

By the Committee on Agriculture & Consumer Affairs and
Representative Spratt

1 A bill to be entitled
2 An act relating to assistive technology;
3 amending s. 400.925, F.S.; revising definitions
4 with respect to home medical equipment;
5 amending s. 427.802, F.S.; revising definitions
6 with respect to home medical equipment
7 providers; amending s. 427.803, F.S.; revising
8 warranty requirements under the Assistive
9 Technology Device Warranty Act; providing for
10 express warranties; amending s. 427.804, F.S.;
11 conforming references; deleting investigation
12 and complaint processing requirements of the
13 Department of Agriculture and Consumer
14 Services; repealing s. 427.8041, F.S., relating
15 to regulation requirements with respect to
16 assistive technology device dealers; providing
17 an effective date.

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

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

23 400.925 Definitions.--As used in this part, the term:
24 (8) "Home medical equipment" includes any product as
25 defined by the Federal Drug Administration's Drugs, Devices
26 and Cosmetics Act, any products reimbursed under the Medicare
27 Part B Durable Medical Equipment benefits, or any products
28 reimbursed under the Florida Medicaid durable medical
29 equipment program. Home medical equipment includes, but is not
30 limited to, oxygen and related respiratory equipment. Home
31 medical equipment includes customized wheelchairs and related

1 seating and positioning, but does not include prosthetics or
2 orthotics or any splints, braces, or aids custom fabricated by
3 a licensed health care practitioner. Home medical equipment
4 includes assistive technology devices, including manual
5 wheelchairs, motorized wheelchairs, motorized scooters,
6 voice-synthesized computer modules, optical scanners, talking
7 software, braille printers, environmental control devices for
8 use by persons with quadriplegia, motor vehicle adaptive
9 transportation aids, devices that enable persons with severe
10 speech disabilities to in effect speak, personal transfer
11 systems, and specialty beds, including a demonstrator, that a
12 consumer purchases or accepts transfer of in the state for use
13 by a person with a disability.

14 Section 2. Section 427.802, Florida Statutes, is
15 amended to read:

16 427.802 Definitions.--As used in this part:

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

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

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1 (2)~~(3)~~ "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)~~(4)~~ "Assistive technology device dealer" means a
7 person who is ~~business entity that is primarily~~ engaged in the
8 business of selling or leasing of assistive technology
9 devices. ~~As used in this subsection, the term "primarily"~~
10 ~~means no less than 30 percent of the business entity's gross~~
11 ~~sales in the previous fiscal year.~~

12 (4)~~(5)~~ "Assistive technology device lessor" means a
13 person who leases an assistive technology device to a
14 consumer, or holds the lessor's rights, under a written lease.

15 (5)~~(6)~~ "Collateral costs" means expenses incurred by a
16 consumer in connection with the repair of a nonconformity,
17 including the costs of obtaining an alternative assistive
18 technology device.

19 (6)~~(7)~~ "Consumer" means any of the following:

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

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

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

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

1 (7)~~(8)~~ "Demonstrator" means an assistive technology
2 device used primarily for the purpose of demonstration to the
3 public.

4 ~~(9) "Department" means the Department of Agriculture~~
5 ~~and Consumer Services.~~

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

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

27 (10)~~(12)~~ "Manufacturer" means a business entity that
28 manufactures or produces assistive technology devices for sale
29 and agents of that business entity, including an importer, a
30 distributor, a factory branch, a distributor branch, and any
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1 warrantors of the manufacturer's assistive technology device,
2 but not including an assistive technology device dealer.

3 (11)~~(13)~~ "Nonconformity" means a condition or defect
4 of an assistive technology device which substantially impairs
5 the use, value, or safety of the device and which is covered
6 by an express warranty applicable to the assistive technology
7 device, but does not include a condition or defect that is the
8 result of abuse, neglect, excessive wear, or unauthorized
9 modification or alteration of the assistive technology device
10 by a consumer.

11 (12)~~(14)~~ "Reasonable attempt to repair" means, within
12 the terms of an express warranty applicable to a new assistive
13 technology device:

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

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

22 Section 3. Section 427.803, Florida Statutes, is
23 amended to read:

24 427.803 Express Duty of manufacturer and an assistive
25 ~~technology device dealer to conform an assistive technology~~
26 ~~device to the warranty.--~~

27 ~~(1)~~ A manufacturer who sells a new assistive
28 technology device to a consumer, either directly or through an
29 assistive technology device dealer, shall furnish the consumer
30 with an express warranty for the assistive technology device.
31 The duration of the express warranty must be at least 1 year

1 after first delivery of the assistive technology device to the
2 consumer. In the absence of an express warranty from the
3 manufacturer, the manufacturer is considered to have expressly
4 warranted to the consumer of an assistive technology device
5 that, for a period of 1 year after the date of first delivery
6 to the consumer, the assistive technology device will be free
7 from any condition or defect that substantially impairs the
8 value of the assistive technology device to the consumer.

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

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

3 ~~(4) The manufacturer shall provide to the assistive~~
4 ~~technology device dealer and, at the time of acquisition, the~~
5 ~~assistive technology device dealer shall provide to the~~
6 ~~consumer a written statement that explains the consumer's~~
7 ~~rights under this chapter. The written statement shall be~~
8 ~~prepared by the department and shall contain a toll-free~~
9 ~~number for the department that the consumer can contact to~~
10 ~~obtain information regarding the consumer's rights and~~
11 ~~obligations under this chapter or to commence arbitration. The~~
12 ~~consumer's signed acknowledgment of receipt of materials~~
13 ~~required under this subsection shall constitute prima facie~~
14 ~~evidence of compliance by the manufacturer and assistive~~
15 ~~technology device dealer. The form of the acknowledgments~~
16 ~~shall be approved by the department, and the assistive~~
17 ~~technology device dealer shall maintain the consumer's signed~~
18 ~~acknowledgment for 3 years.~~

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

30 Section 4. Section 427.804, Florida Statutes, is
31 amended to read:

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

1 assistive technology device, as the interest may appear, the
2 current value of the written lease, and refund to the consumer
3 the amount that the consumer paid under the written lease plus
4 any collateral costs.

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

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

25 (5) To receive a refund due under paragraph (2)(b), a
26 consumer must offer to return the assistive technology device
27 having the nonconformity to its manufacturer. No later than
28 30 days after the offer, the manufacturer shall provide the
29 refund to the consumer who paid for, or the provider who
30 billed a third party payor source for, the assistive
31 technology device. When the manufacturer provides the refund,

1 the consumer shall return to the manufacturer the assistive
2 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 the department by completing a complaint form.~~
24 ~~The department may investigate the complaint on behalf of the~~
25 ~~consumer if reasonable evidence warrants such an action.~~

26 ~~(10) The department shall process consumer complaints~~
27 ~~pursuant to s. 570.544.~~

28 (9)~~(11)~~ Each consumer may submit any dispute arising
29 under this part to an alternative arbitration mechanism
30 established pursuant to chapter 682. Upon notice by the

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1 consumer, all manufacturers must submit to such alternative
2 arbitration.
3 (10)~~(12)~~ Such alternative arbitration must be
4 conducted by a professional arbitrator or arbitration firm
5 appointed under chapter 682 and any applicable rules. These
6 procedures must provide for the personal objectivity of the
7 arbitrators and for the right of each party to present its
8 case, to be in attendance during any presentation made by the
9 other party, and to rebut or refute such a presentation.
10 (11)~~(13)~~ This part does not limit rights or remedies
11 available to a consumer under any other law.

12 Section 5. Section 427.8041, Florida Statutes, is
13 repealed.

14 Section 6. This act shall take effect July 1, 2001.

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17 HOUSE SUMMARY

18 Revises provisions of the Assistive Technology Device
19 Warranty Act to revise definitions and warranty
20 requirements, to delete investigation and complaint
21 processing requirements of the Department of Agriculture
22 and Consumer Services, and to eliminate registration
23 requirement for assistive technology device dealers. See
24 bill for details.
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