

**STORAGE NAME:** h1917.ag.doc  
**DATE:** April 11, 2001

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
AGRICULTURE & CONSUMER AFFAIRS  
ANALYSIS**

**BILL #:** HB 1917 (PCB AG 01-04)  
**RELATING TO:** Assistive technology  
**SPONSOR(S):** Committee on Agriculture & Consumer Affairs and Representative Spratt  
**TIED BILL(S):** none

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) AGRICULTURE & CONSUMER AFFAIRS (CCC) YEAS 8 NAYS 0
  - (2)
  - (3)
  - (4)
  - (5)
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I. SUMMARY:

HB 1917 revises the Assistive Technology Device Warranty Act (part III, chapter 427, F.S.) to return it to pre-1999 status. Assistive technology device warranty protections are preserved; however, regulatory activities of the Department of Agriculture and Consumer Services (department) relating to assistive technology devices are removed, including the \$300 registration fee. The bill also revises the definition of "home medical equipment" in s. 400.925(8), F.S., to include specific assistive technology devices.

The department uses 2 FTE to implement the Assistive Technology Device Warranty Act. Repeal of this act reduces the department's budget by 2 positions and \$102,553 from the General Inspection Trust Fund.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

**Background:** The Legislature passed the Assistive Technology Device Warranty Act (the Warranty Act) in 1997. The Warranty Act then provided only a minimum mandatory warranty for a specific list of items that help the disabled in their everyday lives, including wheelchairs, specialty beds, and some communication devices. The 1999 Legislature amended the Warranty Act adding a consumer protection program to the existing minimum mandatory warranty law. The consumer protection provisions require certain sellers of assistive technology devices to register as dealers. Dealers pay a \$300 annual registration fee and must collect and remit a \$2.00 fee on every consumer transaction. Further, dealers and manufacturers have certain obligations when they attempt to repair faulty devices.

Also in 1999, the Legislature passed the Home Medical Equipment Providers Act (the Provider Act), part X, chapter 400, F.S. The Provider Act is a complete professional licensure act. The Provider Act was enacted pursuant to the recommendations of the Thirteenth Statewide Grand Jury to help fight Medicaid/Medicare fraud. Applicants for licensure as a provider must meet statutory requirements, pass a background check, pay a \$300 processing fee, a \$400 inspection fee, and a \$300 biennial renewal fee.

The Home Medical Equipment Providers object to having to pay to register as dealers under the Warranty Act in addition to the burdens of licensure. Other aspects of the Warranty Act are also subject to criticism. For example, the numbers of non-exempt businesses registering as dealers under the Warranty Act are insufficient to fully fund the program through fees. Also, the consumer protection provisions of the Warranty Act appear to be duplicative of provisions contained within the Provider Act. Finally, federal law hinders provisions of the Warranty Act in two circumstances. First, the \$2.00 consumer transaction fee is not permitted to be collected when Medicaid or Medicare funds the purchase. Second, a refund to consumers, as is sometimes required by the Warranty Act, is problematic when federal funds are involved.

C. EFFECT OF PROPOSED CHANGES:

Please see Section-by-Section Analysis.

D. SECTION-BY-SECTION ANALYSIS:

**Section 1:** Amends subsection (8) of section 400.925, F.S., to add specified assistive technology devices, including manual wheelchairs, motorized wheelchairs, motorized scooters, voice-

synthesized computer modules, optical scanners, talking software, braille printers, environmental control devices for use by persons with quadriplegia, motor vehicle adaptive transportation aids, devices that enable persons with severe speech disabilities to in effect speak, personal transfer systems, and specialty beds, including a demonstrator, that a consumer purchases or accepts transfer of in the state for use by a person with a disability to the definition of "home medical equipment".

**Section 2:** Amends definitions in section 427.802, F.S., relating to the warranty act rights period and assistive technology device dealers. The definition relating to the Department of Agriculture and Consumer Services (department) is deleted.

**Section 3:** Amends section 427.803, F.S., to remove duties of manufacturers and dealers and replace those duties with express warranty information.

**Section 4.** Amends section 427.804, F.S., to delete investigation and complaint processing duties of the department and clarify who receives manufacturers' refunds.

**Section 5.** Repeals section 427.804, F.S., to eliminate the registration requirement for assistive technology device dealers.

**Section 6:** Provides an effective date of July 1, 2001.

### III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

N/A

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

The Department of Agriculture and Consumer Services (the department) uses 2 FTE to implement the Assistive Technology Device Warranty Act. Repeal of this act reduces the department's budget by 2 positions and \$102,553 from the General Inspection Trust Fund.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce any state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON AGRICULTURE & CONSUMER AFFAIRS:

Prepared by:

Staff Director:

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Susan D. Reese

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