

LEGISLATIVE BILL 802

Approved by the Governor June 3, 1997

Introduced by Lynch, 13; Stuhr, 24

AN ACT relating to assistive devices; to adopt the Assistive Technology Regulation Act.

Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be known and may be cited as the Assistive Technology Regulation Act.

Sec. 2. For purposes of the Assistive Technology Regulation Act, the definitions found in sections 3 to 13 of this act apply.

Sec. 3. Assistive device means any device, including a demonstrator, that a consumer purchases or accepts transfer of in this state which is used for a major life activity, including, but not limited to, manual wheelchairs, motorized wheelchairs, motorized scooters, and other aides that enhance the mobility of an individual; hearing aids, telephone communication devices for the deaf (TTY), assistive listening devices, and other aides that enhance an individual's ability to hear; voice synthesized computer modules, optical scanners, talking software, braille printers, and other devices that enhance a sight-impaired individual's ability to communicate; environmental control units; and any other assistive device that enables a person with a disability to communicate, see, hear, or maneuver.

Sec. 4. Assistive device dealer means a person who is in the business of selling assistive devices.

Sec. 5. Assistive device lessor means a person who leases an assistive device to a consumer under a written lease or who holds the lessor's rights under a written lease.

Sec. 6. Collateral costs means expenses incurred by an assistive device lessor or a consumer in connection with the repair of a nonconformity, including the costs of sales tax and of obtaining an alternative assistive device.

Sec. 7. Consumer means any of the following:

(1) An individual or entity purchasing an assistive device if the assistive device was purchased from an assistive device dealer or manufacturer for purposes other than resale;

(2) An individual or entity 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;

(3) An individual or entity who may enforce the warranty; or

(4) An individual or entity who leases an assistive device from an assistive device lessor under a written lease.

Sec. 8. Demonstrator means an assistive device used primarily for the purpose of demonstration to the public.

Sec. 9. Major life activity means a function such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Sec. 10. Manufacturer means a person who manufactures or assembles assistive devices and agents of that person, including an importer, a distributor, a factory branch, a distributor branch, and any warrantors of the manufacturer's assistive device, but not including an assistive device dealer.

Sec. 11. Nonconformity means a condition or defect that substantially impairs the use, value, or safety of an assistive device and that is covered by an express warranty applicable to the assistive device or to a component of the assistive device but does not include (1) a condition or defect that is the result of abuse, neglect, or unauthorized modification or alteration of the assistive device by a consumer or (2) a condition that is the result of normal use which could be resolved through fitting adjustments, cleaning, or proper care.

Sec. 12. Reasonable allowance for use means an amount up to a maximum of the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is one thousand eight hundred twenty-five 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.

Sec. 13. Reasonable attempt to repair means within the terms of an express warranty applicable to a new assistive device:

(1) Any nonconformity within the warranty that has been repaired by

the manufacturer, the assistive device lessor, or any of the manufacturer's authorized assistive device dealers on at least two previous occasions and a nonconformity continues; or

(2) The assistive device is out of service for repair for an aggregate of at least thirty cumulative days because of warranty nonconformity.

Sec. 14. (1) A manufacturer who sells an assistive device to a consumer, either directly or through an assistive device dealer, shall furnish the consumer with an express warranty for the assistive device. The duration of the express warranty shall be not less than one year after first delivery of the assistive device to 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 for a period of one year as if the manufacturer had furnished an express warranty to the consumer as required by this section.

(2) An express warranty does not take effect until the consumer takes possession of the new assistive device.

(3) 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 repair before one year after first delivery of the device to a consumer, the nonconformity shall be repaired or a refund or replacement shall be made pursuant to section 15 of this act.

Sec. 15. (1) The manufacturer shall:

(a) Accept an offer to return or an offer to transfer possession of any nonconforming assistive device by a consumer. Within thirty days after such offer, the manufacturer shall provide the consumer with a comparable new assistive device or refund to the consumer and to any holder of a perfected security interest in the consumer's assistive device, as the interest may appear, the amount paid by the consumer at the point of sale, plus any finance charge and collateral costs, less a reasonable allowance for use; or

(b) Accept an offer to return or an offer to transfer possession of any nonconforming assistive device by an assistive device lessor. Within thirty days after such offer, the manufacturer shall provide the assistive device lessor with a comparable new assistive device or refund to the assistive device lessor and to any holder of a perfected security interest in the assistive device, as the interest may appear, the amount paid by the assistive device lessor at the time of purchase, plus any finance charge and collateral costs incurred by both the assistive device lessor and the consumer, and the amount paid by the consumer to date under the written lease, less a reasonable allowance for use.

(2)(a) To receive a comparable new assistive device or a refund, a consumer shall:

(i) Offer to return the assistive device having the nonconformity to its manufacturer. When the manufacturer provides a comparable new assistive device or a refund pursuant to subdivision (1)(a) of this section, the consumer shall return to the manufacturer the assistive device having the nonconformity; or

(ii) Offer to transfer possession of the assistive device having the nonconformity to the manufacturer of the assistive device. When the manufacturer provides the comparable new assistive device or a refund pursuant to subdivision (1)(a) of this section, 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.

(b) If the consumer has leased the assistive device from an assistive device lessor, the consumer shall return the assistive device having a nonconformity to the assistive device lessor. The assistive device lessor shall provide to the consumer from the manufacturer a comparable new assistive device or a refund pursuant to subdivision (3)(b) of this section.

(3)(a) To receive a comparable new assistive device or a refund, an assistive device lessor shall:

(i) Offer to return the assistive device having the nonconformity to its manufacturer. When the manufacturer provides a comparable new assistive device or a refund pursuant to subdivision (1)(b) of this section, the assistive device lessor shall return the nonconforming assistive device to the manufacturer; or

(ii) Offer to transfer possession of the assistive device having the nonconformity to its manufacturer. When the manufacturer provides a comparable new assistive device or a refund pursuant to subdivision (1)(b) of this section, the assistive device lessor shall return the nonconforming assistive device to the manufacturer along with any endorsements necessary to transfer real possession to the manufacturer.

(b) The assistive device lessor shall refund to the consumer the amount that the consumer paid under the written lease and collateral costs paid by the consumer, less a reasonable allowance for use.

Sec. 16. (1) No assistive device returned by a consumer or assistive device lessor in this state or in any other state may be sold or leased again in this state unless full written disclosure of the reasons for return is made to any prospective buyer or lessee.

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

Sec. 17. (1) The Assistive Technology Regulation Act shall not limit rights or remedies available to a consumer under any other law.

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

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

Sec. 18. (1) If an assistive device covered by a manufacturer's express warranty is tendered by a consumer to the dealer from whom it was purchased or exchanged for the repair of any nonconformity to which the warranty is applicable and at least one of the conditions described in subdivision (a) or (b) of this subsection exists, the manufacturer shall provide directly to the consumer for the duration of the repair period a rental assistive device reimbursement of up to twenty dollars per day. The applicable conditions are:

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

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

(2) The provisions of this section regarding a manufacturer's duty shall apply for the period of the manufacturer's express warranty or for one year from delivery of the assistive device to the consumer, whichever period of time is longer.

Sec. 19. The Assistive Technology Regulation Act shall apply to assistive devices delivered after the effective date of this act and shall in no way be applied retroactively.