

By Representative Jacobs

1                                   A bill to be entitled  
2           An act relating to assistive technology  
3           devices; creating part III of chapter 427,  
4           F.S.; creating the "Assistive Technology Device  
5           Warranty Act"; providing definitions; requiring  
6           an express warranty for manufacturers who sell  
7           assistive technology devices; requiring refund,  
8           replacement, or repair of nonconforming  
9           assistive technology devices; requiring  
10          disclosure of reasons for return before resale  
11          or re-lease; allowing consumers the option of  
12          submitting disputes to arbitration; permitting  
13          action for damages for violation of the act;  
14          providing an effective date.

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16 Be It Enacted by the Legislature of the State of Florida:

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18           Section 1. Part III of chapter 427, Florida Statutes,  
19           consisting of sections 427.801, 427.802, 427.803, 427.804,  
20           427.805, and 427.806, is created to read:

21           427.801 Short title.--This part may be cited as the  
22 "Assistive Technology Device Warranty Act."

23           427.802 Definitions.--As used in this part:

24           (1) "Assistive technology device" means any manual  
25 wheelchair, motorized wheelchair, motorized scooter,  
26 voice-synthesized computer module, optical scanner, talking  
27 software, braille printer, environmental control device for  
28 use by a person with quadriplegia, motor vehicle adaptive  
29 transportation aid, or specialty bed, including a  
30 demonstrator, that a consumer purchases or accepts transfer of  
31 in this state for use by a person with a disability.

1           (2) "Assistive technology device dealer" means a  
2 person who is in the business of selling assistive technology  
3 devices.

4           (3) "Assistive technology device lessor" means a  
5 person who leases an assistive technology device to a  
6 consumer, or who holds the lessor's rights, under a written  
7 lease.

8           (4) "Collateral costs" means expenses incurred by a  
9 consumer in connection with the repair of a nonconformity,  
10 including the costs of obtaining an alternative assistive  
11 technology device.

12           (5) "Consumer" means any of the following:

13           (a) The purchaser of an assistive technology device,  
14 if the assistive technology device was purchased from an  
15 assistive technology device dealer or manufacturer for  
16 purposes other than resale.

17           (b) A person to whom the assistive technology device  
18 is transferred for purposes other than resale, if the transfer  
19 occurs before the expiration of an express warranty applicable  
20 to the assistive technology device.

21           (c) A person who may enforce the warranty.

22           (d) A person who leases an assistive technology device  
23 from an assistive technology device lessor under a written  
24 lease.

25           (6) "Demonstrator" means an assistive technology  
26 device used primarily for the purpose of demonstration to the  
27 public.

28           (7) "Early termination cost" means any expense or  
29 obligation that an assistive technology device lessor incurs  
30 as a result of both the termination of a written lease before  
31 the termination date set forth in that lease and the return of

1 an assistive technology device to a manufacturer pursuant to  
2 this section. Early termination cost includes a penalty for  
3 prepayment under a financial arrangement.

4 (8) "Early termination saving" means any expense or  
5 obligation that an assistive technology device lessor avoids  
6 as a result of both the termination of a written lease before  
7 the termination date set forth in the lease and the return of  
8 an assistive technology device to a manufacturer pursuant to  
9 this section. Early termination saving includes an interest  
10 charge that the assistive technology device lessor would have  
11 paid to finance the assistive technology device or, if the  
12 assistive technology device lessor does not finance the  
13 assistive technology device, the difference between the total  
14 amount for which the lease obligates the consumer during the  
15 period of the lease term remaining after the early termination  
16 and the present value of that amount at the date of the early  
17 termination.

18 (9) "Manufacturer" means a business entity which  
19 manufactures or produces assistive technology devices for  
20 sale, and agents of that business entity, including an  
21 importer, a distributor, a factory branch, a distributor  
22 branch, and any warrantors of the manufacturer's assistive  
23 technology device, but not including an assistive technology  
24 device dealer.

25 (10) "Nonconformity" means a condition or defect of an  
26 assistive technology device that substantially impairs the  
27 use, value, or safety of the device and that is covered by an  
28 express warranty applicable to the assistive technology  
29 device, but does not include a condition or defect that is the  
30 result of abuse, neglect, or unauthorized modification or  
31 alteration of the assistive technology device by a consumer.

1       (11) "Person with a disability" means any person who  
2 has one or more permanent physical or mental limitations that  
3 restrict his or her ability to perform the normal activities  
4 of daily living and impede his or her capacity to live  
5 independently.

6       (12) "Reasonable attempt to repair" means, within the  
7 terms of an express warranty applicable to a new assistive  
8 technology device:

9       (a) Any nonconformity within the warranty that is  
10 either subject to repair by the manufacturer, the assistive  
11 technology device lessor, or any of the manufacturer's  
12 authorized assistive technology device dealers, for at least  
13 three times, and the nonconformity continues; or

14       (b) The assistive technology device is out of service  
15 for an aggregate of at least 30 cumulative days because of a  
16 warranty nonconformity.

17       427.803 Express warranty.--A manufacturer who sells a  
18 new assistive technology device to a consumer, either directly  
19 or through an assistive technology device dealer, shall  
20 furnish the consumer with an express warranty for the  
21 assistive technology device. The duration of the express  
22 warranty shall be not less than 1 year after first delivery of  
23 the assistive technology device to the consumer. In the  
24 absence of an express warranty from the manufacturer, the  
25 manufacturer shall be deemed to have expressly warranted to  
26 the consumer of an assistive technology device that, for a  
27 period of 1 year from the date of first delivery to the  
28 consumer, the assistive technology device will be free from  
29 any condition or defect which substantially impairs the value  
30 of the assistive technology device to the consumer.

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1           427.804 Repair of nonconforming assistive technology  
2 devices; refund or replacement of devices after attempt to  
3 repair; sale or lease of returned device; arbitration;  
4 limitation of rights.--

5           (1) If a new assistive technology device does not  
6 conform to an applicable express warranty and the consumer  
7 reports the nonconformity to the manufacturer, the assistive  
8 technology device lessor, or any of the manufacturer's  
9 authorized assistive technology device dealers and makes the  
10 assistive technology device available for repair within 1 year  
11 after first delivery or return of the assistive technology  
12 device to the consumer, the nonconformity shall be repaired at  
13 no charge to the consumer.

14           (2) If, after a reasonable attempt to repair, the  
15 nonconformity is not repaired, then, at the direction of a  
16 consumer as defined in s. 427.802(5)(a)-(c), the manufacturer  
17 shall do one of the following:

18           (a) Accept return of the assistive technology device  
19 and replace the assistive technology device with a comparable  
20 new assistive technology device and refund any collateral  
21 costs.

22           (b) Accept return of the assistive technology device  
23 and refund to the consumer and to any holder of a perfected  
24 security interest in the consumer's assistive technology  
25 device, as the interest may appear, the full purchase price  
26 plus any finance charge amount paid by the consumer at the  
27 point of sale, and collateral costs.

28           (c) With respect to a consumer as defined in s.  
29 427.802(5)(d), accept return of the assistive technology  
30 device, refund to the assistive technology device lessor and  
31 to any holder of a perfected security interest in the

1 assistive technology device, as the interest may appear, the  
2 current value of the written lease, and refund to the consumer  
3 the amount that the consumer paid under the written lease plus  
4 any collateral costs.

5 (3) The current value of the written lease equals the  
6 total amount for which the lease obligates the consumer during  
7 the period of the lease remaining after its early termination  
8 plus the assistive technology device dealer's early  
9 termination costs and the value of the assistive technology  
10 device at the lease expiration date if the lease sets forth  
11 the value, less the assistive technology device lessor's early  
12 termination savings.

13 (4) To receive a comparable new assistive technology  
14 device or a refund due under paragraph (2)(a), a consumer  
15 shall offer to the manufacturer of the assistive technology  
16 device having the nonconformity to transfer possession of the  
17 assistive technology device to the manufacturer. No later  
18 than 30 days after the offer, the manufacturer shall provide  
19 the consumer with the comparable assistive technology device  
20 or refund. When the manufacturer provides the new assistive  
21 technology device or refund, the consumer shall return the  
22 assistive technology device having the nonconformity to the  
23 manufacturer, along with any endorsements necessary to  
24 transfer real possession to the manufacturer.

25 (5) To receive a refund due under paragraph (2)(b), a  
26 consumer shall offer to return the assistive technology device  
27 having the nonconformity to its manufacturer. No later than  
28 30 days after the offer, the manufacturer shall provide the  
29 refund to the consumer. When the manufacturer provides the  
30 refund, the consumer shall return to the manufacturer the  
31 assistive technology device having the nonconformity.

1       (6) To receive a refund due under paragraph (2)(c), an  
2 assistive technology device lessor shall offer to transfer  
3 possession of the assistive technology device having the  
4 nonconformity to its manufacturer. No later than 30 days  
5 after the offer, the manufacturer shall provide the refund to  
6 the assistive technology device lessor. When the manufacturer  
7 provides the refund, the assistive technology device lessor  
8 shall provide to the manufacturer any endorsements necessary  
9 to transfer legal possession to the manufacturer.

10       (7) No person shall enforce the lease against the  
11 consumer after the consumer receives a refund due under  
12 paragraph (2)(c).

13       (8) No assistive technology device returned by a  
14 consumer or assistive technology device lessor in this state,  
15 or by a consumer or assistive technology device lessor in  
16 another state under a similar law of that state, may be sold  
17 or leased again in this state, unless full disclosure of the  
18 reasons for return is made to any prospective buyer or lessee.

19       (9) Each consumer shall have the option of submitting  
20 any dispute arising under this part to an alternate  
21 arbitration mechanism established pursuant to chapter 682 and  
22 any applicable rules. Upon notice by the consumer, all  
23 manufacturers shall submit to such alternate arbitration.

24       (10) Such alternate arbitration shall be conducted by  
25 a professional arbitrator or arbitration firm appointed under  
26 the provisions established by chapter 682 and any applicable  
27 rules. Such mechanism shall ensure the personal objectivity  
28 of its arbitrators and the right of each party to present its  
29 case, to be in attendance during any presentation made by the  
30 other party, and to rebut or refute such presentation.

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1       (11) Nothing in this part shall be construed to limit  
2 rights or remedies available to a consumer under any other  
3 law.

4       427.805 Waiver.--Any waiver by a consumer of rights  
5 under this part is void.

6       427.806 Action for damages.--In addition to pursuing  
7 any other remedy, a consumer may bring an action to recover  
8 for any damages caused by a violation of this part. The court  
9 shall award a consumer who prevails in such an action twice  
10 the amount of any pecuniary loss, together with costs,  
11 disbursements, and reasonable attorney's fees, and any  
12 equitable relief that the court determines is appropriate.

13       Section 2. This act shall take effect July 1, 1997.

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16                   HOUSE SUMMARY

17       Creates the "Assistive Technology Device Warranty Act."  
18       Requires a minimum 1-year express warranty for  
19       manufacturers who sell assistive technology devices, such  
20       as wheelchairs, motorized scooters, braille printers,  
21       optical scanners, talking software, specialty beds, and  
22       other devices for use by a person with a disability.  
23       Provides procedures for repair, refund, or replacement of  
24       devices under such warranty. Requires disclosure of  
25       reasons for the return of such a device before it can be  
26       resold or re-leased. Provides for arbitration of  
27       disputes between a manufacturer and a consumer.  
28       Authorizes consumer actions for damages, and provides for  
29       award of costs and attorney's fees.  
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