TITLE 48
MONOPOLIES AND TRADE PRACTICES

CHAPTER 14
ASSISTIVE TECHNOLOGY WARRANTY ACT

48-1401. SHORT TITLE. This chapter governing the sale of assistive technology devices may be cited as the "Assistive Technology Warranty Act."

[48-1401, added 1997, ch. 276, sec. 1, p. 819.]

48-1402. DEFINITIONS. As used in this chapter:

(1) "Assistive device" is an item, piece of equipment, or product system that is designated and used to increase, maintain or improve functional capabilities of individuals with disabilities in the areas of seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself or working. The term includes, but is not limited to: manual wheelchairs, motorized wheelchairs, motorized scooters, and other aids that enhance the mobility of an individual; hearing aids, assistive listening devices and other aids that enhance an individual's ability to hear or communicate; voice synthesized computer modules, optical scanners, talking software, braille printers, large print materials and other devices that enhance an individual's ability to access print or communicate; and other devices such as environmental controls, adaptive transportation aids, communication boards and modified environments. "Assistive device" does not include: (a) a transcutaneous electrical nerve stimulator, neuromuscular electrical stimulator, or dynamic range of motion splint, if the stimulator or splint is already covered by a warranty; (b) a hearing aid covered by a one (1) year express warranty to repair or replace a device with a nonconformity; and (c) items including canes, crutches, walkers, bathroom safety aids, batteries, blood pressure kits, glucose monitors, bandages, household aids, wraps and other disposable items.

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

(3) "Assistive device lessor" means a person who leases new assistive devices to consumers, or who holds the lessor's rights, under a written lease.

(4) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the cost of sales tax and of obtaining an alternative assistive device.

(5) "Consumer" or "agency" means any of the following:

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

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

(c) A person who may enforce the warranty; or

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

(6) "Demonstrator" means an assistive device used primarily for the purpose of demonstration to the public.

(7) "Early termination cost" means an expense or obligation that an assistive 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 device to the manufacturer. The term incurs a penalty for prepayment under a finance arrangement.

(8) "Early termination savings" means an expense or obligation that an assistive device lessor avoids 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 device to the manufacturer. The term includes an interest charge that the assistive device lessor would have paid to finance the assistive device or, if the assistive device lessor does not finance the assistive device, the difference between the total period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(9) "Manufacturer" means a person who manufactures or assembles assistive devices and agents of that person, including an importer, a distributor, a factory branch, and a warrantor of the manufacturer's assistive device. The term does not include an assistive device dealer or lessor.

(10) "Nonconformity" means a specific condition or generic defect or malfunction, or a defect or condition that substantially impairs the use, value or safety of an assistive device, but does not include a condition or defect that is the result of abuse or unauthorized modification or alteration of the assistive device by the consumer.

(11) "Reasonable attempt to repair" means any of the following occurring within the term of an express warranty applicable to a new assistive device:

(a) The manufacturer, assistive device lessor, or any of the manufacturer's authorized assistive device dealers accepts returns of the new assistive device for repair at least two (2) times; or

(b) The assistive device is out of service for an aggregate of at least thirty (30) cumulative days because of warranty nonconformities.

[48-1402, added 1997, ch. 276, sec. 1, p. 819; am. 1998, ch. 236, sec. 1, p. 793.]

48-1403. EXPRESS WARRANTIES. (1) A manufacturer who sells or leases a new assistive device to a consumer, either directly or through an assistive device dealer or lessor, shall furnish the consumer with an express warranty to preserve or maintain the utility or performance of the assistive device. The duration of the express warranty must not be less than one (1) year after first possession of the assistive device by the consumer. If a manufacturer fails to furnish an express warranty as required by this section, the assistive device shall be covered by an express warranty as if the manufacturer had furnished an express warranty to the consumer as required by this section.

(2) If a new assistive device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the assistive device lessor, or any of the manufacturer's authorized assistive device dealers and makes the assistive device available for repairs before one (1) year after the first possession of the device by the consumer, the nonconformity must be repaired or replaced.

[48-1403, added 1997, ch. 276, sec. 1, p. 821.]

48-1404. ASSISTIVE DEVICE REPLACEMENT OR REFUND. If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer

shall carry out, at the option of the consumer, the requirements under subsection (1)(a) or (b) or (2) of this section, whichever is appropriate.

(1) To provide for refunds, at the request of the consumer, the manufacturer shall do one (1) of the following:

(a) Accept return of the assistive device and refund to the consumer and to a holder of a perfected security interest in the consumer's assistive device, as their interest may appear, the full purchase price plus any finance charge, amount paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use; or

(b) Accept return of the assistive device, refund to the assistive device lessor and the holder of a perfected security interest in the assistive device, as their interest may appear, the current value of a written lease and refund to the consumer the amount that the consumer paid under the written lease plus collateral costs, less a reasonable allowance for use.

(2) The manufacturer shall provide a comparable new assistive device replacing the device having the nonconformity. To receive a comparable new assistive device, the consumer shall offer to transfer possession of the assistive device to the manufacturer of the assistive device having the nonconformity. No later than thirty (30) days after that offer, the manufacturer shall provide the consumer with the comparable new assistive device or a refund, and the consumer shall return the assistive device having the nonconformity to the manufacturer, along with any endorsements necessary to transfer real possession to the manufacturer.

(3) If, after a reasonable attempt to repair, the nonconformity is not repaired, an assistive device lessor shall receive a refund from the manufacturer. To receive a refund, the assistive device lessor shall offer to transfer possession of a nonconforming assistive device to its manufacturer. No later than thirty (30) days after that offer, the manufacturer shall provide the refund to the assistive device lessor. When the manufacturer provides the refund, the assistive device lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

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

(5) Under this section, a reasonable allowance for use may not exceed the amount obtained by multiplying the total amount the consumer paid or for which the written lease obligates the consumer by a fraction, the denominator of which is one thousand eight hundred twenty-five (1,825) and the numerator of which is the number of days that the consumer used the assistive device before first reporting the nonconformity to the manufacturer, assistive device lessor or assistive device dealer.

(6) No person may enforce the lease against the consumer after the consumer receives a refund.

[48-1404, added 1997, ch. 276, sec. 1, p. 821.]

48-1405. NONCONFORMITY DISCLOSURE REQUIREMENT. No assistive device returned by a consumer or assistive device lessor in this state or another

state may be sold or leased in this state unless full disclosure of the reason for return is made to the prospective buyer or lessee.

[48-1405, added 1997, ch. 276, sec. 1, p. 822.]

48-1406. MANUFACTURER'S DUTY TO PROVIDE REIMBURSEMENT FOR TEMPORARY REPLACEMENT OF ASSISTIVE DEVICES AND PENALTIES. (1) Whenever an assistive device covered by manufacturer's express warranty is tendered by a consumer to a dealer from whom it was purchased or exchanged for the repair of a defect, malfunction or nonconformity to which the warranty is applicable and at least one (1) of the following conditions exists, the manufacturer shall provide directly to the consumer for the duration of the repair period, a replacement assistive device or a rental assistive device reimbursement to pay for the cost incurred by the consumer for renting a replacement assistive device. The applicable conditions are as follows:

(a) The repair period exceeds ten (10) working days, including the day on which the device is tendered to the dealer for repair; or

(b) The defect, malfunction or nonconformity is the same for which the assistive device has been tendered to the dealer for repair on at least two (2) previous occasions.

(2) This section applies for the period of the manufacturer's express warranty.

[48-1406, added 1997, ch. 276, sec. 1, p. 822.]

48-1407. ENFORCEMENT. (1) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of the chapter in the district court of the county where the consumer resides or where the manufacturer resides or has its principal place of business. Damages include all costs to the consumer attributable to the nonconforming device, but does not include punitive damages. The court shall award a consumer who prevails in such action the amount of any pecuniary loss, and costs and reasonable attorney's fees, and any other equitable relief the court deems appropriate.

(2) These sections shall not be construed to limit rights or remedies available to the consumer under any other law and the remedies provided under this chapter are inclusive and in addition to any other remedies provided by law.

(3) Any waiver by a consumer of rights under this chapter is void.

[48-1407, added 1997, ch. 276, sec. 1, p. 822.]