

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

HOUSE BILL 1757

By: Henke

AS INTRODUCED

An Act relating to public health and safety; allowing for mail and Internet sales of hearing aids; requiring registration; requiring disclosure statement; requiring personal amplifier disclaimer; requiring annual statement of compliance; requiring consent to service of process; requiring medical evaluation and earmold; requiring inclusion of notice of cancellation; specifying procedure for cancelling sale; prohibiting certain acts; requiring that certain employees be licensed; granting reciprocity; requiring payment of license fees; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1755 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Nothing in this section shall prohibit a corporation, partnership, trust, association or other organization maintaining an established business address from engaging in the business of selling or offering for sale hearing instruments at retail by mail or by Internet to a person eighteen (18) years of age or older who

1 has not been examined by a licensed physician or tested by a
2 licensed hearing instrument dispenser provided that:

3 1. The organization is registered by the State Board of Health
4 prior to engaging in business in this state and has paid the fee set
5 forth in this section;

6 2. The organization files with the Board prior to registration
7 and annually thereafter a disclosure statement containing the
8 following:

9 a. the name under which the organization is doing or
10 intends to do business and the name of any affiliated
11 company which the organization recommends or will
12 recommend to persons as a supplier of goods or
13 services or in connection with other business
14 transactions of the organization,

15 b. the organization's principal business address and the
16 name and address of its agent in this state authorized
17 to receive service of process,

18 c. the business form of the organization, whether
19 corporate, partnership or otherwise and the state or
20 other sovereign power under which the organization is
21 organized,

22 d. the names of the directors or persons performing
23 similar functions and names and addresses of the chief
24 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
5 the organization is a sole proprietorship, together
6 with a statement of the business background during the
7 past five (5) years for each such person,
8 e. a statement as to whether the organization or any
9 person identified in the disclosure statement:
10 (1) has during the five-year period immediately
11 preceding the date of the disclosure statement
12 been convicted of a felony, pleaded nolo
13 contendere to a felony charge or been held liable
14 in a civil action by final judgment, if such
15 felony or civil action involved fraud,
16 embezzlement or misappropriation of property,
17 submit a description thereof,
18 (2) is subject to any current injunctive or
19 restrictive order as a result of a proceeding or
20 pending action brought by any government agency
21 or department and a description thereof,
22 (3) is a defendant in any pending criminal or
23 material civil action relating to fraud,
24 embezzlement, misappropriation of property or

1 violations of the antitrust or trade regulation
2 laws of the United States or any state and a
3 description thereof,

4 (4) has during the five-year period immediately
5 preceding the date of the disclosure statement
6 had entered against such person or organization a
7 final judgment in any material civil proceeding,
8 and a description thereof, or

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

17 f. the length of time the organization and any
18 predecessor of the organization has conducted a
19 business dealing with hearing instrument goods or
20 services,

21 g. a financial statement of the organization as of the
22 close of the most recent fiscal year of the
23 organization. If the financial statement is filed
24 later than one hundred twenty (120) days following the

1 close of the fiscal year of the organization it shall
2 be accompanied by a statement of the organization of
3 any material changes in the financial condition of the
4 organization,

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

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

15 j. a statement setting forth such additional information
16 and such comments and explanations relative to the
17 information contained in the disclosure statement as
18 the organization may desire to present;

19 3. If a device being sold does not meet the definition of a
20 hearing aid as set forth in Section 764.1 of Title 15 of the
21 Oklahoma Statutes, the organization shall include a disclaimer in
22 all written or electronic promotions. The disclaimer shall include
23 the following language:
24

1 "This is not a hearing instrument or hearing aid as
2 defined in the Hearing Instrument Consumer Protection Act
3 but a personal amplifier and not intended to replace a
4 properly fitted and calibrated hearing instrument.";

5 4. The organization files with the Board prior to registration
6 and annually thereafter a statement that it complies with this
7 section, the rules issued pursuant to it and the regulations of the
8 Federal Food and Drug Administration and the Federal Trade
9 Commission insofar as they are applicable;

10 5. The organization files with the Board at the time of
11 registration an irrevocable consent to service of process
12 authorizing the Board and any of its successors to be served any
13 notice, process or pleading in any action or proceeding against the
14 organization arising out of or in connection with any violation of
15 this section. Such service shall have the effect of conferring
16 personal jurisdiction over such organization in any court of
17 competent jurisdiction;

18 6. Before dispensing a hearing instrument to a resident of this
19 state, the organization informs the prospective user that he or she
20 needs the following for proper fitting of a hearing instrument:

- 21 a. the results of an audiogram performed within the past
22 six (6) months by a licensed audiologist or a licensed
23 hearing instrument dispenser, and
24

- 1 b. an earmold impression obtained from the prospective
2 user and taken by a licensed hearing instrument
3 dispenser or licensed audiologist;

4 7. The prospective user receives a medical evaluation or the
5 organization affords the prospective user an opportunity to waive a
6 medical evaluation requirement and waives the receiving of tests
7 utilizing appropriate established procedures for the fitting of
8 hearing instruments, provided that the organization:

- 9 a. informs the prospective user that the exercise of the
10 waiver is not in the user's best health interest,
11 b. does not in any way actively encourage the prospective
12 user to waive the medical evaluation or test, and
13 c. affords the prospective user the option to sign the
14 following statement:

15 "I have been advised by _____ (hearing
16 instrument dispenser's name) that the Food and Drug
17 Administration and the State of Oklahoma have
18 determined that my best interest would be served if I
19 had a medical evaluation by a licensed physician,
20 preferably a physician who specialized in diseases of
21 the ear, before purchasing a hearing instrument or a
22 test by a licensed audiologist or licensed hearing
23 instrument dispenser utilizing established procedures
24 and instrumentation in the fitting of hearing

1 instruments. I do not wish either a medical evaluation
2 or test before purchasing a hearing instrument.";

3 8. If a sale, lease or rental of hearing instruments is sold or
4 contracted to be sold to a consumer by mail order, the consumer may
5 void the contract or sale by notifying the seller within forty-five
6 (45) business days following the day on which the hearing
7 instruments were mailed by the seller to the consumer and by
8 returning to the seller in its original condition any hearing
9 instrument delivered to the consumer under the contract or sale. At
10 the time the hearing instrument is mailed, the seller shall furnish
11 the consumer with a fully completed receipt or copy of any contract
12 pertaining to the sale that contains a "Notice of Cancellation"
13 informing the consumer that he or she may cancel the sale at any
14 time within forty-five (45) business days and disclosing the date of
15 the mailing and the name, address and telephone number of the
16 seller. In immediate proximity to the space reserved in the
17 contract for the signature of the consumer or on the front page of
18 the receipt if a contract is not used and in boldface type of a
19 minimum size of ten (10) points, there shall be a statement in
20 substantially the following form:

21 "You, the buyer, may cancel this transaction at any time prior
22 to midnight of the forty-fifth business day after the date of
23 this transaction. See the attached notice of cancellation form
24 for an explanation of this right."

1 Attached to the receipt or contract shall be a completed form in
2 duplicate, captioned "NOTICE OF CANCELLATION" which shall be easily
3 detachable and which shall contain in at least ten-point boldface
4 type the following information and statements in the same language
5 as that used in the contract:

6 "NOTICE OF CANCELLATION

7 Enter date of transaction

8 _____
9 (DATE)

10 YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR
11 OBLIGATION, WITHIN FORTY-FIVE (45) BUSINESS DAYS FROM THE ABOVE
12 DATE.

13 IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY
14 YOU UNDER THE CONTRACT OR SALE LESS ANY NONREFUNDABLE RESTOCKING
15 FEE AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE
16 RETURNED WITHIN TEN (10) BUSINESS DAYS FOLLOWING RECEIPT BY THE
17 SELLER OF YOUR CANCELLATION NOTICE AND ALL MERCHANDISE
18 PERTAINING TO THIS TRANSACTION AND ANY SECURITY INTEREST ARISING
19 OUT OF THE TRANSACTION WILL BE CANCELLED.

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

23 TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND
24 DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN

1 NOTICE OR SEND A TELEGRAM TO (name of seller), AT (address of
2 seller's place of business) AND (seller's telephone number) NO
3 LATER THAN MIDNIGHT OF _____ (date).

4 I HEREBY CANCEL THIS TRANSACTION.

5 _____
6 (date)

7 _____
8 (Buyer's Signature)"

9 The written Notice of Cancellation may be sent by the consumer
10 to the seller to cancel the contract. The forty-five-day period
11 does not commence until the consumer is furnished the Notice of
12 Cancellation and the address and phone number at which such notice
13 to the seller can be given.

14 If the conditions of this paragraph are met, the seller must
15 return to the consumer the amount of any payment made or
16 consideration given under the contract or for the merchandise less a
17 nonrefundable restocking fee; and

18 9. The organization employs only licensed hearing instrument
19 dispensers and files with the Board, by January 1 of each year, a
20 list of all licensed hearing instrument dispensers employed by it.

21 B. It is an unlawful practice for a seller to:

22 1. Hold a consumer responsible for any liability or obligation
23 under any mail order transaction if the consumer claims not to have
24 received the merchandise unless the merchandise was sent by

1 certified mail or other delivery method by which the seller is
2 provided with proof of delivery;

3 2. Fail, before furnishing copies of the Notice of Cancellation
4 to the consumer, to complete both copies by entering the name of the
5 seller, the address of the seller's place of business, the seller's
6 telephone number, the date of the mailing and the date not earlier
7 than the forty-fifth business day following the date of the mailing
8 by which the consumer may give notice of cancellation;

9 3. Include in any contract or receipt any confession of
10 judgment or any waiver of any of the rights to which the consumer is
11 entitled under this act including specifically his right to cancel
12 the sale in accordance with the provisions of this section;

13 4. Misrepresent in any manner the consumer's right to cancel;

14 5. Use any undue influence, coercion or any other willful act
15 or representation to interfere with the consumer's exercise of his
16 or her rights under this section;

17 6. Fail or refuse to honor any valid notice of cancellation and
18 return of merchandise by a consumer, and within ten (10) business
19 days after the receipt of such notice and merchandise pertaining to
20 such transaction to:

- 21 a. refund payments made under the contract or sale,
- 22 b. return any goods or property traded in, in
- 23 substantially as good condition as when received by
- 24 the person, or

1 c. cancel and return any negotiable instrument executed
2 by the consumer in connection with the contract or
3 sale and take any action necessary or appropriate to
4 terminate promptly any security interest created in
5 the transaction;

6 7. Negotiate, transfer, sell or assign any note or other
7 evidence of indebtedness to a finance company or other third party
8 prior to the fiftieth business day following the day of the mailing;
9 or

10 8. Fail to provide the consumer of a hearing instrument with
11 written information stating the name, address and telephone number
12 of the Board and informing the consumer that complaints regarding
13 hearing instrument goods or services may be made to the Board.

14 C. The Board shall issue a license to any hearing instrument
15 dispenser who:

16 1. Has been certified by the National Board for Certification
17 in Hearing Instrument Sciences and has been actively practicing for
18 a minimum of five (5) years;

19 2. Has a valid license as a hearing instrument dispenser or its
20 equivalent from another state that has an examination that is
21 comparable to the examination required under this act or is provided
22 by the International Hearing Society;

23 3. Has completed the specific academic and training
24 requirements or their equivalent under Board rules;

1 4. Has been actively practicing as a hearing instrument
2 dispenser for at least three (3) months or is certified by the
3 National Board for Certification in Hearing Instrument Sciences; and

4 5. Has paid the required fee in Section 1-1751 of Title 63 of
5 the Oklahoma Statutes.

6 SECTION 2. This act shall become effective November 1, 2017.
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