

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

2
3
4
5
6
7
8 SYNOPSIS: Existing law does not provide for new
9 assistive devices warranties.

10 This bill would establish the New Assistive
11 Devices Warranty Act.

12 This bill would provide for definitions,
13 assistive device replacement or refund, and
14 remedies.

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT
19

20 To establish the New Assistive Devices Warranty Act;
21 to provide for definitions; to provide for assistive device
22 replacement or refund; and to provide for remedies.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. This act shall be known and may be cited
25 as the New Assistive Devices Warranty Act.

26 Section 2. For purposes of this act, the following
27 terms shall have the following meanings:

1 (1) ASSISTIVE DEVICE. Any device, costing five
2 hundred dollars (\$500) or more, including a demonstrator, that
3 a consumer purchases or accepts transfer of in this state
4 which is used for a major life activity. The term includes,
5 but is not limited to, all of the following:

6 a. Manual wheelchairs, motorized wheelchairs,
7 motorized scooters, and other aids that enhance the mobility
8 of an individual.

9 b. Hearing aids, telephone communication devices for
10 the deaf, assistive listening devices, and other aids that
11 enhance the ability to hear of an individual.

12 c. Voice synthesized computer modules, optical
13 scanners, talking software, Braille printers, and other
14 devices that enhance the ability of a sight impaired
15 individual to communicate.

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

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

24 (4) COLLATERAL COSTS. Expenses incurred by a
25 consumer in connection with the repair of a nonconformity,
26 including the cost of sales tax and of obtaining an
27 alternative assistive device.

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

2 a. The purchaser of an assistive device, including
3 government entities purchasing a device for the benefit of an
4 individual and the individual for whose benefit the device is
5 purchased, if the assistive device was purchased from an
6 assistive device dealer or manufacturer for purposes other
7 than resale.

8 b. A person to whom the assistive device is
9 transferred for purposes other than resale, if the transfer
10 occurs before the expiration of an express warranty applicable
11 to the assistive device.

12 c. A person who may enforce the warranty.

13 d. A person who leases an assistive device from an
14 assistive device lessor under a written lease.

15 e. Any person, with authority, acting on behalf of
16 the consumer or the agency.

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

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

22 (1) Report the nonconformity to the manufacturer,
23 the assistive device lessor, or any of the authorized
24 assistive device dealers of the manufacturer.

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

1 (b) Once a nonconformity is reported and the
2 assistive device is made available for repair, the
3 manufacturer, the assistive device lessor, or any of the
4 authorized assistive device dealers of the manufacturer shall
5 make an attempt to repair the nonconformity.

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

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

25 (2) If the consumer or the agency requests a refund
26 for a device which was leased, the manufacturer shall refund
27 to the assistive device lessor and to any holder of a

1 perfected security interest in the assistive device, as their
2 interest may appear, the current value of the written lease
3 and refund to the consumer the amount that the consumer paid
4 under the written lease plus any collateral costs, less a
5 reasonable allowance for use. The manufacturer shall have a
6 cause of action against the dealer or lessor for reimbursement
7 of any amount that it pays to a consumer which exceeds the net
8 price received by the manufacturer for the assistive device.
9 When the manufacturer provides the refund, the assistive
10 device lessor shall provide to the manufacturer any
11 endorsements necessary to transfer legal possession to the
12 manufacturer.

13 (3) If the consumer elects to receive a comparable
14 new assistive device, the manufacturer shall provide the
15 consumer or the agency with the comparable new assistive
16 device no later than 30 days after the consumer or lessor
17 offers to transfer possession of the assistive device having
18 the nonconformity to the manufacturer.

19 (b) This section regarding the duty of a
20 manufacturer shall apply for the period of the express
21 warranty of the manufacturer.

22 Section 5. This act does not apply to either of the
23 following:

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

26 (2) Batteries or nonfunctional accessories.

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

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

5 (c) In addition to pursuing any other remedy, a
6 consumer may bring an action to recover any damages caused by
7 a violation of this act within one year of the violation. The
8 court shall award a consumer who prevails in such an action no
9 more than twice the amount of any pecuniary loss, together
10 with costs, disbursements, and reasonable attorney fees, and
11 any equitable relief that the court determines is appropriate.

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