

1 SB437
2 138967-1
3 By Senator Bedford
4 RFD: Children, Youth Affairs, and Human Resources
5 First Read: 20-MAR-12

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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
21 Act"; to provide for definitions; to provide for assistive
22 device 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 cited as the
25 "New Assistive Devices Warranty Act."

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

1 (1) ASSISTIVE DEVICE. Any device, including a
2 demonstrator, that a consumer purchases or accepts transfer of
3 in this state which is used for a major life activity which
4 includes, but is not limited to, the following:

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

8 b. Hearing aids, telephone communication devices for
9 the deaf (TDD), assistive listening devices, and other aids
10 that enhance an individual's ability to hear.

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

15 d. Any other assistive device that enables a person
16 with a disability to communicate, see, hear, or maneuver, but
17 does not include batteries or nonfunctional accessories.

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

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

26 (4) COLLATERAL COSTS. Expenses incurred by a
27 consumer in connection with the repair of a nonconformity,

1 including the cost of sales tax and of obtaining an
2 alternative assistive device.

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

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

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

14 c. A person who may enforce the warranty.

15 d. A person who leases an assistive device from an
16 assistive device lessor under a written lease.

17 e. Any person, with authority, acting on behalf of
18 the consumer or the agency.

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

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

24 (1) Report the nonconformity to the manufacturer,
25 the assistive device lessor, or any of the manufacturer's
26 authorized device dealers.

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

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

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

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

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

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

22 (b) This section regarding a manufacturer's duty
23 shall apply for the period of the manufacturer's express
24 warranty.

25 Section 5. (a) This act shall not limit rights or
26 remedies available to a consumer under any other law.

1 (b) Any waiver of rights by a consumer under the
2 provisions of this act shall be void.

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

10 Section 6. This act shall become effective on the
11 first day of the third month following its passage and
12 approval by the Governor, or its otherwise becoming law.