

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	

ORIGINAL STAMP BELOW

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

The Council for Competitive Commerce offered the following:

Amendment (with title amendment)

On page 2 of the bill, between lines 9 & 10,

insert:

Section 1. Subsection (8) of section 400.925, Florida Statutes, is amended to read:

400.925 Definitions.--As used in this part, the term:

(8) "Home medical equipment" includes any product as defined by the Federal Drug Administration's Drugs, Devices and Cosmetics Act, any products reimbursed under the Medicare Part B Durable Medical Equipment benefits, or any products reimbursed under the Florida Medicaid durable medical equipment program. Home medical equipment includes, but is not limited to, oxygen and related respiratory equipment. Home medical equipment includes customized wheelchairs and related seating and positioning, but does not include prosthetics or orthotics or any splints, braces, or aids custom fabricated by a licensed health care practitioner. Home medical equipment includes assistive technology devices, including manual

Amendment No. ____ (for drafter's use only)

1 wheelchairs, motorized wheelchairs, motorized scooters,
2 voice-synthesized computer modules, optical scanners, talking
3 software, braille printers, environmental control devices for
4 use by persons with quadriplegia, motor vehicle adaptive
5 transportation aids, devices that enable persons with severe
6 speech disabilities to in effect speak, personal transfer
7 systems, and specialty beds, including a demonstrator for use
8 by a person with a medical need.

9 Section 2. Section 427.802, Florida Statutes, is
10 amended to read:

11 427.802 Definitions.--As used in this part:

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

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

26 (2)(3) "Person with a disability" means any person who
27 has one or more permanent physical or mental limitations that
28 restrict his or her ability to perform the normal activities
29 of daily living and impede his or her capacity to live
30 independently.

31 (3)(4) "Assistive technology device dealer" means a

Amendment No. ____ (for drafter's use only)

1 ~~person who is business entity that is primarily~~ engaged in the
2 ~~business of~~ selling or leasing of assistive technology
3 devices. ~~As used in this subsection, the term "primarily"~~
4 ~~means no less than 30 percent of the business entity's gross~~
5 ~~sales in the previous fiscal year.~~

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

9 ~~(5)(6)~~ "Collateral costs" means expenses incurred by a
10 consumer in connection with the repair of a nonconformity,
11 including the costs of obtaining an alternative assistive
12 technology device.

13 ~~(6)(7)~~ "Consumer" means any of the following:

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

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

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

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

26 ~~(7)(8)~~ "Demonstrator" means an assistive technology
27 device used primarily for the purpose of demonstration to the
28 public.

29 ~~(9)~~ "Department" means the Department of Agriculture
30 and Consumer Services.

31 ~~(8)(10)~~ "Early termination cost" means any expense or

Amendment No. ____ (for drafter's use only)

1 obligation that an assistive technology device lessor incurs
2 as a result of both the termination of a written lease before
3 the termination date set forth in that lease and the return of
4 an assistive technology device to a manufacturer pursuant to
5 this section. The term includes a penalty for prepayment
6 under a financial arrangement.

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

21 (10)~~(12)~~ "Manufacturer" means a business entity that
22 manufactures or produces assistive technology devices for sale
23 and agents of that business entity, including an importer, a
24 distributor, a factory branch, a distributor branch, and any
25 warrantors of the manufacturer's assistive technology device,
26 but not including an assistive technology device dealer.

27 (11)~~(13)~~ "Nonconformity" means a condition or defect
28 of an assistive technology device which substantially impairs
29 the use, value, or safety of the device and which is covered
30 by an express warranty applicable to the assistive technology
31 device, but does not include a condition or defect that is the

Amendment No. ____ (for drafter's use only)

1 result of abuse, neglect, excessive wear, or unauthorized
2 modification or alteration of the assistive technology device
3 by a consumer.

4 (12)~~(14)~~ "Reasonable attempt to repair" means, within
5 the terms of an express warranty applicable to a new assistive
6 technology device:

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

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

15 Section 3. Section 427.803, Florida Statutes, is
16 amended to read:

17 427.803 Express Duty of manufacturer and an assistive
18 ~~technology device dealer to conform an assistive technology~~
19 ~~device to the warranty.--~~

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

Amendment No. ____ (for drafter's use only)

1 value of the assistive technology device to the consumer.

2 ~~(2) If an assistive technology device does not conform~~
3 ~~to the warranty and the consumer first reports the problem to~~
4 ~~the manufacturer during the Assistive Technology Device~~
5 ~~Warranty Act rights period, the manufacturer shall make such~~
6 ~~repairs as are necessary to conform the device to the~~
7 ~~warranty, irrespective of whether such repairs are made after~~
8 ~~the expiration of the Assistive Technology Device Warranty Act~~
9 ~~rights period. Such repairs shall be at no cost to the~~
10 ~~consumer if reported to the manufacturer or assistive~~
11 ~~technology device dealer during the Assistive Technology~~
12 ~~Device Warranty Act rights period. Nothing in this subsection~~
13 ~~shall be construed to grant an extension of the Assistive~~
14 ~~Technology Device Warranty Act rights period or to expand the~~
15 ~~time within which a consumer must file a complaint under this~~
16 ~~chapter.~~

17 ~~(3) Each manufacturer or assistive technology device~~
18 ~~dealer shall provide to its consumers conspicuous notice of~~
19 ~~the address and phone number for its zone, district, or~~
20 ~~regional office for this state in the written warranty or~~
21 ~~owner's manual. Within 10 days after the department's written~~
22 ~~request, a manufacturer shall forward to the department a copy~~
23 ~~of the owner's manual and any written warranty for each make~~
24 ~~and model of assistive technology device that it sells in this~~
25 ~~state.~~

26 ~~(4) The manufacturer shall provide to the assistive~~
27 ~~technology device dealer and, at the time of acquisition, the~~
28 ~~assistive technology device dealer shall provide to the~~
29 ~~consumer a written statement that explains the consumer's~~
30 ~~rights under this chapter. The written statement shall be~~
31 ~~prepared by the department and shall contain a toll-free~~

Amendment No. ____ (for drafter's use only)

1 ~~number for the department that the consumer can contact to~~
2 ~~obtain information regarding the consumer's rights and~~
3 ~~obligations under this chapter or to commence arbitration. The~~
4 ~~consumer's signed acknowledgment of receipt of materials~~
5 ~~required under this subsection shall constitute prima facie~~
6 ~~evidence of compliance by the manufacturer and assistive~~
7 ~~technology device dealer. The form of the acknowledgments~~
8 ~~shall be approved by the department, and the assistive~~
9 ~~technology device dealer shall maintain the consumer's signed~~
10 ~~acknowledgment for 3 years.~~

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

22 Section 4. Section 427.804, Florida Statutes, is
23 amended to read:

24 427.804 Repair of nonconforming assistive technology
25 devices; refund or replacement of devices after attempt to
26 repair; sale or lease of returned device; arbitration;
27 ~~investigation~~ limitation of rights.--

28 (1) If a new assistive technology device does not
29 conform to an applicable express warranty and the consumer
30 reports the nonconformity to the manufacturer, the assistive
31 technology device lessor, or any of the manufacturer's

Amendment No. ____ (for drafter's use only)

1 authorized assistive technology device dealers and makes the
2 assistive technology device available for repair within 1 year
3 after first delivery or return of the assistive technology
4 device to the consumer, the nonconformity must be repaired at
5 no charge to the consumer.

6 (2) If, after a reasonable attempt to repair, the
7 nonconformity is not repaired, the manufacturer, at the
8 direction of a consumer as defined in s. 427.802(6)(~~7~~)(a)-(c),
9 must do one of the following:

10 (a) Accept return of the assistive technology device
11 and replace the assistive technology device with a comparable
12 new assistive technology device and refund any collateral
13 costs.

14 (b) Accept return of the assistive technology device
15 and refund to the consumer and to any holder of a perfected
16 security interest in the consumer's assistive technology
17 device, as the interest may appear, the full purchase price
18 plus any finance charge amount paid by the consumer at the
19 point of sale, and collateral costs.

20 (c) With respect to a consumer as defined in s.
21 427.802(6)(~~7~~)(d), accept return of the assistive technology
22 device, refund to the assistive technology device lessor and
23 to any holder of a perfected security interest in the
24 assistive technology device, as the interest may appear, the
25 current value of the written lease, and refund to the consumer
26 the amount that the consumer paid under the written lease plus
27 any collateral costs.

28 (3) The current value of the written lease equals the
29 total amount for which the lease obligates the consumer during
30 the period of the lease remaining after its early termination
31 plus the assistive technology device dealer's early

Amendment No. ____ (for drafter's use only)

1 termination costs and the value of the assistive technology
2 device at the lease expiration date if the lease sets forth
3 the value, less the assistive technology device lessor's early
4 termination savings.

5 (4) To receive a comparable new assistive technology
6 device or a refund due under paragraph (2)(a), a consumer must
7 offer to the manufacturer of the assistive technology device
8 having the nonconformity to transfer possession of the
9 assistive technology device to the manufacturer. No later
10 than 30 days after the offer, the manufacturer shall provide
11 the consumer with the comparable assistive technology device
12 or refund. When the manufacturer provides the comparable
13 assistive technology device or refund, the consumer shall
14 return the assistive technology device having the
15 nonconformity to the manufacturer, along with any endorsements
16 necessary to transfer real possession to the manufacturer.

17 (5) To receive a refund due under paragraph (2)(b), a
18 consumer must offer to return the assistive technology device
19 having the nonconformity to its manufacturer. No later than
20 30 days after the offer, the manufacturer shall provide the
21 refund to the consumer who paid for, or the provider who
22 billed a third party payor source for, the assistive
23 technology device. When the manufacturer provides the refund,
24 the consumer shall return to the manufacturer the assistive
25 technology device having the nonconformity.

26 (6) To receive a refund due under paragraph (2)(c), an
27 assistive technology device lessor must offer to transfer
28 possession of the assistive technology device having the
29 nonconformity to its manufacturer. No later than 30 days
30 after the offer, the manufacturer shall provide the refund to
31 the assistive technology device lessor. When the manufacturer

Amendment No. ____ (for drafter's use only)

1 provides the refund, the assistive technology device lessor
2 shall provide to the manufacturer any endorsements necessary
3 to transfer legal possession to the manufacturer.

4 (7) A person may not enforce the lease against the
5 consumer after the consumer receives a refund due under
6 paragraph (2)(c).

7 (8) An assistive technology device that is returned by
8 a consumer or assistive technology device lessor in this
9 state, or by a consumer or assistive technology device lessor
10 in another state under a similar law of that state, may not be
11 sold or leased again in this state, unless full disclosure of
12 the reasons for return is made to any prospective buyer or
13 lessee.

14 ~~(9) Each consumer may submit any dispute arising under~~
15 ~~this part to the department by completing a complaint form.~~
16 ~~The department may investigate the complaint on behalf of the~~
17 ~~consumer if reasonable evidence warrants such an action.~~

18 ~~(10) The department shall process consumer complaints~~
19 ~~pursuant to s. 570.544.~~

20 (9)~~(11)~~ Each consumer may submit any dispute arising
21 under this part to an alternative arbitration mechanism
22 established pursuant to chapter 682. Upon notice by the
23 consumer, all manufacturers must submit to such alternative
24 arbitration.

25 (10)~~(12)~~ Such alternative arbitration must be
26 conducted by a professional arbitrator or arbitration firm
27 appointed under chapter 682 and any applicable rules. These
28 procedures must provide for the personal objectivity of the
29 arbitrators and for the right of each party to present its
30 case, to be in attendance during any presentation made by the
31 other party, and to rebut or refute such a presentation.

Amendment No. ____ (for drafter's use only)

1 ~~(11)~~(13) This part does not limit rights or remedies
2 available to a consumer under any other law.

3 Section 5. Section 427.8041, Florida Statutes, is
4 repealed.

5
6
7 ===== T I T L E A M E N D M E N T =====

8 And the title is amended as follows:

9 On page 1, line 2 after the semicolon,

10
11 insert:

12 amending s. 400.925, F.S.; revising definitions
13 with respect to home medical equipment;
14 amending s. 427.802, F.S.; revising definitions
15 with respect to home medical equipment
16 providers; amending s. 427.803, F.S.; revising
17 warranty requirements under the Assistive
18 Technology Device Warranty Act; providing for
19 express warranties; amending s. 427.804, F.S.;
20 conforming references; deleting investigation
21 and complaint processing requirements of the
22 Department of Agriculture and Consumer
23 Services; repealing s. 427.8041, F.S., relating
24 to regulation requirements with respect to
25 assistive technology device dealers;

26
27
28
29
30
31