

By Representative Kilmer

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 or the assistive technology device
9 dealer to make repairs necessary to conform the
10 device to the warranty; providing notice of the
11 dealer's and manufacturer's address and
12 telephone number; providing procedures for
13 filing claims; amending s. 427.804, F.S.;
14 allowing consumers to submit disputes to the
15 Department of Agriculture and Consumer
16 Services; authorizing the department to
17 investigate complaints; creating s. 427.8041,
18 F.S.; providing for registration of dealers and
19 for fees and application procedures; providing
20 grounds for refusal or denial of registration;
21 authorizing the department to impose penalties;
22 authorizing the department or the state
23 attorney to bring civil actions for violations
24 of the act; providing for fees and fines
25 collected to be deposited into the General
26 Inspection Trust Fund; authorizing dealers to
27 collect a fee from the consumer at the time of
28 sale or lease of a device; allowing consumers
29 to bring a civil action for violation of the
30 act; providing an effective date.
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1 Be It Enacted by the Legislature of the State of Florida:

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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, personal transfer systems,and specialty beds,
13 including a demonstrator, that a consumer purchases or accepts
14 transfer of in this state for use by a person with a
15 disability.

16 (2) "Person with a disability" means any person who
17 has one or more permanent physical or mental limitations that
18 restrict his or her ability to perform the normal activities
19 of daily living and impede his or her capacity to live
20 independently.

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

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

27 (5) "Collateral costs" means expenses incurred by a
28 consumer in connection with the repair of a nonconformity,
29 including the costs of obtaining an alternative assistive
30 technology device.

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

1 (a) The purchaser of an assistive technology device,
2 if the assistive technology device was purchased from an
3 assistive technology device dealer or manufacturer for
4 purposes other than resale.

5 (b) A person to whom the assistive technology device
6 is transferred for purposes other than resale, if the transfer
7 occurs before the expiration of an express warranty applicable
8 to the assistive technology device.

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

10 (d) A person who leases an assistive technology device
11 from an assistive technology device lessor under a written
12 lease.

13 (7) "Demonstrator" means an assistive technology
14 device used primarily for the purpose of demonstration to the
15 public.

16 (8) "Department" means the Department of Agriculture
17 and Consumer Services.

18 (9)~~(8)~~ "Early termination cost" means any expense or
19 obligation that an assistive technology device lessor incurs
20 as a result of both the termination of a written lease before
21 the termination date set forth in that lease and the return of
22 an assistive technology device to a manufacturer pursuant to
23 this section. The term includes a penalty for prepayment
24 under a financial arrangement.

25 (10)~~(9)~~ "Early termination saving" means any expense
26 or obligation that an assistive technology device lessor
27 avoids as a result of both the termination of a written lease
28 before the termination date set forth in the lease and the
29 return of an assistive technology device to a manufacturer
30 pursuant to this section. The term includes an interest
31 charge that the assistive technology device lessor would have

1 paid to finance the assistive technology device or, if the
2 assistive technology device lessor does not finance the
3 assistive technology device, the difference between the total
4 amount for which the lease obligates the consumer during the
5 period of the lease term remaining after the early termination
6 and the present value of that amount at the date of the early
7 termination.

8 (11)~~(10)~~ "Manufacturer" means a business entity that
9 manufactures or produces assistive technology devices for sale
10 and agents of that business entity, including an importer, a
11 distributor, a factory branch, a distributor branch, and any
12 warrantors of the manufacturer's assistive technology device,
13 ~~but not~~ including an assistive technology device dealer who is
14 authorized by the manufacturer to service the assistive
15 technology device.

16 (12)~~(11)~~ "Nonconformity" means a condition or defect
17 of an assistive technology device as determined by the
18 consumer which substantially impairs the use, value, or safety
19 of the device and which is covered by an express warranty
20 applicable to the assistive technology device, but does not
21 include a condition or defect that is the result of abuse,
22 neglect, or unauthorized modification or alteration of the
23 assistive technology device by a consumer.

24 (13)~~(12)~~ "Reasonable attempt to repair" means, within
25 the terms of an express warranty applicable to a new assistive
26 technology device:

27 (a) A maximum of three efforts by the manufacturer,
28 the assistive technology device lessor, or any of the
29 manufacturer's authorized assistive technology device dealers
30 to repair a nonconformity that is subject to repair under the
31 warranty; or

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

4 Section 2. Section 427.803, Florida Statutes, is
5 amended to read:

6 427.803 Duty of manufacturer and an assistive
7 technology device dealer to conform an assistive technology
8 device to the warranty ~~Express warranty.~~--

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

23 (2) If an assistive technology device does not conform
24 to the warranty and the consumer first reports the problem to
25 the manufacturer or the assistive technology device dealer
26 during the Assistive Technology Device Warranty Act rights
27 period, the manufacturer or the assistive technology device
28 dealer shall make such repairs as are necessary to conform the
29 device to the warranty, irrespective of whether such repairs
30 are made after the expiration of the Assistive Technology
31 Device Warranty Act rights period. Such repairs shall be at no

1 cost to the consumer if made during the term of the
2 manufacturer's written express warranty. Nothing in this
3 paragraph shall be construed to grant an extension of the
4 Assistive Technology Device Warranty Act rights period or to
5 expand the time within which a consumer must file a claim
6 under this chapter.

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

15 (4) At the time of acquisition, the manufacturer or
16 assistive technology device dealer shall inform the consumer
17 clearly and conspicuously in writing how and where to file a
18 claim with a certified procedure if such procedure has been
19 established by the manufacturer pursuant to s. 427.8041. The
20 manufacturer shall provide to the dealer and, at the time of
21 acquisition, the dealer shall provide to the consumer a
22 written statement that explains the consumer's rights under
23 this chapter. The written statement shall be prepared by the
24 department and shall contain a toll-free number for the
25 division that the consumer can contact to obtain information
26 regarding the consumer's rights and obligations under this
27 chapter or to commence arbitration. The consumer's signed
28 acknowledgment of receipt of materials required under this
29 subsection shall constitute prima facie evidence of compliance
30 by the manufacturer and dealer. The form of the
31 acknowledgments shall be approved by the department, and the

1 dealer shall maintain the consumer's signed acknowledgment for
2 3 years.

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

14 Section 3. Section 427.804, Florida Statutes, is
15 amended to read:

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

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

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

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

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

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

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

29 (4) To receive a comparable new assistive technology
30 device or a refund due under paragraph (2)(a), a consumer must
31 offer to the manufacturer of the assistive technology device

1 having the nonconformity to transfer possession of the
2 assistive technology device to the manufacturer. No later
3 than 30 days after the offer, the manufacturer shall provide
4 the consumer with the comparable assistive technology device
5 or refund. When the manufacturer provides the comparable
6 assistive technology device or refund, the consumer shall
7 return the assistive technology device having the
8 nonconformity to the manufacturer, along with any endorsements
9 necessary to transfer real possession to the manufacturer.

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

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

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

29 (8) An assistive technology device that is returned by
30 a consumer or assistive technology device lessor in this
31 state, or by a consumer or assistive technology device lessor

1 in another state under a similar law of that state, may not be
2 sold or leased again in this state, unless full disclosure of
3 the reasons for return is made to any prospective buyer or
4 lessee.

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

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

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

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

23 (13)~~(11)~~ This part does not limit rights or remedies
24 available to a consumer under any other law.

25 Section 4. Section 427.8041, Florida Statutes, is
26 created to read:

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

30 (1) Each technology device dealer engaged or
31 attempting to engage in the business of selling assistive

1 technology devices must register with the department prior to
2 doing business in this state. The application for registration
3 must be on a form provided by the department and must include
4 at least the following information:

5 (a) The name of the applicant.

6 (b) The name under which the applicant is doing
7 business.

8 (c) The business address at which the applicant sells
9 assistive technology devices or in the case of a mobile
10 assistive technology device business, the home address of the
11 owner, if different from the business address.

12 (d) Copies of all licenses, permits, and
13 certifications obtained by the applicant or employees of the
14 applicant.

15 (e) Number of employees which the applicant intends to
16 employ or which are currently employed.

17 (2) Any assistive technology device dealer maintaining
18 more than one place of business may file a single application
19 annually, which, along with the other information required by
20 this part, clearly indicates the location of and the
21 individual in charge of each facility or in the case of a
22 mobile assistive technology device business, the home address
23 of the owner, if different from the business address. In such
24 case, fees shall be paid for each place of business.

25 (3) Each application for registration must be
26 accompanied by a registration fee set forth as follows:

27 (a) If the place of business is not in the business of
28 primarily selling assistive technology devices: \$100.

29 (b) If the place of business is in the business of
30 primarily selling assistive technology devices: \$150.

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1 (4) No annual registration fee is required for any
2 assistive technology device dealer which has a local municipal
3 or county license issued pursuant to an ordinance containing
4 standards which the department determines are at least equal
5 to the requirements of this part.

6 (5) The department shall issue to each applicant a
7 registration certificate in the form and size as prescribed by
8 the department in accordance with s. 120.60. In the case of
9 an applicant with more than one place of business, the
10 department shall issue a registration certificate for each
11 place of business. The certificate must show at least the name
12 and address of the assistive technology device dealer and the
13 registration number for that place of business. In the case of
14 a mobile assistive technology device dealer, the certificate
15 must show the home address of the owner, if different from the
16 business address.

17 (6) Any affidavit of exemption proof of filing
18 certificate, issued by the department prior to July 1, 1999,
19 to an assistive technology device dealer who is not primarily
20 in business to sell assistive technology devices shall be
21 valid until its expiration.

22 (7) Any person applying for or renewing a local
23 occupational license on or after July 1, 1999, to engage in
24 selling assistive technology devices must exhibit an active
25 registration certificate or active affidavit of exemption
26 proof of filing certificate from the department before the
27 local occupational license may be issued or renewed.

28 (8) Each registration must be renewed annually on or
29 before the expiration date of the current registration. A late
30 fee of \$25 shall be paid, in addition to the registration fee
31 or any other penalty, for any registration renewal application

1 that is received by the department after the expiration date
2 of the current registration. The department may not issue the
3 registration until all fees are paid.

4 (9) No annual registration application or fee is
5 required for an individual with no employees and no
6 established place of business. In the case of a mobile
7 assistive technology device business, the established place of
8 business shall be considered the home address of the owner, if
9 different than the business address.

10 (10) The department may deny or refuse to renew the
11 registration of the assistive technology device business based
12 upon a determination that the business, or any of its
13 directors, officers, owners, or general partners:

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

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

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

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

27 (11) All assistive technology device dealers shall
28 allow department personnel to enter their place of business to
29 ascertain whether the registration certificate is current. If
30 department personnel are refused entry or access to the
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1 premises, the department may seek injunctive relief in circuit
2 court in order to obtain compliance with this subsection.

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

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

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

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

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

20 (e) Has intentionally defrauded the public through
21 dishonest or deceptive means.

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

25 (a) Issuing a notice of noncompliance pursuant to s.
26 120.695.

27 (b) Imposing an administrative fine not to exceed
28 \$1,000 per violation for each act which constitutes a
29 violation of this part or a rule or order.

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

1 (d) Refusing to register or revoking or suspending a
2 registration.

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

6 (14) The administrative proceedings which could result
7 in the entry of an order imposing any of the penalties
8 specified in subsection (13) shall be conducted in accordance
9 with chapter 120.

10 (15) The department or the state attorney, if a
11 violation of this part occurs in his or her judicial circuit,
12 shall be the enforcing authority for purposes of this part and
13 may bring a civil action in circuit court for temporary or
14 permanent injunctive relief and may seek other appropriate
15 civil relief, including a civil penalty not to exceed \$1,000
16 for each violation, restitution and damages for injured
17 customers, court costs, and reasonable attorney's fees.

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

23 (17) The remedies provided for in this section shall
24 be in addition to any other remedy provided by law.

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

28 (19) A \$2 fee shall be collected by an assistive
29 technology device dealer or by a person engaged in the
30 business of leasing assistive technology devices from the
31 consumer at the consummation of the sale of an assistive

1 technology device or at the time of entry into a lease
2 agreement for an assistive technology device. Such fees shall
3 be remitted to the department to carry out the provisions of
4 s. 427.8041. The department may use an amount it determines
5 necessary to purchase expert consultation services to assist
6 investigators to carry out the provisions of s. 427.8041.
7 (20) In addition to pursuing any other remedy, a
8 consumer may bring an action to recover damages for any injury
9 caused by a violation of this part. The court shall award a
10 consumer who prevails in such an action twice the amount of
11 any pecuniary loss, together with costs, disbursements, and
12 reasonable attorney's fees, and any equitable relief that the
13 court determines is appropriate.

14 Section 5. This act shall take effect July 1, 1999.

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17 SENATE SUMMARY

18 Provides that the consumer determines whether an
19 assistive technology device is defective for purposes of
20 an express warranty. Requires the manufacturer or the
21 assistive technology device dealer to make repairs
22 necessary to conform the device to the warranty. Provides
23 for notice of the dealer's and manufacturer's address and
24 telephone number. Provides definitions. Provides
25 procedures for filing claims. Authorizes consumers to
26 submit disputes to the Department of Agriculture and
27 Consumer Services. Authorizes the department to
28 investigate complaints. Provides for registration of
29 dealers and for fees and application procedures. Provides
30 grounds for refusal or denial of registration. Authorizes
31 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.

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