

By the Committee on Business Regulation & Consumer Affairs
and Representatives Jacobs and Morse

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.

15

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

17

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 devices" means manual
25 wheelchairs, motorized wheelchairs, motorized scooters,
26 voice-synthesized computer modules, optical scanners, talking
27 software, braille printers, environmental control devices for
28 use by a person with quadriplegia, motor vehicle adaptive
29 transportation aids, and specialty beds, 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) "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 (3) "Assistive technology device dealer" means a
7 person who is in the business of selling assistive technology
8 devices.

9 (4) "Assistive technology device lessor" means a
10 person who leases an assistive technology device to a
11 consumer, or who holds the lessor's rights, under a written
12 lease.

13 (5) "Collateral costs" means expenses incurred by a
14 consumer in connection with the repair of a nonconformity,
15 including the costs of obtaining an alternative assistive
16 technology device.

17 (6) "Consumer" means any of the following:

18 (a) The purchaser of an assistive technology device,
19 if the assistive technology device was purchased from an
20 assistive technology device dealer or manufacturer for
21 purposes other than resale.

22 (b) A person to whom the assistive technology device
23 is transferred for purposes other than resale, if the transfer
24 occurs before the expiration of an express warranty applicable
25 to the assistive technology device.

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

27 (d) A person who leases an assistive technology device
28 from an assistive technology device lessor under a written
29 lease.

30
31

1 (7) "Demonstrator" means an assistive technology
2 device used primarily for the purpose of demonstration to the
3 public.

4 (8) "Early termination cost" means any expense or
5 obligation that an assistive technology device lessor incurs
6 as a result of both the termination of a written lease before
7 the termination date set forth in that lease and the return of
8 an assistive technology device to a manufacturer pursuant to
9 this section. The term includes a penalty for prepayment
10 under a financial arrangement.

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

25 (10) "Manufacturer" means a business entity that
26 manufactures or produces assistive technology devices for sale
27 and agents of that business entity, including an importer, a
28 distributor, a factory branch, a distributor branch, and any
29 warrantors of the manufacturer's assistive technology device,
30 but not including an assistive technology device dealer.

31

1 (11) "Nonconformity" means a condition or defect of an
2 assistive technology device which substantially impairs the
3 use, value, or safety of the device and which is covered by an
4 express warranty applicable to the assistive technology
5 device, but does not include a condition or defect that is the
6 result of abuse, neglect, or unauthorized modification or
7 alteration of the assistive technology device by a consumer.

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

11 (a) A maximum of three efforts by the manufacturer,
12 the assistive technology device lessor, or any of the
13 manufacturer's authorized assistive technology device dealers
14 to repair a nonconformity that is subject to repair under the
15 warranty; or

16 (b) The passage of at least 30 cumulative days during
17 which the assistive technology device is out of service
18 because of a nonconformity that is covered by the warranty.

19 427.803 Express warranty.--A manufacturer who sells a
20 new assistive technology device to a consumer, either directly
21 or through an assistive technology device dealer, shall
22 furnish the consumer with an express warranty for the
23 assistive technology device. The duration of the express
24 warranty must be at least 1 year after first delivery of the
25 assistive technology device to the consumer. In the absence
26 of an express warranty from the manufacturer, the manufacturer
27 is considered to have expressly warranted to the consumer of
28 an assistive technology device that, for a period of 1 year
29 after the date of first delivery to the consumer, the
30 assistive technology device will be free from any condition or
31

1 defect that substantially impairs the value of the assistive
2 technology device to the consumer.
3 427.804 Repair of nonconforming assistive technology
4 devices; refund or replacement of devices after attempt to
5 repair; sale or lease of returned device; arbitration;
6 limitation of rights.--
7 (1) If a new assistive technology device does not
8 conform to an applicable express warranty and the consumer
9 reports the nonconformity to the manufacturer, the assistive
10 technology device lessor, or any of the manufacturer's
11 authorized assistive technology device dealers and makes the
12 assistive technology device available for repair within 1 year
13 after first delivery or return of the assistive technology
14 device to the consumer, the nonconformity must be repaired at
15 no charge to the consumer.
16 (2) If, after a reasonable attempt to repair, the
17 nonconformity is not repaired, the manufacturer, at the
18 direction of a consumer as defined in s. 427.802(6)(a)-(c),
19 must do one of the following:
20 (a) Accept return of the assistive technology device
21 and replace the assistive technology device with a comparable
22 new assistive technology device and refund any collateral
23 costs.
24 (b) Accept return of the assistive technology device
25 and refund to the consumer and to any holder of a perfected
26 security interest in the consumer's assistive technology
27 device, as the interest may appear, the full purchase price
28 plus any finance charge amount paid by the consumer at the
29 point of sale, and collateral costs.
30 (c) With respect to a consumer as defined in s.
31 427.802(6)(d), accept return of the assistive technology

1 device, refund to the assistive technology device lessor and
2 to any holder of a perfected security interest in the
3 assistive technology device, as the interest may appear, the
4 current value of the written lease, and refund to the consumer
5 the amount that the consumer paid under the written lease plus
6 any collateral costs.

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

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

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

1 refund, the consumer shall return to the manufacturer the
2 assistive technology device having the nonconformity.

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

12 (7) A person may not enforce the lease against the
13 consumer after the consumer receives a refund due under
14 paragraph (2)(c).

15 (8) An assistive technology device that is returned by
16 a consumer or assistive technology device lessor in this
17 state, or by a consumer or assistive technology device lessor
18 in another state under a similar law of that state, may not be
19 sold or leased again in this state, unless full disclosure of
20 the reasons for return is made to any prospective buyer or
21 lessee.

22 (9) Each consumer may submit any dispute arising under
23 this part to an alternative arbitration mechanism established
24 pursuant to chapter 682. Upon notice by the consumer, all
25 manufacturers must submit to such alternative arbitration.

26 (10) Such alternative arbitration must be conducted by
27 a professional arbitrator or arbitration firm appointed under
28 chapter 682 and any applicable rules. These procedures must
29 provide for the personal objectivity of the arbitrators and
30 for the right of each party to present its case, to be in

31

1 attendance during any presentation made by the other party,
2 and to rebut or refute such a presentation.

3 (11) This part does not limit rights or remedies
4 available to a consumer under any other law.

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

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

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

15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31