

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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7 (Section scheduled to be repealed on January 1, 2016)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
17 Audiology Practice Act.

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

23 "Licensed physician" or "physician" means a physician

1 licensed in Illinois to practice medicine in all of its
2 branches.

3 "Trainee" means a person who is licensed to perform the
4 functions of a hearing instrument dispenser in accordance with
5 the Department rules and only under the direct supervision of a
6 hearing instrument dispenser or audiologist who is licensed in
7 the State.

8 "Board" means the Hearing Instrument Consumer Protection
9 Board.

10 "Hearing instrument" or "hearing aid" means any wearable
11 instrument or device designed for or offered for the purpose of
12 aiding or compensating for impaired human hearing and that can
13 provide more than 15 dB full on gain via a 2cc coupler at any
14 single frequency from 200 through 6000 cycles per second, and
15 any parts, attachments, or accessories, including ear molds.
16 "Hearing instrument" or "hearing aid" do not include batteries,
17 cords, instrument or device designed, intended, or offered for
18 the purpose of improving a person's hearing and any parts,
19 attachments, or accessories, including earmold. Batteries,
20 cords, and individual or group auditory training devices and
21 any instrument or device used by a public utility in providing
22 telephone or other communication services are excluded.

23 "Practice of fitting, dispensing, or servicing of hearing
24 instruments" means the measurement of human hearing with an
25 audiometer, calibrated to the current American National
26 Standard Institute standards, for the purpose of making

1 selections, recommendations, adaptations, services, or sales of
2 hearing instruments including the making of earmolds as a part
3 of the hearing instrument.

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

7 "Hearing instrument dispenser" means a person who is a
8 hearing care professional that engages in the selling, practice
9 of fitting, selecting, recommending, dispensing, or servicing
10 of hearing instruments or the testing for means of hearing
11 instrument selection or who advertises or displays a sign or
12 represents himself or herself as a person who practices the
13 testing, fitting, selecting, servicing, dispensing, or selling
14 of hearing instruments.

15 "Fund" means the Hearing Instrument Dispenser Examining
16 and Disciplinary Fund.

17 "Hearing Care Professional" means a person who is a
18 licensed audiologist, a licensed hearing instrument dispenser,
19 or a licensed physician.

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

21 (225 ILCS 50/6) (from Ch. 111, par. 7406)

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

23 Sec. 6. Mail order and Internet sales. Nothing in this Act
24 shall prohibit a corporation, partnership, trust, association,
25 or other organization, maintaining an established business

1 address, from engaging in the business of selling or offering
2 for sale hearing instruments at retail by mail or by Internet
3 to persons 18 years of age or older who have not been examined
4 by a licensed physician or tested by a licensed hearing
5 instrument dispenser provided that:

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

9 (b) The organization files with the Department, prior to
10 registration and annually thereafter, a Disclosure Statement
11 containing the following:

12 (1) the name under which the organization is doing or
13 intends to do business and the name of any affiliated
14 company which the organization recommends or will
15 recommend to persons as a supplier of goods or services or
16 in connection with other business transactions of the
17 organization;

18 (2) the organization's principal business address and
19 the name and address of its agent in this State authorized
20 to receive service of process;

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

24 (4) the names of the directors or persons performing
25 similar functions and names and addresses of the chief
26 executive officer, and the financial, accounting, sales,

1 and other principal executive officers, if the
2 organization is a corporation, association, or other
3 similar entity; of all general partners, if the
4 organization is a partnership; and of the owner, if the
5 organization is a sole proprietorship, together with a
6 statement of the business background during the past 5
7 years for each such person;

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

10 (i) has during the 5 year period immediately
11 preceding the date of the disclosure statement been
12 convicted of a felony, pleaded nolo contendere to a
13 felony charge, or been held liable in a civil action by
14 final judgment, if such felony or civil action involved
15 fraud, embezzlement, or misappropriation of property,
16 and a description thereof; or

17 (ii) is subject to any currently effective
18 injunctive or restrictive order as a result of a
19 proceeding or pending action brought by any government
20 agency or department, and a description thereof; or

21 (iii) is a defendant in any pending criminal or
22 material civil action relating to fraud, embezzlement,
23 misappropriation of property or violations of the
24 antitrust or trade regulation laws of the United States
25 or any state, and a description thereof; or

26 (iv) has during the 5 year period immediately

1 preceding the date of the disclosure statement had
2 entered against such person or organization a final
3 judgment in any material civil proceeding, and a
4 description thereof; or

5 (v) has during the 5 year period immediately
6 preceding the date of the disclosure statement been
7 adjudicated a bankrupt or reorganized due to
8 insolvency or was a principal executive officer or
9 general partner of any company that has been
10 adjudicated a bankrupt or reorganized due to
11 insolvency during such 5 year period, and a description
12 thereof;

13 (6) the length of time the organization and any
14 predecessor of the organization has conducted a business
15 dealing with hearing instrument goods or services;

16 (7) a financial statement of the organization as of the
17 close of the most recent fiscal year of the organization.
18 If the financial statement is filed later than 120 days
19 following the close of the fiscal year of the organization
20 it must be accompanied by a statement of the organization
21 of any material changes in the financial condition of the
22 organization;

23 (8) a general description of the business, including
24 without limitation a description of the goods, training
25 programs, supervision, advertising, promotion and other
26 services provided by the organization;

1 (9) a statement of any compensation or other benefit
2 given or promised to a public figure arising, in whole or
3 in part, from (i) the use of the public figure in the name
4 or symbol of the organization or (ii) the endorsement or
5 recommendation of the organization by the public figure in
6 advertisements;

7 (10) a statement setting forth such additional
8 information and such comments and explanations relative to
9 the information contained in the disclosure statement as
10 the organization may desire to present.

11 (b-5) If a device being sold does not meet the definition
12 of a hearing instrument or hearing device as stated in this
13 Act, the organization shall include a disclaimer in all written
14 or electronic promotions. The disclaimer shall include the
15 following language:

16 "This is not a hearing instrument or hearing aid as
17 defined in the Hearing Instrument Consumer Protection Act,
18 but a personal amplifier and not intended to replace a
19 properly fitted and calibrated hearing instrument."

20 (c) The organization files with the Department prior to
21 registration and annually thereafter a statement that it
22 complies with the Act, the rules issued pursuant to it, and the
23 regulations of the Federal Food and Drug Administration and the
24 Federal Trade Commission insofar as they are applicable.

25 (d) The organization files with the Department at the time
26 of registration an irrevocable consent to service of process

1 authorizing the Department and any of its successors to be
2 served any notice, process, or pleading in any action or
3 proceeding against the organization arising out of or in
4 connection with any violation of this Act. Such service shall
5 have the effect of conferring personal jurisdiction over such
6 organization in any court of competent jurisdiction.

7 (e) Before dispensing a hearing instrument to a resident of
8 this State, the organization informs the prospective users that
9 they ~~may~~ need the following for proper fitting of a hearing
10 instrument:

11 (1) the results of an audiogram performed within the
12 past 6 months by a licensed audiologist or a licensed
13 hearing instrument dispenser; and

14 (2) an earmold impression obtained from the
15 prospective user and taken by a licensed hearing instrument
16 dispenser.

17 (f) The prospective user receives a medical evaluation or
18 the organization affords the prospective user an opportunity to
19 waive the medical evaluation requirement of Section 4 of this
20 Act and the testing requirement of subsection (z) of Section
21 18, provided that the organization:

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

24 (2) does not in any way actively encourage the
25 prospective user to waive the medical evaluation or test;
26 and

1 (3) affords the prospective user the option to sign the
2 following statement:

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

15 (g) Where a sale, lease, or rental of hearing instruments
16 is sold or contracted to be sold to a consumer by mail order,
17 the consumer may void the contract or sale by notifying the
18 seller within 45 business days following that day on which the
19 hearing instruments were mailed by the seller to the consumer
20 and by returning to the seller in its original condition any
21 hearing instrument delivered to the consumer under the contract
22 or sale. At the time the hearing instrument is mailed, the
23 seller shall furnish the consumer with a fully completed
24 receipt or copy of any contract pertaining to the sale that
25 contains a "Notice of Cancellation" informing the consumer that
26 he or she may cancel the sale at any time within 45 business

1 days and disclosing the date of the mailing and the name,
 2 address, and telephone number of the seller. In immediate
 3 proximity to the space reserved in the contract for the
 4 signature of the consumer, or on the front page of the receipt
 5 if a contract is not used, and in bold face type of a minimum
 6 size of 10 points, there shall be a statement in substantially
 7 the following form:

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

12 Attached to the receipt or contract shall be a completed
 13 form in duplicate, captioned "NOTICE OF CANCELLATION" which
 14 shall be easily detachable and which shall contain in at least
 15 10 point bold face type the following information and
 16 statements in the same language as that used in the contract:

17 "NOTICE OF CANCELLATION

18 enter date of transaction

19

20 (DATE)

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

23 IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY
 24 YOU UNDER THE CONTRACT OR SALE LESS ANY NONREFUNDABLE
 25 RESTOCKING FEE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU
 26 WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY

1 THE SELLER OF YOUR CANCELLATION NOTICE AND ALL MERCHANDISE
2 PERTAINING TO THIS TRANSACTION, AND ANY SECURITY INTEREST
3 ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

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

7 TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED
8 AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER
9 WRITTEN NOTICE, OR SEND A TELEGRAM, TO (name of seller), AT
10 (address of seller's place of business) AND (seller's
11 telephone number) NO LATER THAN MIDNIGHT OF
12(date).

13 I HEREBY CANCEL THIS TRANSACTION.

14 (Date).....

15

16 (Buyers Signature)"

17 The written "Notice of Cancellation" may be sent by the
18 consumer to the seller to cancel the contract. The 45-day
19 period does not commence until the consumer is furnished the
20 Notice of Cancellation and the address and phone number at
21 which such notice to the seller can be given.

22 If the conditions of this Section are met, the seller must
23 return to the consumer the amount of any payment made or
24 consideration given under the contract or for the merchandise
25 less a nonrefundable restocking fee.

26 It is an unlawful practice for a seller to: (1) hold a

1 consumer responsible for any liability or obligation under any
2 mail order transaction if the consumer claims not to have
3 received the merchandise unless the merchandise was sent by
4 certified mail or other delivery method by which the seller is
5 provided with proof of delivery; (2) fail, before furnishing
6 copies of the "Notice of Cancellation" to the consumer, to
7 complete both copies by entering the name of the seller, the
8 address of the seller's place of business, the seller's
9 telephone number, the date of the mailing, and the date, not
10 earlier than the 45th business day following the date of the
11 mailing, by which the consumer may give notice of cancellation;
12 (3) include in any contract or receipt any confession of
13 judgment or any waiver of any of the rights to which the
14 consumer is entitled under this Section including specifically
15 his right to cancel the sale in accordance with the provisions
16 of this Section; (4) misrepresent in any manner the consumer's
17 right to cancel; (5) use any undue influence, coercion, or any
18 other wilful act or representation to interfere with the
19 consumer's exercise of his rights under this Section; (6) fail
20 or refuse to honor any valid notice of cancellation and return
21 of merchandise by a consumer and, within 10 business days after
22 the receipt of such notice and merchandise pertaining to such
23 transaction, to (i) refund payments made under the contract or
24 sale, (ii) return any goods or property traded in, in
25 substantially as good condition as when received by the person,
26 (iii) cancel and return any negotiable instrument executed by

1 the consumer in connection with the contract or sale and take
2 any action necessary or appropriate to terminate promptly any
3 security interest created in the transaction; (7) negotiate,
4 transfer, sell, or assign any note or other evidence of
5 indebtedness to a finance company or other third party prior to
6 the 50th business day following the day of the mailing; or (8)
7 fail to provide the consumer of a hearing instrument with
8 written information stating the name, address, and telephone
9 number of the Department and informing the consumer that
10 complaints regarding hearing instrument goods or services may
11 be made to the Department.

12 (h) The organization employs only licensed hearing
13 instrument dispensers in the dispensing of hearing instruments
14 and files with the Department, by January 1 of each year, a
15 list of all licensed hearing instrument dispensers employed by
16 it.

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

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.