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**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
CIVIL JUSTICE & CLAIMS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 361

RELATING TO: Assistive Technology Devices

SPONSOR(S): Committee on Business Regulation and Consumer Affairs; Representative Jacobs and others

STATUTE(S) AFFECTED: Part III of Chapter 427, F.S.

COMPANION BILL(S): SB 486 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 7 NAYS 0
- (2) FINANCIAL SERVICES (W/D)
- (3) CIVIL JUSTICE & CLAIMS YEAS 8 NAYS 1
- (4)
- (5)

I. SUMMARY:

CS/HB 361 creates the Assistive Technology Device Warranty Act (Act). Assistive Technology Devices (ATDs) are equipment that a consumer purchases or accepts transfer of in this state for use by a disabled person, including:

- ◆ vehicles or devices used to increase personal mobility, including manual and motorized wheelchairs, motorized scooters, and motor vehicle adaptive transportation aids;
- ◆ devices that enhance a visually impaired individual's ability to communicate, such as voice-synthesized computer modules, optical scanners, talking software, and braille printers;
- ◆ environmental control devices that allow persons with limited movement to access security systems or appliances in their home or surrounding area; and
- ◆ aids for daily living, including specialty beds.

Based on a 1995 recommendation of the Commission on Long Term Care in Florida, the Act requires manufacturers of ATDs to provide consumers with a minimum one-year express warranty. If the device does not conform to the warranty, the manufacturer must repair the device without cost to the consumer. If the device remains defective after a reasonable attempt to repair, the manufacturer must either replace the ATD or provide a refund. The bill provides the consumer with the option of submitting to arbitration any dispute arising under the Act and also allows consumers to bring a civil action to recover any damages caused by a violation of the Act.

The bill provides an effective date of July 1, 1997.

This bill does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Individuals with Disabilities Act defines an assistive technology device (ATD) as "equipment . . . used to increase, maintain, or improve functional capabilities of individuals with disabilities." 20 U.S.C. s. 1401(25). Designers of assistive technology devices seek to provide disabled persons with technology for more independent, productive and enjoyable living. According to the 1995 report of the Commission on Long Term Care in Florida, these devices "play an integral part of daily living for persons with disabilities, as they allow the person to function independently, maintain dignity and privacy in their personal lives, and allow the person to depend on themselves rather than the government."

The number of individuals using ATDs in Florida is unknown. Nevertheless, the above-referenced report provides the following information about Florida citizens with disabilities, many of whom use one or more ATDs:

- ◆ approximately 675,000 elders in Florida have difficulty with one activity of daily living (ADL) of which 281,000 have severe disabilities (defined as having difficulty performing three or more ADL's)
- ◆ approximately 280,000 adults (18-59) have disabilities, 97% of whom live in the community (rather than institutions.)

A preliminary study in 1993 by the National Council on Disability on the benefits and costs of assistive technology to disabled persons led to the following conclusions:

- ◆ 75% of school age children were able to remain in a regular classroom;
- ◆ 65% of working-age persons were able to reduce dependence on family members;
- ◆ 58% were able to reduce dependence on public support; and
- ◆ 37% were able to increase their earnings.

Among the elderly disabled, the same study revealed that assistive technology enabled:

- ◆ 80% to reduce dependence on others; and
- ◆ 50% to avoid entering a nursing home.

A memo prepared by the Florida Department of Labor and Employment Security provided representative purchase prices for ATDs which illustrate the widely varying price ranges. For example, vocal assistance communications aides cost \$390-490 while lifting devices can cost over \$6,500. Wheelchairs range in price from as low as \$3,500 up to \$20,000 with rough average price of approximately \$6,500-8,000.

Many manufacturers of these devices already offer one-year warranties or better on new devices. Other manufacturers, however, offer only 90-day or 6-month warranties, with loaner availability and replacement policies which vary depending on the manufacturer and type of device.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 361 creates Part III in Chapter 427, F.S., to be known as the "Assistive Technology Device Warranty Act." Otherwise known as a "lemon law," this bill specifies that an ATD manufacturer shall furnish to purchasers of new ATDs an express warranty with a duration of at least one year after delivery of the device to the consumer. In the absence of an express warranty from the manufacturer, the manufacturer shall be deemed to have expressly warranted that, for a period of one year, the ATD will be free from any condition or defect which substantially impairs the value of the ATD to the consumer.

For purposes of this bill, a consumer may be the purchaser of the device; a person to whom the device is transferred if the transfer occurs prior to warranty expiration; a person who may enforce the warranty; or a person who leases an ATD from a lessor under a written contract.

If the ATD fails to perform in the manner expressly warranted, the manufacturer is required to repair the device at no charge to the consumer. If, after a consumer has made a reasonable attempt to have the device repaired, but has been unsuccessful, the manufacturer must either:

- ◆ replace the defective device with a comparable new ATD and refund any collateral costs; or
- ◆ accept the return of the defective device and refund the full purchase price, plus any finance charges and collateral costs incurred by the consumer and/or lessor.

The bill defines "reasonable attempt to repair" as a nonconformity within the warranty which has been subject to repair by the manufacturer, lessor or authorized manufacturer's dealer at least three times and the nonconformity continues, or the ATD has been out of service at least 30 cumulative days.

No device that has been returned to the manufacturer under this law may be resold in this state unless full disclosure of the reasons for the return are made to any prospective buyer or lessee.

If a dispute arises from this part, the bill provides a mechanism for arbitration under Chapter 682, F.S. Manufacturers are required to submit to such arbitration upon notice by the consumer. A consumer may also seek to recover damages caused by a violation of this part, in addition to any other remedy pursued. If a consumer prevails in such action, the court is to award twice the amount of pecuniary damages plus related court costs and any additional relief deemed appropriate by the court. Any waiver of these rights by a consumer is void.

A. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

Allows consumers to seek arbitration pursuant to chapter 682, F.S.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Requires manufacturers to provide express warranty of not less than one year.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Allows greater independence to users of ATDs by increasing warranty rights.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

B. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates Part III of Chapter 427, F.S., consisting of the following sections:

s. 427.801, F.S., to provide for the short title of "Assistive Technology Device Warranty Act";

s. 427.802, F.S., to provide for definitions of assistive technology device; assistive technology device dealer; assistive technology device lessor; collateral costs; consumer; demonstrator; early termination cost; early termination saving; manufacturer; nonconformity; person with a disability; and reasonable attempt to repair;

s. 427.803, F.S., to provide that assistive technology device manufacturers provide or be deemed to provide consumers with an express warranty of at least one year from the time of delivery;

s. 427.804, F.S., to provide that repairs within the warranty period shall be without charge to the consumer; that consumers are entitled to a replacement device or refund after the manufacturer is given a reasonable time to repair the device; that the current lease value equals the lease obligation plus early termination costs incurred by the

dealer and the value of the device at lease expiration less the dealer's savings from early termination; that the manufacturer has 30 days to provide a comparable device or refund after the consumer or lessor transfers the defective device to the manufacturer; that no returned device may be sold or leased again in Florida without full disclosure to the prospective buyer or lessee; that consumers shall have the option of submitting disputes relating to defective devices to arbitration under chapter 682, F.S.;

s. 427.805, F.S., to provide that any waiver of consumer rights under this part is void; and

s. 427.806, F.S., to provide a cause of action for damages in addition to any remedies under this part.

Section 2. Provides an effective date of July 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Those manufacturers not already providing warranties of one year or greater will be required to provide conforming devices or refunds for up to a year. This act will have no impact on manufacturers already providing one year warranties.

2. Direct Private Sector Benefits:

Purchasers and lessees of ATDs will benefit by receiving greater warranty rights than previously available.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Does not require counties or municipalities to spend funds or take any action requiring fund expenditure.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

In the aggregate, this bill does not reduce municipality or county authority to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

This bill is a result of the recommendation of the Commission on Long Term Care in Florida, which in a 1995 report stated: "The Commission recommends that the Legislature enact an Assistive Devices Lemon Law for Florida that protects the consumers of assistive devices." Since 1993, at least thirteen states have enacted consumer protection laws that provide minimum express warranties for assistive technology devices, and are commonly referred to as assistive technology "lemon laws."

COMMITTEE ON CIVIL JUSTICE & CLAIMS - The staff of the Committee on Civil Justice and Claims has reviewed CS/HB 361, and offers the following comments:

1. **Definition of "Assistive Technology Devices"** - CS/HB 361's definition of "assistive technology devices" appears to be fairly narrow. The bill lists only certain devices used by persons who suffer from lost mobility or lost sight. It does not appear to cover devices used by persons suffering from disabilities such as hearing loss or certain medical conditions. The bill applies to "environmental control devices for use by a person with quadriplegia." Immobilized persons, who are not quadriplegic, may have an equal need for such devices but do not appear to receive protection under the bill. It is uncertain why the bill distinguishes between these classes of disabled persons. In addition, the meaning of some of the devices listed is not entirely clear from the text of the bill. The Commission on Long Term Care in Florida, in its 1995 report *Managing Florida's Future*, treats such items in a comparatively broad fashion. The report defines an Assistive Technology Device as:

[A] device used by a person with a disability to perform one or more major life activities. Such devices include, but are not limited to: manual wheelchairs, motorized wheelchairs, motorized scooters, hearing aids, text telephone, assistive listening devices, voice synthesized computer modules, optical scanners, talking software, and braille printers.

2. **Definition of "Manufacturer"** - CS/HB 361 subjects only "manufacturers" to liability and forced arbitration. The bill's definition of "manufacturer" encompasses "agents including an importer, a distributor, a factory branch, a distributor branch, and any warrantors of the manufacturer's assistive technology device, but not including an assistive technology dealer." Some of the business entities listed may not be in privity with consumers purchasing assistive devices. Also, it is not certain why CS/HB 361 imposes liability upon businesses that have no means of ensuring product quality, while excluding dealers from liability. This arrangement, however, parallels the arrangement contained in s. 681.1021(13), F.S., which defines manufacturers under the Motor Vehicle Warranty Enforcement Act, also known as the "Lemon Law".
3. **Express Warranty** - CS/HB 361 requires manufactures of assistive technology devices to furnish consumers with a one-year express warranty. This provision may have several ramifications. Some companies may offer inexpensive products of short life. The bill could divest disabled consumers of the ability to purchase such products. Would batteries for motorized wheelchairs and scooters fall under the express warranty? If so, the bill may force manufacturers to offer such items separately.
4. **Civil Action** - CS/HB 361 would allow a consumer to bring action against a manufacturer to recover damages caused by a violation of the act. CS/HB 361 provides:

"The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with costs, disbursements, and reasonable attorney's fees, and any equitable relief that the court determines is appropriate." Presently, consumers of "assistive technology devices," as well as purchasers of other products, may recover damages based on a number of theories including: negligence, strict liability, defective design, breach of an implied warranty of merchantability, breach of an implied warranty of fitness for a particular purpose, and breach of an express warranty.

- a. **Right to a Jury Trial** - The wording of this provision of CS/HB 361 seems to suggest that the manufacturer would not be entitled to a jury trial, at least with respect to damages. Depending upon judicial interpretations, this provision of CS/HB 361 could infringe upon the right to a jury trial -- a right guaranteed by Article I, Section 22 of the state constitution.
 - b. **Due Process** - Under certain circumstances CS/HB 361 would require the court to automatically assess double damages against a defendant/manufacture, irrespective of the facts of the case. Potentially, this provision could infringe upon the defendant/manufacture's due process rights. Due process is addressed in the Fourteenth Amendment of the federal constitution and in Article I, Section 2 of the Florida Constitution.
 - c. **Definition of "Prevails"** - The bill does not specify the extent to which a consumer would need to prevail in an action against a manufacturer, to subject the manufacturer to double damages. What would happen, for example, if the consumer wins a nominal award after asking for extensive reparations? CS/HB 361 leaves this determination to the courts.
 - d. **Court Costs** - Because CS/HB 361 would allow certain consumers to seek damages for violations of this act, it could slightly increase the workload of the courts.
 - e. **Alternative Dispute Resolution** - CS/HB 361 provides a judicial remedy for civil damages *in addition* to other remedies. In this respect, the bill significantly differs from the Motor Vehicle Warranty Enforcement Act. Sections 681.108, F.S., and 681.1095, F.S., require the purchaser of a motor vehicle to submit to alternative dispute resolution *before* filing a civil action for damages. A civil suit is treated as a last-ditch measure. CS/HB 361 would allow consumers to force a manufacturer to submit to "alternative arbitration," either before or after filing a civil suit.
5. **No Penalty for "Bad Faith" Claims** - The Motor Vehicle Warranty Enforcement Act, at s. 681.106, F.S., provides that a motor vehicle manufacturer can recover costs incurred in connection with a bad faith claim. CS/HB 361 contains no similar provision.
 6. **Definition of "Full Disclosure"** - CS/HB 361 provides that if an assistive technology device is returned by a consumer or lessor, it "may not be sold or leased again in this state, unless full disclosure of the reasons for return is made to any prospective buyer or lessee." It is unclear whether this provision would require full disclosure in cases where an assistive technology device is returned for reasons other than nonconformity with the warranty. What is meant by the term "full disclosure?" To fulfill its obligations under this

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provision of the bill, would a manufacturer need to obtain a statement from each consumer or lessor returning an assistive technology device? The bill does not address these issues.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The CS makes several revisions to the bill, affecting ss. 427.802, 427.803, and 427.804, F.S. The definitions are renumbered to locate "person with a disability" earlier in the section; in addition, technical revisions are made to the following terms: assistive technology device; early termination cost; early termination saving; nonconformity; and reasonable attempt to repair. A technical change is made to s. 427.803, F.S., regarding the manufacturer's duty to provide an express warranty. Several technical changes are also made to provisions regarding repairs and refunds for defective devices. These revisions are entirely technical in nature, and have no substantive or fiscal impact.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Legislative Research Director:

Peter M. Rodnite

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AS FURTHER REVISED BY THE COMMITTEE ON CIVIL JUSTICE & CLAIMS:

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