

By Senator Forman

32-328B-99

1                                   A bill to be entitled  
2           An act relating to assistive technology;  
3           amending s. 427.802, F.S.; providing  
4           definitions; amending s. 427.803, F.S.;  
5           providing that the consumer determines whether  
6           an assistive technology device is defective for  
7           purposes of the express warranty; requiring the  
8           manufacturer to make repairs necessary to  
9           conform the device to the warranty; providing  
10          notice of the dealer's and manufacturer's  
11          address and telephone number; providing  
12          procedures for filing claims; amending s.  
13          427.804, F.S.; allowing consumers to submit  
14          disputes to the Department of Agriculture and  
15          Consumer Services; authorizing the department  
16          to investigate complaints; creating s.  
17          427.8041, F.S.; providing for registration of  
18          dealers, for fees, and for application  
19          procedures; providing grounds for refusal or  
20          denial of registration; requiring dealers to  
21          allow department personnel to enter their  
22          places of business; authorizing the department  
23          to impose penalties; authorizing the department  
24          or the state attorney to bring civil actions  
25          for violations of the act; providing for fees  
26          and fines collected to be deposited into the  
27          General Inspection Trust Fund; authorizing  
28          dealers to collect a fee from the consumer at  
29          the time of sale or lease of a device; allowing  
30          consumers to bring a civil action for violation  
31          of the act; providing an effective date.

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

2

3 Section 1. Section 427.802, Florida Statutes, is  
4 amended to read:

5 427.802 Definitions.--As used in this part:

6 (1) "Assistive technology devices" means manual  
7 wheelchairs, motorized wheelchairs, motorized scooters,  
8 voice-synthesized computer modules, optical scanners, talking  
9 software, braille printers, environmental control devices for  
10 use by a person with quadriplegia, motor vehicle adaptive  
11 transportation aids, adaptive augmentative communication  
12 devices that enable persons with severe speech disabilities  
13 to, in effect, speak, personal transfer systems, and specialty  
14 beds, including a demonstrator, that a consumer purchases or  
15 accepts transfer of in this state for use by a person with a  
16 disability.

17 (2) "Assistive Technology Device Warranty Act rights  
18 period" means the period ending 1 year after first delivery of  
19 the assistive technology device to the consumer or the  
20 manufacturer's express written warranty, whichever is longer.

21 (3)~~(2)~~ "Person with a disability" means any person who  
22 has one or more permanent physical or mental limitations that  
23 restrict his or her ability to perform the normal activities  
24 of daily living and impede his or her capacity to live  
25 independently.

26 (4)~~(3)~~ "Assistive technology device dealer" means a  
27 person who is in the business of selling assistive technology  
28 devices.

29 (5)~~(4)~~ "Assistive technology device lessor" means a  
30 person who leases an assistive technology device to a  
31 consumer, or holds the lessor's rights, under a written lease.

1           ~~(6)~~(5) "Collateral costs" means expenses incurred by a  
2 consumer in connection with the repair of a nonconformity,  
3 including the costs of obtaining an alternative assistive  
4 technology device.

5           ~~(7)~~(6) "Consumer" means any of the following:

6           (a) The purchaser of an assistive technology device,  
7 if the assistive technology device was purchased from an  
8 assistive technology device dealer or manufacturer for  
9 purposes other than resale.

10           (b) A person to whom the assistive technology device  
11 is transferred for purposes other than resale, if the transfer  
12 occurs before the expiration of an express warranty applicable  
13 to the assistive technology device.

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

15           (d) A person who leases an assistive technology device  
16 from an assistive technology device lessor under a written  
17 lease.

18           ~~(8)~~(7) "Demonstrator" means an assistive technology  
19 device used primarily for the purpose of demonstration to the  
20 public.

21           ~~(9)~~ "Department" means the Department of Agriculture  
22 and Consumer Services.

23           ~~(10)~~(8) "Early termination cost" means any expense or  
24 obligation that an assistive technology device lessor incurs  
25 as a result of both the termination of a written lease before  
26 the termination date set forth in that lease and the return of  
27 an assistive technology device to a manufacturer pursuant to  
28 this section. The term includes a penalty for prepayment  
29 under a financial arrangement.

30           ~~(11)~~(9) "Early termination saving" means any expense  
31 or obligation that an assistive technology device lessor

1 avoids as a result of both the termination of a written lease  
2 before the termination date set forth in the lease and the  
3 return of an assistive technology device to a manufacturer  
4 pursuant to this section. The term includes an interest  
5 charge that the assistive technology device lessor would have  
6 paid to finance the assistive technology device or, if the  
7 assistive technology device lessor does not finance the  
8 assistive technology device, the difference between the total  
9 amount for which the lease obligates the consumer during the  
10 period of the lease term remaining after the early termination  
11 and the present value of that amount at the date of the early  
12 termination.

13 (12)~~(10)~~ "Manufacturer" means a business entity that  
14 manufactures or produces assistive technology devices for sale  
15 and agents of that business entity, including an importer, a  
16 distributor, a factory branch, a distributor branch, and any  
17 warrantors of the manufacturer's assistive technology device,  
18 ~~but not~~ including an assistive technology device dealer.

19 (13)~~(11)~~ "Nonconformity" means a condition or defect  
20 of an assistive technology device as determined by the  
21 consumer which substantially impairs the use, value, or safety  
22 of the device and which is covered by an express warranty  
23 applicable to the assistive technology device, but does not  
24 include a condition or defect that is the result of abuse,  
25 neglect, or unauthorized modification or alteration of the  
26 assistive technology device by a consumer.

27 (14)~~(12)~~ "Reasonable attempt to repair" means, within  
28 the terms of an express warranty applicable to a new assistive  
29 technology device:

30 (a) A maximum of three efforts by the manufacturer,  
31 the assistive technology device lessor, or any of the

1 manufacturer's authorized assistive technology device dealers  
2 to repair a nonconformity that is subject to repair under the  
3 warranty; or

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

7 Section 2. Section 427.803, Florida Statutes, is  
8 amended to read:

9 427.803 Duty of manufacturer and an assistive  
10 technology device dealer to conform an assistive technology  
11 device to the warranty ~~Express warranty.~~--

12 (1) A manufacturer who sells a new assistive  
13 technology device to a consumer, either directly or through an  
14 assistive technology device dealer, shall furnish the consumer  
15 with an express warranty for the assistive technology device.  
16 The duration of the express warranty must be at least 1 year  
17 after first delivery of the assistive technology device to the  
18 consumer. In the absence of an express warranty from the  
19 manufacturer, the manufacturer is considered to have expressly  
20 warranted to the consumer of an assistive technology device  
21 that, for a period of 1 year after the date of first delivery  
22 to the consumer, the assistive technology device will be free  
23 from any condition or defect as determined by the consumer  
24 which ~~that~~ substantially impairs the value of the assistive  
25 technology device to the consumer.

26 (2) If an assistive technology device does not conform  
27 to the warranty and the consumer first reports the problem to  
28 the manufacturer during the Assistive Technology Device  
29 Warranty Act rights period, the manufacturer shall make such  
30 repairs as are necessary to conform the device to the  
31 warranty, irrespective of whether such repairs are made after

1 the expiration of the Assistive Technology Device Warranty Act  
2 rights period. Such repairs shall be at no cost to the  
3 consumer if reported to the manufacturer or assistive  
4 technology device dealer during the Assistive Technology  
5 Device Warranty Act rights period. Nothing in this paragraph  
6 shall be construed to grant an extension of the Assistive  
7 Technology Device Warranty Act rights period or to expand the  
8 time within which a consumer must file a complaint under this  
9 chapter.

10 (3) Each manufacturer or assistive technology device  
11 dealer shall provide to its consumers conspicuous notice of  
12 the address and phone number for its zone, district, or  
13 regional office for this state in the written warranty or  
14 owner's manual. By January 1 of each year, each manufacturer  
15 shall forward to the department a copy of the owner's manual  
16 and any written warranty for each make and model of assistive  
17 technology device that it sells in this state.

18 (4) The manufacturer shall provide to the dealer and,  
19 at the time of acquisition, the dealer shall provide to the  
20 consumer a written statement that explains the consumer's  
21 rights under this chapter. The written statement shall be  
22 prepared by the department and shall contain a toll-free  
23 number for the department that the consumer can contact to  
24 obtain information regarding the consumer's rights and  
25 obligations under this chapter or to commence arbitration. The  
26 consumer's signed acknowledgment of receipt of materials  
27 required under this subsection shall constitute prima facie  
28 evidence of compliance by the manufacturer and dealer. The  
29 form of the acknowledgments shall be approved by the  
30 department, and the dealer shall maintain the consumer's  
31 signed acknowledgment for 3 years.

1           (5) A manufacturer or an assistive technology device  
2 dealer shall provide to the consumer, each time the consumer's  
3 assistive technology device is returned after being examined  
4 or repaired under the warranty, a fully itemized, legible  
5 statement of any diagnosis made and all work performed on the  
6 assistive technology device, including, but not limited to, a  
7 general description of the problem reported by the consumer or  
8 an identification of the defect or condition, parts and labor,  
9 the date on which the assistive technology device was  
10 submitted for examination or repair, and the date when the  
11 repair or examination was completed.

12           Section 3. Section 427.804, Florida Statutes, is  
13 amended to read:

14           427.804 Repair of nonconforming assistive technology  
15 devices; refund or replacement of devices after attempt to  
16 repair; sale or lease of returned device; arbitration;  
17 investigation; limitation of rights.--

18           (1) If a new assistive technology device does not  
19 conform to an applicable express warranty and the consumer  
20 reports the nonconformity to the manufacturer, the assistive  
21 technology device lessor, or any of the manufacturer's  
22 authorized assistive technology device dealers and makes the  
23 assistive technology device available for repair within 1 year  
24 after first delivery or return of the assistive technology  
25 device to the consumer, the nonconformity must be repaired at  
26 no charge to the consumer.

27           (2) If, after a reasonable attempt to repair, the  
28 nonconformity is not repaired, the manufacturer, at the  
29 direction of a consumer as defined in s. 427.802(6)(a)-(c),  
30 must do one of the following:

31

1           (a) Accept return of the assistive technology device  
2 and replace the assistive technology device with a comparable  
3 new assistive technology device and refund any collateral  
4 costs.

5           (b) Accept return of the assistive technology device  
6 and refund to the consumer and to any holder of a perfected  
7 security interest in the consumer's assistive technology  
8 device, as the interest may appear, the full purchase price  
9 plus any finance charge amount paid by the consumer at the  
10 point of sale, and collateral costs.

11           (c) With respect to a consumer as defined in s.  
12 427.802(6)(d), accept return of the assistive technology  
13 device, refund to the assistive technology device lessor and  
14 to any holder of a perfected security interest in the  
15 assistive technology device, as the interest may appear, the  
16 current value of the written lease, and refund to the consumer  
17 the amount that the consumer paid under the written lease plus  
18 any collateral costs.

19           (3) The current value of the written lease equals the  
20 total amount for which the lease obligates the consumer during  
21 the period of the lease remaining after its early termination  
22 plus the assistive technology device dealer's early  
23 termination costs and the value of the assistive technology  
24 device at the lease expiration date if the lease sets forth  
25 the value, less the assistive technology device lessor's early  
26 termination savings.

27           (4) To receive a comparable new assistive technology  
28 device or a refund due under paragraph (2)(a), a consumer must  
29 offer to the manufacturer of the assistive technology device  
30 having the nonconformity to transfer possession of the  
31 assistive technology device to the manufacturer. No later

1 than 30 days after the offer, the manufacturer shall provide  
2 the consumer with the comparable assistive technology device  
3 or refund. When the manufacturer provides the comparable  
4 assistive technology device or refund, the consumer shall  
5 return the assistive technology device having the  
6 nonconformity to the manufacturer, along with any endorsements  
7 necessary to transfer real possession to the manufacturer.

8 (5) To receive a refund due under paragraph (2)(b), a  
9 consumer must offer to return the assistive technology device  
10 having the nonconformity to its manufacturer. No later than  
11 30 days after the offer, the manufacturer shall provide the  
12 refund to the consumer. When the manufacturer provides the  
13 refund, the consumer shall return to the manufacturer the  
14 assistive technology device having the nonconformity.

15 (6) To receive a refund due under paragraph (2)(c), an  
16 assistive technology device lessor must offer to transfer  
17 possession of the assistive technology device having the  
18 nonconformity to its manufacturer. No later than 30 days  
19 after the offer, the manufacturer shall provide the refund to  
20 the assistive technology device lessor. When the manufacturer  
21 provides the refund, the assistive technology device lessor  
22 shall provide to the manufacturer any endorsements necessary  
23 to transfer legal possession to the manufacturer.

24 (7) A person may not enforce the lease against the  
25 consumer after the consumer receives a refund due under  
26 paragraph (2)(c).

27 (8) An assistive technology device that is returned by  
28 a consumer or assistive technology device lessor in this  
29 state, or by a consumer or assistive technology device lessor  
30 in another state under a similar law of that state, may not be  
31 sold or leased again in this state, unless full disclosure of

1 the reasons for return is made to any prospective buyer or  
2 lessee.

3 (9) Each consumer may submit any dispute arising under  
4 this part to the department by completing a complaint form.  
5 The department may investigate the complaint on behalf of the  
6 consumer if reasonable evidence warrants such an action.

7 (10) The department shall process consumer complaints  
8 pursuant to s. 570.544.

9 (11)~~(9)~~ Each consumer may submit any dispute arising  
10 under this part to an alternative arbitration mechanism  
11 established pursuant to chapter 682. Upon notice by the  
12 consumer, all manufacturers must submit to such alternative  
13 arbitration.

14 (12)~~(10)~~ Such alternative arbitration must be  
15 conducted by a professional arbitrator or arbitration firm  
16 appointed under chapter 682 and any applicable rules. These  
17 procedures must provide for the personal objectivity of the  
18 arbitrators and for the right of each party to present its  
19 case, to be in attendance during any presentation made by the  
20 other party, and to rebut or refute such a presentation.

21 (13)~~(11)~~ This part does not limit rights or remedies  
22 available to a consumer under any other law.

23 Section 4. Section 427.8041, Florida Statutes, is  
24 created to read:

25 427.8041 Assistive technology device dealers  
26 registration; application; exemption; penalties; adoption of  
27 fees and fines; purchase fees.--

28 (1) Each technology device dealer engaged or  
29 attempting to engage in the business of selling assistive  
30 technology devices must register with the department prior to  
31 doing business in this state. The application for registration

1 must be on a form adopted by the department and must include  
2 at least the following information:  
3       (a) The name of the applicant.  
4       (b) The name under which the applicant is doing  
5 business.  
6       (c) The business address at which the applicant sells  
7 assistive technology devices or in the case of a mobile  
8 assistive technology device business, the home address of the  
9 owner, if different from the business address.  
10       (d) Copies of all licenses, permits, and  
11 certifications obtained by the applicant or employees of the  
12 applicant.  
13       (2) Any assistive technology device dealer maintaining  
14 more than one place of business must register each separate  
15 location. In such case, fees shall be paid for each place of  
16 business.  
17       (3) Each initial application and renewal application  
18 for registration must be accompanied by a registration fee of  
19 \$125.  
20       (4) The department shall issue to each applicant a  
21 registration certificate. In the case of an applicant with  
22 more than one place of business, the department shall issue a  
23 registration certificate for each place of business. The  
24 certificate must show at least the name and address of the  
25 assistive technology device dealer and the registration number  
26 for that place of business. In the case of a mobile assistive  
27 technology device dealer, the certificate must show the home  
28 address of the owner, if different from the business address.  
29 The registration certificate must be posted in a conspicuous  
30 manner in the assistive technology device dealer's primary  
31 place of business.

1           (5) Any person applying for or renewing a local  
2 occupational license on or after July 1, 1999, to engage in  
3 selling assistive technology devices must exhibit an active  
4 registration certificate from the department before the local  
5 occupational license may be issued or renewed.

6           (6) Each registration must be renewed annually on or  
7 before the expiration date of the current registration. A late  
8 fee of \$25 shall be paid, in addition to the registration fee  
9 or any other penalty, for any registration renewal application  
10 that is received by the department after the expiration date  
11 of the current registration. The department may not issue the  
12 registration until all fees are paid.

13           (7) The department may deny or refuse to renew the  
14 registration of the assistive technology device dealer based  
15 upon a determination that the dealer, or any of its directors,  
16 officers, owners, or general partners:

17           (a) Have failed to meet the requirements for  
18 registration as provided in this part;

19           (b) Have not satisfied a civil fine, administrative  
20 fine, or other penalty arising out of any administrative or  
21 enforcement action brought by any governmental agency based  
22 upon conduct involving fraud, dishonest dealing, or any  
23 violation of this part;

24           (c) Have had against them any civil, criminal, or  
25 administrative adjudication in any jurisdiction, based upon  
26 conduct involving fraud, dishonest dealing, or any violation  
27 of this part; or

28           (d) Have had a judgment entered against them in any  
29 action brought by the department or the state attorney.

30           (8) All assistive technology device dealers shall  
31 allow department personnel to enter their place of business to

1 ascertain whether the registration certificate is current. If  
2 department personnel are refused entry or access to the  
3 premises, the department may seek injunctive relief in circuit  
4 court in order to obtain compliance with this subsection.

5 (9) The department may enter an order imposing one or  
6 more of the penalties set forth in subsection (13) if the  
7 department finds that an assistive technology device dealer:

8 (a) Violated or is operating in violation of any of  
9 the provisions of this part or of the rules adopted or orders  
10 issued thereunder;

11 (b) Made a material false statement in any  
12 application, document, or record required to be submitted or  
13 retained under this part;

14 (c) Refused or failed, or any of its principal  
15 officers have refused or failed, after notice, to produce any  
16 document or record or disclose any information required to be  
17 produced or disclosed under this part or the rules of the  
18 department;

19 (d) Made a material false statement in response to any  
20 request or investigation by the department, the Department of  
21 Legal Affairs, or the state attorney; or

22 (e) Has intentionally defrauded the public through  
23 dishonest or deceptive means.

24 (10) Upon a finding as set forth in subsection (12),  
25 the department may enter an order doing one or more of the  
26 following:

27 (a) Issuing a notice of noncompliance pursuant to s.  
28 120.695.

29 (b) Imposing an administrative fine not to exceed  
30 \$5,000 per violation for each act which constitutes a  
31 violation of this part or a rule or order.

1           (c) Directing that the assistive technology device  
2 dealer cease and desist specified activities.

3           (d) Refusing to register or revoking or suspending a  
4 registration.

5           (e) Placing the registrant on probation for a period  
6 of time, subject to such conditions as the department may  
7 specify.

8           (11) The administrative proceedings which could result  
9 in the entry of an order imposing any of the penalties  
10 specified in subsection (10) shall be conducted in accordance  
11 with chapter 120.

12           (12) The department or the state attorney, if a  
13 violation of this part occurs in his or her judicial circuit,  
14 shall be the enforcing authority for purposes of this part and  
15 may bring a civil action in circuit court for temporary or  
16 permanent injunctive relief and may seek other appropriate  
17 civil relief, including a civil penalty not to exceed \$5,000  
18 for each violation, restitution and damages for injured  
19 customers, court costs, and reasonable attorney's fees.

20           (13) The enforcing authority may terminate any  
21 investigation or action upon agreement by the offender to pay  
22 a stipulated civil penalty, to make restitution or pay damages  
23 to customers, or to satisfy any other relief authorized herein  
24 and requested by the department.

25           (14) The remedies provided for in this section shall  
26 be in addition to any other remedy provided by law.

27           (15) Fees and fines collected under this part by the  
28 Department of Agriculture and Consumer Services shall be  
29 deposited in the General Inspection Trust Fund.

30           (16) A \$2 fee shall be collected by the assistive  
31 technology device dealer or assistive technology device lessor

1 from the consumer at the consummation of the sale or lease of  
2 an assistive technology device. Such fees must be remitted  
3 monthly to the Department of Revenue. All fees, less the cost  
4 of administration, must be transferred monthly to the  
5 Department of Agriculture and Consumer Services for deposit  
6 into the General Inspection Trust Fund to carry out the  
7 provisions of s. 427.8041. The Department of Agriculture and  
8 Consumer Services may use an amount it determines necessary to  
9 purchase expert consultation services to assist in carrying  
10 out the provisions of s. 427.8041.

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

18 Section 5. This act shall take effect July 1, 1999.  
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SENATE SUMMARY

Provides that the consumer determines whether an assistive technology device is defective for purposes of an express warranty. Requires the manufacturer to make repairs necessary to conform the device to the warranty. Provides for notice of the dealer's and manufacturer's address and telephone number. Provides definitions. Provides procedures for filing claims. Authorizes consumers to submit disputes to the Department of Agriculture and Consumer Services. Authorizes the department to investigate complaints. Provides for registration of dealers and for fees and application procedures. Provides grounds for refusal or denial of registration. Requires dealers to allow department personnel to enter their place of business. Authorizes the department to impose penalties. Authorizes the department or the state attorney to bring civil actions for violations of the act. Provides for fees and fines collected to be deposited into the General Inspection Trust Fund. Authorizes dealers to collect a fee from the consumer at the time of sale or lease of a device. Allows consumers to bring a civil action for violation of the act.