June 22, 2009

Senator Lehman:

As requested in an e–mail from your office dated April 23, 2009, this bill makes a number of changes to 2009 LRB–1345/1. Please review the draft carefully to ensure that I have captured your intent.

Drafting instructions provided in an attachment to the e–mail, dated April 21, 2009, requested that an exemption from certain educational requirements be provided to applicants for licensure as an audiologist who hold a license to practice audiology in another state. The drafting instructions requested that I notwithstand s. 459.24 (3) (d) 2. and 3. However, to minimize confusion generated going back and forth between the requirements under ss. 459.24 (3) (d) 1., 2., and 3. and 459.28 (1) and (2), I simply provided an exemption from the applicability of s. 459.24 (3) (d) 1. for licensees of other jurisdictions. Let me know if you have a problem with this approach.

The attachment also posed two "questions for drafting attorney" and suggested an amendment to s. 968.27 (7) (b), stats., "if appropriate." I will address the questions first:

1. Effective date. The first question asked whether the effective date could be December 31, 2009. In the event that the bill passes in calendar year 2010, I drafted an effective date provision that establishes an effective date for the bill of December 31, 2009, or on the day after publication, whichever is later. Please let me know if it was your intent that the bill apply retroactively if the bill passes in calendar year 2010.

Note that certain provisions in the bill have in–text initial applicability provisions of December 31, 2010. Did you wish to change these dates to December 31, 2009, as well?

2. Temporary licensure. The second question asks whether "the elimination of the temporary license in its entirety create[s] a problem with individuals applying who have to wait for the testing cycle and licensure to be granted."

In general, whether to make a temporary license available to applicants for licensure is a policy question. Doubtless some applicants may be inconvenienced by the elimination of temporary licensure. However, whether this inconvenience to the applicant is outweighed by the inconvenience to the examining board of offering temporary licensure, particularly in the absence of the supervision afforded the holder

of a temporary license participating in a postgraduate clinical fellowship, is a decision for you and the legislature.

Definition of "electronic, mechanical or other device" in ch. 968. Regarding whether s. 968.27 (7) (b), stats., needs amending, I don't believe the proposed amendment is appropriate. The memo instructs me to "Change Misused to Used (if appropriate)." The word, "misused" does not appear in that section of the statute, which reads:

"A hearing aid or similar device being used to correct subnormal hearing to not better than normal." Wis. Stat. section 968.27 (7) (b) (emphasis mine).

However, the word, "used," is appropriate. This particular provision is excepting a hearing aid from the definition of "electronic, mechanical or other device," which is, in turn, defined as as a "device or apparatus which can be used to intercept a wire, electronic or oral communication." This definition applies to ss. 968.28 to 968.37; these sections of the statutes deal with applying for, authorizing, disclosing the use of, and prosecuting improper uses of wiretaps and other means of intercepting communications. The exception as drafted is appropriate. Were the word, "used," to be replaced with "misused," the lawful use of hearing aid would not be excepted from the definition of "electronic, mechanical or other device," and a court order could be required for the otherwise lawful use of hearing aids.

Please let me know if you have any questions about the changes to this bill or wish to make additional changes.

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