



Rep. Michael J. Zalewski

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09800HB0530ham001

LRB098 03348 MGM 43602 a

1 AMENDMENT TO HOUSE BILL 530

2 AMENDMENT NO. _____. Amend House Bill 530 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Hearing Instrument Consumer Protection Act
5 is amended by changing Sections 3 and 6 as follows:

6 (225 ILCS 50/3) (from Ch. 111, par. 7403)

7 (Section scheduled to be repealed on January 1, 2016)

8 Sec. 3. Definitions. As used in this Act, except as the
9 context requires otherwise:

10 "Department" means the Department of Public Health.

11 "Director" means the Director of the Department of Public
12 Health.

13 "License" means a license issued by the State under this
14 Act to a hearing instrument dispenser.

15 "Licensed Audiologist" means a person licensed as an
16 audiologist under the Illinois Speech-Language Pathology and

1 Audiology Practice Act.

2 "National Board Certified Hearing Instrument Specialist"
3 means a person who has had at least 2 years in practice as a
4 licensed hearing instrument dispenser and has been certified
5 after qualification by examination by the National Board for
6 Certification in Hearing Instruments Sciences.

7 "Licensed physician" or "physician" means a physician
8 licensed in Illinois to practice medicine in all of its
9 branches.

10 "Trainee" means a person who is licensed to perform the
11 functions of a hearing instrument dispenser in accordance with
12 the Department rules and only under the direct supervision of a
13 hearing instrument dispenser or audiologist who is licensed in
14 the State.

15 "Board" means the Hearing Instrument Consumer Protection
16 Board.

17 "Hearing instrument" or "hearing aid" means any wearable
18 instrument or device designed for or offered for the purpose of
19 aiding or compensating for impaired human hearing and that can
20 provide more than 15 dB full on gain via a 2cc coupler at any
21 single frequency from 200 through 6000 cycles per second, and
22 any parts, attachments, or accessories, including ear molds.

23 "Hearing instrument" or "hearing aid" do not include batteries,
24 cords, instrument or device designed, intended, or offered for
25 the purpose of improving a person's hearing and any parts,
26 attachments, or accessories, including earmold. Batteries,

1 ~~ords, and individual~~ or group auditory training devices and
2 any instrument or device used by a public utility in providing
3 telephone or other communication services are excluded.

4 "Practice of fitting, dispensing, or servicing of hearing
5 instruments" means the measurement of human hearing with an
6 audiometer, calibrated to the current American National
7 Standard Institute standards, for the purpose of making
8 selections, recommendations, adaptations, services, or sales of
9 hearing instruments including the making of earmolds as a part
10 of the hearing instrument.

11 "Sell" or "sale" means any transfer of title or of the
12 right to use by lease, bailment, or any other contract,
13 excluding wholesale transactions with distributors or dealers.

14 "Hearing instrument dispenser" means a person who is a
15 hearing care professional that engages in the selling, practice
16 of fitting, selecting, recommending, dispensing, or servicing
17 of hearing instruments or the testing for means of hearing
18 instrument selection or who advertises or displays a sign or
19 represents himself or herself as a person who practices the
20 testing, fitting, selecting, servicing, dispensing, or selling
21 of hearing instruments.

22 "Fund" means the Hearing Instrument Dispenser Examining
23 and Disciplinary Fund.

24 "Hearing Care Professional" means a person who is a
25 licensed audiologist, a licensed hearing instrument dispenser,
26 or a licensed physician.

1 (Source: P.A. 96-846, eff. 6-1-10.)

2 (225 ILCS 50/6) (from Ch. 111, par. 7406)

3 (Section scheduled to be repealed on January 1, 2016)

4 Sec. 6. Mail order and Internet sales. Nothing in this Act
5 shall prohibit a corporation, partnership, trust, association,
6 or other organization, maintaining an established business
7 address, from engaging in the business of selling or offering
8 for sale hearing instruments at retail by mail or by Internet
9 to persons 18 years of age or older who have not been examined
10 by a licensed physician or tested by a licensed hearing
11 instrument dispenser provided that:

12 (a) The organization is registered by the Department prior
13 to engaging in business in this State and has paid the fee set
14 forth in this Act.

15 (b) The organization files with the Department, prior to
16 registration and annually thereafter, a Disclosure Statement
17 containing the following:

18 (1) the name under which the organization is doing or
19 intends to do business and the name of any affiliated
20 company which the organization recommends or will
21 recommend to persons as a supplier of goods or services or
22 in connection with other business transactions of the
23 organization;

24 (2) the organization's principal business address and
25 the name and address of its agent in this State authorized

1 to receive service of process;

2 (3) the business form of the organization, whether
3 corporate, partnership, or otherwise and the state or other
4 sovereign power under which the organization is organized;

5 (4) the names of the directors or persons performing
6 similar functions and names and addresses of the chief
7 executive officer, and the financial, accounting, sales,
8 and other principal executive officers, if the
9 organization is a corporation, association, or other
10 similar entity; of all general partners, if the
11 organization is a partnership; and of the owner, if the
12 organization is a sole proprietorship, together with a
13 statement of the business background during the past 5
14 years for each such person;

15 (5) a statement as to whether the organization or any
16 person identified in the disclosure statement:

17 (i) has during the 5 year period immediately
18 preceding the date of the disclosure statement been
19 convicted of a felony, pleaded nolo contendere to a
20 felony charge, or been held liable in a civil action by
21 final judgment, if such felony or civil action involved
22 fraud, embezzlement, or misappropriation of property,
23 and a description thereof; or

24 (ii) is subject to any currently effective
25 injunctive or restrictive order as a result of a
26 proceeding or pending action brought by any government

1 agency or department, and a description thereof; or

2 (iii) is a defendant in any pending criminal or
3 material civil action relating to fraud, embezzlement,
4 misappropriation of property or violations of the
5 antitrust or trade regulation laws of the United States
6 or any state, and a description thereof; or

7 (iv) has during the 5 year period immediately
8 preceding the date of the disclosure statement had
9 entered against such person or organization a final
10 judgment in any material civil proceeding, and a
11 description thereof; or

12 (v) has during the 5 year period immediately
13 preceding the date of the disclosure statement been
14 adjudicated a bankrupt or reorganized due to
15 insolvency or was a principal executive officer or
16 general partner of any company that has been
17 adjudicated a bankrupt or reorganized due to
18 insolvency during such 5 year period, and a description
19 thereof;

20 (6) the length of time the organization and any
21 predecessor of the organization has conducted a business
22 dealing with hearing instrument goods or services;

23 (7) a financial statement of the organization as of the
24 close of the most recent fiscal year of the organization.
25 If the financial statement is filed later than 120 days
26 following the close of the fiscal year of the organization

1 it must be accompanied by a statement of the organization
2 of any material changes in the financial condition of the
3 organization;

4 (8) a general description of the business, including
5 without limitation a description of the goods, training
6 programs, supervision, advertising, promotion and other
7 services provided by the organization;

8 (9) a statement of any compensation or other benefit
9 given or promised to a public figure arising, in whole or
10 in part, from (i) the use of the public figure in the name
11 or symbol of the organization or (ii) the endorsement or
12 recommendation of the organization by the public figure in
13 advertisements;

14 (10) a statement setting forth such additional
15 information and such comments and explanations relative to
16 the information contained in the disclosure statement as
17 the organization may desire to present.

18 (b-5) If a device being sold does not meet the definition
19 of a hearing instrument or hearing device as stated in this
20 Act, the organization shall include a disclaimer in all written
21 or electronic promotions. The disclaimer shall include the
22 following language:

23 "This is not a hearing instrument or hearing aid as
24 defined in the Hearing Instrument Consumer Protection Act,
25 but a personal amplifier and not intended to replace a
26 properly fitted and calibrated hearing instrument."

1 (c) The organization files with the Department prior to
2 registration and annually thereafter a statement that it
3 complies with the Act, the rules issued pursuant to it, and the
4 regulations of the Federal Food and Drug Administration and the
5 Federal Trade Commission insofar as they are applicable.

6 (d) The organization files with the Department at the time
7 of registration an irrevocable consent to service of process
8 authorizing the Department and any of its successors to be
9 served any notice, process, or pleading in any action or
10 proceeding against the organization arising out of or in
11 connection with any violation of this Act. Such service shall
12 have the effect of conferring personal jurisdiction over such
13 organization in any court of competent jurisdiction.

14 (e) Before dispensing a hearing instrument to a resident of
15 this State, the organization informs the prospective users that
16 they ~~may~~ need the following for proper fitting of a hearing
17 instrument:

18 (1) the results of an audiogram performed within the
19 past 6 months by a licensed audiologist or a licensed
20 hearing instrument dispenser; and

21 (2) an earmold impression obtained from the
22 prospective user and taken by a licensed hearing instrument
23 dispenser.

24 (f) The prospective user receives a medical evaluation or
25 the organization affords the prospective user an opportunity to
26 waive the medical evaluation requirement of Section 4 of this

1 Act and the testing requirement of subsection (z) of Section
2 18, provided that the organization:

3 (1) informs the prospective user that the exercise of
4 the waiver is not in the user's best health interest;

5 (2) does not in any way actively encourage the
6 prospective user to waive the medical evaluation or test;
7 and

8 (3) affords the prospective user the option to sign the
9 following statement:

10 "I have been advised by (hearing
11 instrument dispenser's name) that the Food and Drug
12 Administration and the State of Illinois have
13 determined that my best interest would be served if I
14 had a medical evaluation by a licensed physician,
15 preferably a physician who specialized in diseases of
16 the ear, before purchasing a hearing instrument; or a
17 test by a licensed audiologist or licensed hearing
18 instrument dispenser utilizing established procedures
19 and instrumentation in the fitting of hearing
20 instruments. I do not wish either a medical evaluation
21 or test before purchasing a hearing instrument."

22 (g) Where a sale, lease, or rental of hearing instruments
23 is sold or contracted to be sold to a consumer by mail order,
24 the consumer may void the contract or sale by notifying the
25 seller within 45 business days following that day on which the
26 hearing instruments were mailed by the seller to the consumer

1 and by returning to the seller in its original condition any
 2 hearing instrument delivered to the consumer under the contract
 3 or sale. At the time the hearing instrument is mailed, the
 4 seller shall furnish the consumer with a fully completed
 5 receipt or copy of any contract pertaining to the sale that
 6 contains a "Notice of Cancellation" informing the consumer that
 7 he or she may cancel the sale at any time within 45 business
 8 days and disclosing the date of the mailing and the name,
 9 address, and telephone number of the seller. In immediate
 10 proximity to the space reserved in the contract for the
 11 signature of the consumer, or on the front page of the receipt
 12 if a contract is not used, and in bold face type of a minimum
 13 size of 10 points, there shall be a statement in substantially
 14 the following form:

15 "You, the buyer, may cancel this transaction at any
 16 time prior to midnight of the 45th business day after the
 17 date of this transaction. See the attached notice of
 18 cancellation form for an explanation of this right."

19 Attached to the receipt or contract shall be a completed
 20 form in duplicate, captioned "NOTICE OF CANCELLATION" which
 21 shall be easily detachable and which shall contain in at least
 22 10 point bold face type the following information and
 23 statements in the same language as that used in the contract:

24 "NOTICE OF CANCELLATION
 25 enter date of transaction
 26

1 (DATE)

2 YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR
3 OBLIGATION, WITHIN 45 BUSINESS DAYS FROM THE ABOVE DATE.

4 IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY
5 YOU UNDER THE CONTRACT OR SALE LESS ANY NONREFUNDABLE
6 RESTOCKING FEE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU
7 WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY
8 THE SELLER OF YOUR CANCELLATION NOTICE AND ALL MERCHANDISE
9 PERTAINING TO THIS TRANSACTION, AND ANY SECURITY INTEREST
10 ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

11 IF YOU CANCEL, YOU MUST RETURN TO THE SELLER, IN
12 SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS
13 DELIVERED TO YOU UNDER THIS CONTRACT OR SALE.

14 TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED
15 AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER
16 WRITTEN NOTICE, OR SEND A TELEGRAM, TO (name of seller), AT
17 (address of seller's place of business) AND (seller's
18 telephone number) NO LATER THAN MIDNIGHT OF
19(date).

20 I HEREBY CANCEL THIS TRANSACTION.

21 (Date).....

22

23 (Buyers Signature)"

24 The written "Notice of Cancellation" may be sent by the
25 consumer to the seller to cancel the contract. The 45-day
26 period does not commence until the consumer is furnished the

1 Notice of Cancellation and the address and phone number at
2 which such notice to the seller can be given.

3 If the conditions of this Section are met, the seller must
4 return to the consumer the amount of any payment made or
5 consideration given under the contract or for the merchandise
6 less a nonrefundable restocking fee.

7 It is an unlawful practice for a seller to: (1) hold a
8 consumer responsible for any liability or obligation under any
9 mail order transaction if the consumer claims not to have
10 received the merchandise unless the merchandise was sent by
11 certified mail or other delivery method by which the seller is
12 provided with proof of delivery; (2) fail, before furnishing
13 copies of the "Notice of Cancellation" to the consumer, to
14 complete both copies by entering the name of the seller, the
15 address of the seller's place of business, the seller's
16 telephone number, the date of the mailing, and the date, not
17 earlier than the 45th business day following the date of the
18 mailing, by which the consumer may give notice of cancellation;
19 (3) include in any contract or receipt any confession of
20 judgment or any waiver of any of the rights to which the
21 consumer is entitled under this Section including specifically
22 his right to cancel the sale in accordance with the provisions
23 of this Section; (4) misrepresent in any manner the consumer's
24 right to cancel; (5) use any undue influence, coercion, or any
25 other wilful act or representation to interfere with the
26 consumer's exercise of his rights under this Section; (6) fail

1 or refuse to honor any valid notice of cancellation and return
2 of merchandise by a consumer and, within 10 business days after
3 the receipt of such notice and merchandise pertaining to such
4 transaction, to (i) refund payments made under the contract or
5 sale, (ii) return any goods or property traded in, in
6 substantially as good condition as when received by the person,
7 (iii) cancel and return any negotiable instrument executed by
8 the consumer in connection with the contract or sale and take
9 any action necessary or appropriate to terminate promptly any
10 security interest created in the transaction; (7) negotiate,
11 transfer, sell, or assign any note or other evidence of
12 indebtedness to a finance company or other third party prior to
13 the 50th business day following the day of the mailing; or (8)
14 fail to provide the consumer of a hearing instrument with
15 written information stating the name, address, and telephone
16 number of the Department and informing the consumer that
17 complaints regarding hearing instrument goods or services may
18 be made to the Department.

19 (h) The organization employs only licensed hearing
20 instrument dispensers in the dispensing of hearing instruments
21 and files with the Department, by January 1 of each year, a
22 list of all licensed hearing instrument dispensers employed by
23 it.

24 (Source: P.A. 89-72, eff. 12-31-95.)

25 Section 99. Effective date. This Act takes effect upon

1 becoming law.".