

By: Zaffirini

S.B. No. 2017

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of hearing aids and the practices of audiology and the fitting and dispensing of hearing instruments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 401.001(4-b), Occupations Code, is amended to read as follows:

(4-b) "Fitting and dispensing hearing instruments," "hearing instrument," "over-the-counter hearing aid," and "sale" have the meanings [~~"Hearing instrument" has the meaning~~] assigned to those terms by Section 402.001.

SECTION 2. Section 401.058(a), Occupations Code, is amended to read as follows:

(a) This chapter does not prohibit, prevent, or restrict a person licensed under Chapter 402 from engaging in the practice of fitting and dispensing hearing instruments.

SECTION 3. Subchapter B, Chapter 401, Occupations Code, is amended by adding Section 401.061 to read as follows:

Sec. 401.061. OVER-THE-COUNTER HEARING AIDS. (a) Except as provided by this section, this chapter does not apply to servicing, marketing, selling, dispensing, providing customer support for, acquiring, or distributing over-the-counter hearing aids, regardless of whether the transaction occurs in person, online, or through other means.

(b) A person is not required to obtain a license under this

1 chapter or Chapter 402 to engage in an activity described by
2 Subsection (a).

3 (c) A person may not use the title "licensed dispenser" or
4 "licensed seller" with respect to over-the-counter hearing aids or
5 otherwise represent that the person holds a license to sell or
6 dispense over-the-counter hearing aids unless the person is
7 licensed as an audiologist or audiologist intern under this chapter
8 or as a hearing instrument fitter and dispenser under Chapter 402.

9 (d) The supervision, prescription, order, involvement, or
10 intervention of a person licensed in this state is not required
11 under this chapter for a consumer to access over-the-counter
12 hearing aids.

13 (e) A person licensed under this chapter may service,
14 market, sell, dispense, provide customer support for, or distribute
15 over-the-counter hearing aids. These activities do not exempt a
16 person licensed under this chapter from any applicable provision of
17 this chapter or Chapter 402.

18 SECTION 4. Section 401.403(b), Occupations Code, is amended
19 to read as follows:

20 (b) A person who holds a license as an audiologist or
21 audiologist intern and who fits and dispenses hearing instruments
22 must:

23 (1) comply with rules adopted under this chapter
24 related to fitting and dispensing hearing instruments;

25 (2) comply with the federal Food and Drug
26 Administration rules and guidelines for fitting and dispensing
27 hearing instruments;

1 (3) when providing services in this state, use a
2 written contract that contains the information prescribed by
3 commission rule [~~the department's name, mailing address, telephone~~
4 ~~number, and Internet website address~~]; and

5 (4) follow the guidelines adopted by commission rule
6 for a 30-day trial period on every hearing instrument purchased.

7 SECTION 5. Section 402.001, Occupations Code, is amended by
8 amending Subdivisions (4), (5), and (7) and adding Subdivisions
9 (4-a) and (6-a) to read as follows:

10 (4) "Fitting and dispensing hearing instruments"
11 means the measurement of human hearing by the use of an audiometer
12 or other means to make selections, adaptations, or sales of hearing
13 instruments. The term includes prescribing, ordering, or
14 authorizing the use of hearing instruments, the making of
15 impressions for earmolds to be used as a part of the hearing
16 instruments, and providing any necessary postfitting counseling
17 for the purpose of fitting and dispensing hearing instruments.

18 (4-a) "Hearing aid" means any wearable device designed
19 for, offered for the purpose of, or represented as aiding persons
20 with or compensating for impaired hearing. The term includes
21 hearing instruments and over-the-counter hearing aids.

22 (5) "Hearing instrument" means a prescription hearing
23 aid as that term is defined by 21 C.F.R. Section 800.30 [~~any~~
24 ~~wearable instrument or device designed for, or represented as,~~
25 ~~aiding, improving, or correcting defective human hearing. The term~~
26 ~~includes the instrument's parts and any attachment, including an~~
27 ~~earmold, or accessory to the instrument. The term does not include~~

1 ~~a battery or cord~~].

2 (6-a) "Over-the-counter hearing aid" has the meaning
3 assigned by 21 C.F.R. Section 800.30.

4 (7) "Sale" includes a lease, rental, or any other
5 purchase or exchange for value ~~[transfer of title or of the right to~~
6 ~~use by lease, bailment, or other contract]~~. The term does not
7 include a sale at wholesale by a manufacturer to a person licensed
8 under this chapter or to a distributor for distribution and sale to
9 a person licensed under this chapter.

10 SECTION 6. Subchapter [A](#), Chapter [402](#), Occupations Code, is
11 amended by adding Section 402.004 to read as follows:

12 Sec. 402.004. OVER-THE-COUNTER HEARING AIDS. (a) Except
13 as provided by this section, this chapter does not apply to
14 servicing, marketing, selling, dispensing, providing customer
15 support for, acquiring, or distributing over-the-counter hearing
16 aids, regardless of whether the transaction occurs in person,
17 online, or through other means.

18 (b) A person is not required to obtain a license under this
19 chapter or Chapter [401](#) to engage in an activity described by
20 Subsection (a).

21 (c) A person may not use the title "licensed dispenser" or
22 "licensed seller" with respect to over-the-counter hearing aids or
23 otherwise represent that the person holds a license to sell or
24 dispense over-the-counter hearing aids unless the person is
25 licensed as a hearing instrument fitter and dispenser under this
26 chapter or as an audiologist or audiologist intern under Chapter
27 [401](#).

1 (d) The supervision, prescription, order, involvement, or
2 intervention of a person licensed in this state is not required
3 under this chapter for a consumer to access over-the-counter
4 hearing aids.

5 (e) A person licensed under this chapter may service,
6 market, sell, dispense, provide customer support for, or distribute
7 over-the-counter hearing aids. These activities do not exempt a
8 person licensed under this chapter from any applicable provision of
9 this chapter or Chapter 401.

10 SECTION 7. Section 402.152, Occupations Code, is amended to
11 read as follows:

12 Sec. 402.152. COMPLAINTS. (a) Each license or permit
13 holder under this chapter shall at all times prominently display in
14 the person's place of business a sign containing information about
15 filing a complaint as prescribed by commission rule [+

16 ~~[(1) the name, mailing address, e-mail address, and~~
17 ~~telephone number of the department, and~~

18 ~~[(2) a statement informing consumers that a complaint~~
19 ~~against a license or permit holder may be directed to the~~
20 ~~department].~~

21 (b) Each written contract for services in this state of a
22 license holder must contain the information prescribed by
23 commission rule ~~[the department's name, mailing address, e-mail~~
24 ~~address, and telephone number].~~

25 SECTION 8. Section 402.403, Occupations Code, is amended to
26 read as follows:

27 Sec. 402.403. WRITTEN CONTRACT. The owner of a hearing

instrument fitting and dispensing practice shall ensure that each client receives a written contract at the time of purchase of a hearing instrument that contains the information prescribed by commission rule[+

~~[(1) the signature of the license holder who dispensed the hearing instrument,~~

~~[(2) the printed name of the license holder who dispensed the hearing instrument,~~

~~[(3) the address of the principal office of the license holder who dispensed the hearing instrument,~~

~~[(4) the license number of the license holder who dispensed the hearing instrument,~~

~~[(5) a description of the make and model of the hearing instrument,~~

~~[(6) the amount charged for the hearing instrument,~~

~~[(7) a statement of whether the hearing instrument is new, used, or rebuilt,~~

~~[(8) notice of the 30-day trial period under Section 402.401, and~~

~~[(9) the name, mailing address, e-mail address, and telephone number of the department].~~

SECTION 9. Section 401.058(b), Occupations Code, is repealed.

SECTION 10. Not later than December 1, 2023, the Texas Commission of Licensing and Regulation shall adopt rules prescribing the information required to be included:

(1) in a contract, as required by Sections 401.403(b),

1 402.152(b), and 402.403, Occupations Code, as amended by this Act;
2 and

3 (2) on a sign, as required by Section 402.152(a),
4 Occupations Code, as amended by this Act.

5 SECTION 11. (a) The changes in law made by this Act apply
6 only to a contract provided to a patient on or after December 1,
7 2023.

8 (b) The changes in law made by this Act apply only to a sign
9 displayed on or after December 1, 2023.

10 SECTION 12. This Act takes effect immediately if it
11 receives a vote of two-thirds of all the members elected to each
12 house, as provided by Section 39, Article III, Texas Constitution.
13 If this Act does not receive the vote necessary for immediate
14 effect, this Act takes effect September 1, 2023.