

1 HB139
2 189027-2
3 By Representative Johnson (K)
4 RFD: Commerce and Small Business
5 First Read: 09-JAN-18

1 ~~b. Hearing aids, telephone communication devices for~~
2 ~~the deaf, assistive listening devices, and other aids that~~
3 ~~enhance the ability to hear of an individual.~~

4 c. 2. Voice synthesized computer modules, optical
5 scanners, talking software, Braille printers, and other
6 devices that enhance the ability of a sight impaired
7 individual to communicate.

8 b. The term does not include hearing aids, telephone
9 communication devices for the deaf, assistive listening
10 devices, or other aids that enhance the ability of an
11 individual to hear.

12 (2) ASSISTIVE DEVICE DEALER. A person who is in the
13 business of selling assistive devices.

14 (3) ASSISTIVE DEVICE LESSOR. A person who leases
15 assistive devices to consumers, or who holds the rights of a
16 lessor, under a written lease. Any assistive device lessor who
17 is also an assistive device dealer shall fulfill all
18 obligations owed to the consumer pursuant to this act as both
19 an assistive device dealer and lessor.

20 (4) COLLATERAL COSTS. Expenses incurred by a
21 consumer in connection with the repair of a nonconformity,
22 including the cost of sales tax and of obtaining an
23 alternative assistive device.

24 (5) CONSUMER or THE AGENCY. Any of the following:

25 a. The purchaser of an assistive device, including
26 government entities purchasing a device for the benefit of an
27 individual and the individual for whose benefit the device is

1 purchased, if the assistive device was purchased from an
2 assistive device dealer or manufacturer for purposes other
3 than resale.

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

8 c. A person who may enforce the warranty.

9 d. A person who leases an assistive device from an
10 assistive device lessor under a written lease.

11 e. Any person, with authority, acting on behalf of
12 the consumer or the agency.

13 (6) DEMONSTRATOR. An assistive device used primarily
14 for the purpose of demonstration to the public.

15 Section 3. (a) If an assistive device covered by an
16 applicable express warranty exhibits a nonconformity, the
17 consumer or the agency shall do both of the following:

18 (1) Report the nonconformity to the manufacturer,
19 the assistive device lessor, or any of the authorized
20 assistive device dealers of the manufacturer.

21 (2) Make the assistive device available for repair
22 within an applicable express warranty period.

23 (b) Once a nonconformity is reported and the
24 assistive device is made available for repair, the
25 manufacturer, the assistive device lessor, or any of the
26 authorized assistive device dealers of the manufacturer shall
27 make an attempt to repair the nonconformity.

1 Section 4. (a) If the manufacturer, dealer, or
2 lessor either refuses to accept a device which a consumer
3 makes available for repairs or makes a reasonable attempt to
4 repair, but the nonconformity is not actually repaired, the
5 manufacturer shall be required to provide a refund or
6 replacement of the device, whichever is requested by the
7 consumer or the agency, as follows:

8 (1) If the consumer or the agency requests a refund
9 for a device which was purchased, the manufacturer shall
10 refund to the consumer and to any holder of a perfected
11 security interest in the assistive device of the consumer, as
12 their interest may appear, the full purchase price plus any
13 finance charge or sales tax paid by the consumer at the point
14 of sale and any collateral costs incurred by the consumer,
15 less a reasonable allowance for use. When the manufacturer
16 provides the refund, the consumer or the agency shall return
17 the assistive device having the nonconformity to the
18 manufacturer, along with any endorsements necessary to
19 transfer legal possession to the manufacturer.

20 (2) If the consumer or the agency requests a refund
21 for a device which was leased, the manufacturer shall refund
22 to the assistive device lessor and to any holder of a
23 perfected security interest in the assistive device, as their
24 interest may appear, the current value of the written lease
25 and refund to the consumer the amount that the consumer paid
26 under the written lease plus any collateral costs, less a
27 reasonable allowance for use. The manufacturer shall have a

1 cause of action against the dealer or lessor for reimbursement
2 of any amount that it pays to a consumer which exceeds the net
3 price received by the manufacturer for the assistive device.
4 When the manufacturer provides the refund, the assistive
5 device lessor shall provide to the manufacturer any
6 endorsements necessary to transfer legal possession to the
7 manufacturer.

8 (3) If the consumer elects to receive a comparable
9 new assistive device, the manufacturer shall provide the
10 consumer or the agency with the comparable new assistive
11 device no later than 30 days after the consumer or lessor
12 offers to transfer possession of the assistive device having
13 the nonconformity to the manufacturer.

14 (b) This section regarding the duty of a
15 manufacturer shall apply for the period of the express
16 warranty of the manufacturer.

17 Section 5. This act does not apply to ~~either~~ any of
18 the following:

19 (1) Disposable assistive devices with a useful life
20 of one year or less.

21 (2) Batteries or nonfunctional accessories.

22 (3) Assistive devices dispensed, sold, injected, or
23 implanted by a licensed physician, licensed physician
24 assistant, or any individual working with or for the practice
25 of a licensed physician, employer, or other business entity
26 that is primarily engaged in the practice of medicine, whether
27 or not the individual is working in a collaborative practice

1 agreement as an agent, employee, or independent contractor.
2 The exemption provided by this subdivision shall not apply to
3 an assistive device simply because it was prescribed or
4 ordered by a licensed physician or other health care
5 practitioner.

6 Section 6. (a) This act shall not limit rights or
7 remedies available to a consumer under any other law.

8 (b) Any waiver of rights by a consumer under this
9 act shall be void.

10 (c) In addition to pursuing any other remedy, a
11 consumer may bring an action to recover any damages caused by
12 ~~a violation of this act within one year of the violation. The~~
13 ~~court shall award a consumer who prevails in such an action no~~
14 ~~more than twice the amount of any pecuniary loss, together a~~
15 violation of this act within four years after the cause of
16 action has accrued. By the original agreement, the parties may
17 reduce the period of limitation to not less than one year but
18 may not extend the period of limitation. The court may award a
19 consumer who prevails up to treble damages, together with
20 costs, disbursements, and reasonable attorney fees, and any
21 equitable relief that the court determines is appropriate.

22 Section 7. This act shall become effective on the
23 first day of the third month following its passage and
24 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Commerce and
Small Business..... 09-JAN-18

Read for the second time and placed
on the calendar 3 amendments 25-JAN-18

Read for the third time and passed
as amended..... 01-MAR-18

Yeas 97, Nays 0, Abstains 1

Jeff Woodard
Clerk