

CHAPTER 97-47

Senate Bill No. 486

An act relating to assistive technology devices; creating part III of chapter 427, F.S.; creating the "Assistive Technology Device Warranty Act"; providing definitions; requiring an express warranty for manufacturers who sell assistive technology devices; requiring refund, replacement, or repair of nonconforming assistive technology devices; requiring disclosure of reasons for return before resale or release; allowing consumers the option of submitting disputes to arbitration; permitting action for damages for violation of the act; providing an effective date.

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

Section 1. Part III of chapter 427, Florida Statutes, consisting of sections 427.801, 427.802, 427.803, 427.804, 427.805, and 427.806, is created to read:

427.801 Short title.—This part may be cited as the "Assistive Technology Device Warranty Act."

427.802 Definitions.—As used in this part:

(1) "Assistive technology devices" means manual wheelchairs, motorized wheelchairs, motorized scooters, voice-synthesized computer modules, optical scanners, talking software, braille printers, environmental control devices for use by a person with quadriplegia, motor vehicle adaptive transportation aids, and specialty beds, including a demonstrator, that a consumer purchases or accepts transfer of in this state for use by a person with a disability.

(2) "Person with a disability" means any person who has one or more permanent physical or mental limitations that restrict his or her ability to perform the normal activities of daily living and impede his or her capacity to live independently.

(3) "Assistive technology device dealer" means a person who is in the business of selling assistive technology devices.

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

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

(6) "Consumer" means any of the following:

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

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

(c) A person who may enforce the warranty.

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

(7) “Demonstrator” means an assistive technology device used primarily for the purpose of demonstration to the public.

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

(9) “Early termination saving” means any expense or obligation that an assistive technology device lessor avoids as a result of both the termination of a written lease before the termination date set forth in the lease and the return of an assistive technology device to a manufacturer pursuant to this section. The term includes an interest charge that the assistive technology device lessor would have paid to finance the assistive technology device or, if the assistive technology device lessor does not finance the assistive technology device, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(10) “Manufacturer” means a business entity that manufactures or produces assistive technology devices for sale and agents of that business entity, including an importer, a distributor, a factory branch, a distributor branch, and any warrantors of the manufacturer’s assistive technology device, but not including an assistive technology device dealer.

(11) “Nonconformity” means a condition or defect of an assistive technology device which substantially impairs the use, value, or safety of the device and which is covered by an express warranty applicable to the assistive technology device, but does not include a condition or defect that is the result of abuse, neglect, or unauthorized modification or alteration of the assistive technology device by a consumer.

(12) “Reasonable attempt to repair” means, within the terms of an express warranty applicable to a new assistive technology device:

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

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

427.803 Express warranty.—A manufacturer who sells a new assistive technology device to a consumer, either directly or through an assistive technology device dealer, shall furnish the consumer with an express warranty for the assistive technology device. The duration of the express warranty must be at least 1 year after first delivery of the assistive technology device to the consumer. In the absence of an express warranty from the manufacturer, the manufacturer is considered to have expressly warranted to the consumer of an assistive technology device that, for a period of 1 year after the date of first delivery to the consumer, the assistive technology device will be free from any condition or defect that substantially impairs the value of the assistive technology device to the consumer.

427.804 Repair of nonconforming assistive technology devices; refund or replacement of devices after attempt to repair; sale or lease of returned device; arbitration; limitation of rights.—

(1) If a new assistive technology device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the assistive technology device lessor, or any of the manufacturer's authorized assistive technology device dealers and makes the assistive technology device available for repair within 1 year after first delivery or return of the assistive technology device to the consumer, the nonconformity must be repaired at no charge to the consumer.

(2) If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer, at the direction of a consumer as defined in s. 427.802(6)(a)-(c), must do one of the following:

(a) Accept return of the assistive technology device and replace the assistive technology device with a comparable new assistive technology device and refund any collateral costs.

(b) Accept return of the assistive technology device and refund to the consumer and to any holder of a perfected security interest in the consumer's assistive technology device, as the interest may appear, the full purchase price plus any finance charge amount paid by the consumer at the point of sale, and collateral costs.

(c) With respect to a consumer as defined in s. 427.802(6)(d), accept return of the assistive technology device, refund to the assistive technology device lessor and to any holder of a perfected security interest in the assistive technology device, as the interest may appear, the current value of the written lease, and refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs.

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

(4) To receive a comparable new assistive technology device or a refund due under paragraph (2)(a), a consumer must offer to the manufacturer of the assistive technology device having the nonconformity to transfer possession of the assistive technology device to the manufacturer. No later than 30 days after the offer, the manufacturer shall provide the consumer with the comparable assistive technology device or refund. When the manufacturer provides the comparable assistive technology device or refund, the consumer shall return the assistive technology device having the nonconformity to the manufacturer, along with any endorsements necessary to transfer real possession to the manufacturer.

(5) To receive a refund due under paragraph (2)(b), a consumer must offer to return the assistive technology device having the nonconformity to its manufacturer. No later than 30 days after the offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return to the manufacturer the assistive technology device having the nonconformity.

(6) To receive a refund due under paragraph (2)(c), an assistive technology device lessor must offer to transfer possession of the assistive technology device having the nonconformity to its manufacturer. No later than 30 days after the offer, the manufacturer shall provide the refund to the assistive technology device lessor. When the manufacturer provides the refund, the assistive technology device lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

(7) A person may not enforce the lease against the consumer after the consumer receives a refund due under paragraph (2)(c).

(8) An assistive technology device that is returned by a consumer or assistive technology device lessor in this state, or by a consumer or assistive technology device lessor in another state under a similar law of that state, may not be sold or leased again in this state, unless full disclosure of the reasons for return is made to any prospective buyer or lessee.

(9) Each consumer may submit any dispute arising under this part to an alternative arbitration mechanism established pursuant to chapter 682. Upon notice by the consumer, all manufacturers must submit to such alternative arbitration.

(10) Such alternative arbitration must be conducted by a professional arbitrator or arbitration firm appointed under chapter 682 and any applicable rules. These procedures must provide for the personal objectivity of the arbitrators and for the right of each party to present its case, to be in attendance during any presentation made by the other party, and to rebut or refute such a presentation.

(11) This part does not limit rights or remedies available to a consumer under any other law.

427.805 Waiver.—Any waiver by a consumer of rights under this part is void.

427.806 Action for damages.—In addition to pursuing any other remedy, a consumer may bring an action to recover damages for any injury caused by a violation of this part. The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with costs, disbursements, and reasonable attorney's fees, and any equitable relief that the court determines is appropriate.

Section 2. This act shall take effect July 1, 1997.

Approved by the Governor May 7, 1997.

Filed in Office Secretary of State May 7, 1997.