required to permit the applicants to be examined within thirty days following the submission of the official application form.

Section 8. Temporary Trainee Permit.)

1. After July 1, 1969, an applicant who fulfills the requirements regarding age, character, education and health as set forth in section 7 (1), may obtain a trainee permit upon application to the department.

(a) Previous experience, or a waiting period shall not be required to obtain this trainee permit.

2. Upon receiving an application as provided under this section and accompanied by a fee of twenty-five dollars, the department shall issue a trainee permit which shall entitle the applicant to engage in the fitting and sale of hearing aids for a period of one year. A person holding a valid hearing aid dealer's and fitter's license shall be responsible for the supervision and training of such applicant and maintain adequate personal contact.

3. If a person who holds a temporary trainee permit under this section has not successfully passed the licensing examination during this one-year period from the date of issuance, the temporary trainee permit may be renewed or reissued once upon payment of a twenty-five dollar fee.

Section 9. Scope of Examination.) The qualifying examination provided in section "License by Examination" shall consist of:

1. 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.
2. 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 of recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing.
 - c. Masking when indicated.
 - d. Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing aid.
 - e. Taking earmold impressions.

Section 10. Notice to Department of Place of Business—Notice to Holders of License—How Given by Department.)

1. A person who holds a license shall notify the department in writing of a regular address of the place or places where he engages or intends to engage in the fitting or the sale of hearing aids.
2. The department shall keep a record of the place of business of persons who hold licenses.
3. 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.

Section 11. Annual Renewal of License—Fees—Effect of Failure to Renew.) Each person who engages in the fitting and

sale of hearing aids shall annually, on or before January thirtieth, pay to the department a fee of fifty dollars, for a renewal of his license and 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 thirty-day grace period shall be allowed after January thirtieth, during which time licenses may be renewed on payment of a fee of seventy-five dollars to the department. After expiration of the grace period, the department may renew such certificates upon the payment of one hundred dollars 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 two years from the date of such suspension.

Section 12. Grounds for Suspension of License.)

1. Any person wishing to make a complaint against a licensee under this Act shall reduce the same to writing and file this complaint to the department within one year from the date of the action upon which the complaint is based. If the department determines the charges made in the complaint are sufficient to warrant a hearing to determine whether the license issued under this Act shall be suspended or revoked, it shall make an order fixing a time and place for a hearing and requiring the licensee complained against to appear and defend against the complaint. The order shall have annexed thereto a copy of the complaint and the order and copy of the complaint shall be served upon the licensee at least twenty days before the date set for hearing, either personally or by registered mail sent to licensee's last known address. Continuances or adjournments of a hearing date shall be made if for good cause. At the hearing the licensee complained against may be represented by counsel. The licensee complained against and the department shall have the right to take depositions in advance of hearing and after service of the complaint and either may compel the attendance of witnesses by subpoenas issued by the department. Either party taking depositions shall give at least five days' written notice to the other party of the time and place of such depositions, and the other party shall have the right to attend with counsel if desired and cross-examine. Any person registered under this Act may have his license revoked or suspended for a fixed period by the department for

any of the following causes. Appeals from suspension or revocation may be made under the Administrative Procedures Act.

2. The conviction of a felony, or a misdemeanor, involving moral turpitude. The record of conviction, or a certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence of such conviction.

3. Procuring of license by fraud or deceit practiced upon the department.

4. Unethical conduct. Unethical conduct means:

a. The obtaining of any fee or the making of any sale by fraud or misrepresentation.

b. Knowingly employing directly or indirectly any suspended or unregistered person to perform any work covered by this Act.

c. Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceptive or untruthful.

d. Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised.

e. Representing that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance or repair of hearing aids when that is not true, or using the word "doctor," "clinic" or similar words, abbreviations or symbols which tend to connote the medical profession when such is not accurate.

f. Habitual intemperance.

g. Gross immorality.

- h. Permitting another to use his license.
 - i. Advertising a manufacturer's product or using a manufacturer's name or trademark which implies a relationship with the manufacturer which does not exist.
 - j. To directly or indirectly give or offer to give, or permit or cause to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence them or have them influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dealer or fitter, or to influence persons to refrain from dealing in the products of competitors.
5. Conducting business while suffering from a contagious or infectious disease.
 6. Engaging in the fitting and sale of hearing aids under a false name or alias with fraudulent intent.
 7. For any violation of the provisions of this Act.

Section 13. Prohibited Acts and Practices.) No person shall:

1. Sell, barter or offer to sell or barter a license.
2. 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.
3. Alter a license with fraudulent intent.
4. Use or attempt to use as a valid license a license which has been purchased, fraudulently obtained, counterfeited or materially altered.
5. Willfully make a false statement in an application for license or application for renewal of a license.

Section 14. Powers and Duties of Department.) The powers and duties of the department are as follows;

1. To authorize all disbursements necessary to carry out the provisions of this Act.

2. To supervise issuance of licenses "By Experience" and administer qualifying examinations to test the knowledge and proficiency of applicants licensed by examination.
3. To register persons who apply to the department and who are qualified to engage in the fitting and sale of hearing aids.
4. To purchase and maintain or rent audiometric equipment and other facilities necessary to carry out the examination of applicants as provided in section 7.
5. To issue and renew licenses.
6. To suspend or revoke licenses in the manner provided.
7. To designate the time and place for examining applicants.
8. To appoint representatives to conduct or supervise the examination.
9. To make and publish rules and regulations not inconsistent with the laws of this state which are necessary to carry out the provisions of this Act.
10. To appoint or employ subordinate employees.

Section 15. Board of Hearing Aid Dealers and Fitters.)

1. There shall be established a board of hearing aid dealers and fitters which shall guide, advise, and make recommendations to the department handling the license under this Act.
2. Members of the board shall be residents of the state. The board shall consist of three "hearing aid dealers and fitters," two otolaryngologists and one audiologist. Each hearing aid dealer and fitter on the board shall have had no less than five years of experience and shall hold a valid license as a hearing aid dealer and fitter, as provided under this Act. Exception shall be the hearing aid dealers and fitters of the first board appointed who shall have had no less than five years of experience and shall have fulfilled all qualifications for "License by Experience" as provided under this Act.

3. All members of such board shall be appointed by the governor. The term of office of each member shall be for four years, excepting that the members of the first board appointed under this Act, two shall be appointed for two years; two shall be appointed for three years; and two shall be appointed for four years. Before a member's term expires, the Governor 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 member to serve as chairman and another to serve as secretary-treasurer. No member of the board may be reappointed to the board until at least one year after the expiration of his second term of office.

4. Each member of the board shall serve without compensation but he shall receive such mileage and travel expenses while engaged in the performance of the duties of his office as is provided for general state employees.

Section 16. Duties of the Board.)

1. The board shall have the responsibility and duty of advising the department in all matters relating to this Act, shall prepare the examinations required by this Act for the department and shall assist the department in carrying out the provisions of this Act.

2. The department shall be guided by the recommendations of the board in all matters relating to this Act.

Section 17. Meetings of Board.) The board shall meet not less than once each year at a place, day and hour determined by the board. The board shall also meet at such other times and places as may be requested by the department.

Section 18. Violations and Penalties.) Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than six months, or by a fine of not more than five hundred dollars or by both such imprisonment and fine. Each violation shall be deemed a separate offense. In addition to the criminal penalties provided, the civil remedy of injunction shall be available to restrain and enjoin violations of any provisions of this chapter without proof of actual damages sustained by any person.

Section 19. Severability Clause.) If any section, sentence, clause, phrase, or word of this Act is for any reason held or declared to be unconstitutional, inoperative or void, such holding or invalidity shall not affect the remaining portions of this Act, and the remainder of this Act, after the exclusion of such part or parts shall be deemed and held to be valid as if such parts had not been included herein.

Approved April 2, 1969.

CHAPTER 398

S. B. No. 290
(Litten, Lowe, Sorlie)

BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS

AN ACT

To provide for the creation of the North Dakota board of examiners for nursing home administrators; fixing its membership, prescribing its powers, duties and functions; to provide requirements for licensure of nursing home administrators; to provide for license fees; to create the state board of nursing home administrators' fund; to repeal conflicting laws; and for other purposes.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

Section 1. Definitions.) For the purposes of this Act, and as used herein:

1. The term "board" means the North Dakota state board of examiners for nursing home administrators hereinafter created;
2. The term "nursing home administrator" means a person who administers, manages, supervises, or is in general full-time administrative charge of a North Dakota nursing home whether such individual has an ownership interest in such home and whether his functions and duties are shared with one or more individuals; and

3. The term "nursing home" means any institution or facility defined as such for licensing purpose under North Dakota state law or pursuant to the rules and regulations for nursing homes by the state health department, whether proprietary or non-profit, including but not limited to, nursing homes owned or administered by the state government or an agency or political subdivisions thereof.

Section 2. Composition of the Board.) There is hereby created the state board of examiners for nursing home administrators which shall consist of nine members.

1. Three members of the board shall be the state health officer, state welfare director, and the commissioner of higher education;
2. One member of the board shall be a representative of the North Dakota medical association. The individual shall be appointed by the governor from a list of three names submitted to him by the state medical association and the individual so appointed shall serve a three-year term. At the conclusion of the initial appointee's three-year term the same procedure shall be followed to appoint a successor; and
3. Five members of the board shall be initially appointed by the governor from a list submitted by the North Dakota hospital association. These five members shall be engaged on a full-time basis as administrators of nursing homes. Two members shall be appointed for terms of three years, two members shall be appointed for terms of two years, and one member shall be appointed for a term of one year. Thereafter, the terms of all appointive members under this subsection shall be three years. The appointees shall be selected by the governor from a list of three nominees submitted for each appointee by the North Dakota hospital association.

Any vacancy occurring in the position of an appointive member shall be filled by the governor for the unexpired

term from a list of three names submitted to the governor by the North Dakota hospital association. Appointive members may be removed by the governor for cause after due notice and hearing. Initial appointments of members representing nursing home administrators shall be limited to persons who are serving as administrators of licensed nursing homes within the state on the effective date of this Act, as verified by the state health officer. After initial appointments have been made, no person shall be eligible for appointment as a member unless he is the holder of a license as a nursing home administrator.

Section 3. Qualifications for Licensure.) The board shall have authority to issue licenses to qualified persons as nursing home administrators, and shall establish qualification criteria for such nursing home administrators. No license shall be issued to a person as a nursing home administrator unless:

1. He or she is at least twenty-one years of age, a citizen of the United States, of good moral character, and of sound physical and mental health;
2. He or she has satisfactorily completed a course of instruction and training prescribed by the board, which course shall be so designed as to content and so administered as to present sufficient knowledge of the needs properly to be served by nursing homes, laws governing the operation of nursing homes and the protection of the interests of patients therein, and the elements of good nursing home administration, or have presented evidence satisfactory to the board of sufficient education, training or experience in the foregoing fields to administer, supervise and manage a nursing home; and
3. He or she has passed an examination administered by the board and designed to test for competence in the subject matter referred to in subsection 2 hereof.

All persons applying for a license must meet the conditions and requirements as may be prescribed by the board. However, a person meeting the standards of good moral character, sound physical and mental health, and otherwise suitable, and who was a nursing home administrator

during all of the calendar year immediately preceding the calendar year in which the state licensing program becomes effective, may be granted a waiver for a period of two years after the effective date of this Act, or until June 30, 1971, whichever is earlier, to allow the person or persons to meet the conditions or requirements as set by this board.

Section 4. Licensing Function.) The board shall license nursing home administrators in accordance with rules and regulations issued, and from time to time revised by it. A nursing home administrator's license shall not be transferable and shall be valid until surrendered for cancellation or suspended or revoked for violation of this Act or any other laws or regulations relating to the proper administration and management of a nursing home. Any denial of issuance or renewal, suspension or revocation under any section of this Act shall be subject to review upon the timely request of the licensee and pursuant to chapter 28-32, North Dakota Century Code.

Section 5. License Fees.) Each person licensed as a nursing home administrator shall be required to pay a license fee in an amount to be fixed by the board, which fee shall not exceed twenty-five dollars per annum. Said license shall expire on the thirty-first day of December of the year following its issuance, and shall be renewable biennially upon payment of the license fee.

Section 6. Fund Created.) All fees collected under the provisions of this Act shall be paid to North Dakota board of examiners for nursing home administrators, who shall deposit the same with the treasurer of the state of North Dakota to be kept in a special fund to be known as the state board of examiners for nursing home administrators' fund, which fund may be used and expended by the board upon vouchers presented to the state treasurer, signed by the president and the secretary-treasurer of the board, to pay the compensation and travel expenses of members and employees of the board, and other expenses necessary for the board to administer and carry out the provisions of this Act.

Section 7. Organization of Board.) The board shall elect from its membership a chairman, vice chairman and secretary-

treasurer, and shall adopt rules and regulations to govern its proceedings. Each member shall receive, as compensation for his services, an amount agreed upon by the board but not to exceed that of other state boards. All members shall be allowed necessary travel expenses, as may be approved by the board, which shall be payable in the same manner as travel expense of other state officials. The board may employ and fix the compensation and duties of necessary personnel to assist it in the performance of its duties.

Section 8. Exclusive Jurisdiction of Board.) The board shall have sole and exclusive authority to determine the qualifications, competence and fitness of any person to serve as an administrator of a nursing home under the provisions of this Act, and the holder of a license under the provisions of this Act shall be deemed qualified to serve as the administrator of a nursing home.

Section 9. Duties of the Board.) The board shall have the duty and responsibility to:

1. Develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to ensure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;
2. Develop and apply appropriate techniques, including examination and investigations, for determining whether an individual meets such standards;
3. Issue licenses to individuals determined, after application of such techniques, to meet such standards, and for cause, after due notice and hearing, to revoke or suspend licenses previously issued by the board in any case where the individual holding such license is determined substantially to have failed to conform to the requirements of such standards;
4. Establish and carry out procedures designed to en-

- sure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards;
5. Receive, investigate, and take appropriate action with respect to, and including the revocation of a license if necessary after due notice and hearing and for cause, any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards;
 6. Conduct a continuing study and investigation of nursing homes, and administrators of nursing homes within the state with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such; and
 7. Conduct, or cause to be conducted, one or more courses of instruction and training sufficient to meet the requirements of this Act, and shall make provisions for such courses and their accessibility to residents of this state unless it finds that there are and approves a sufficient number of courses which courses are conducted by others within this state. In lieu thereof the board may approve courses conducted within and without this state as sufficient to meet the education and training requirements of this Act.

Section 10. Renewal of License.) Every holder of a nursing home administrator's license shall renew it biennially, by making application to the board. Such renewals shall be granted as matter of course, unless the board finds, after due notice and hearing, that the applicant has acted or failed to act in such manner or under such circumstances as would constitute grounds for suspension or revocation of a license.

Section 11. Temporary Permits.) Pending the issuance of a license, the board at its discretion may issue a

temporary permit without examination to practice as a licensed nursing home administrator, for one year, to an applicant who has been duly licensed under the laws of another state. The board may issue a temporary permit to practice as a licensed nursing home administrator for a period not exceeding six months to a qualified applicant who files with the board a written application for license.

Section 12. Reciprocity with Other States.) The board may issue a nursing home administrator's license, without examination, to any person who holds a current license as a nursing home administrator from another jurisdiction, provided that the board finds that the standards for licensure at the time the license was issued in such other jurisdiction were at least the substantial equivalent of those prevailing in this state at the time of application and that the applicant is otherwise qualified.

Section 13. Misdemeanor.) It shall be unlawful and constitute a misdemeanor for any person to act or serve in the capacity as a nursing home administrator unless he is the holder of a license as a nursing home administrator, issued in accordance with the provisions of this Act.

Section 14. Laws in Conflict Repealed.) All laws and parts of laws in conflict with any of the provisions of this Act are hereby repealed.

Approved March 13, 1969.