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CHAPTER 54.

 ASSISTIVE TECHNOLOGY WARRANTY ACT

**SECTION 39‑54‑10.** Short title.

 This chapter may be cited as the "Assistive Technology Warranty Act".

HISTORY: 1998 Act No. 403, Section 1, eff June 8, 1998.

**SECTION 39‑54‑20.** Definitions.

 As used in this chapter:

 (1) "Assistive technology device" or "device" means an item or piece of equipment or product system with a retail cost to a consumer of three hundred dollars or more that a consumer purchases or accepts transfer of in this State which is used to increase, maintain, or improve the functional capacities of an individual with a disability. "Assistive technology device" or "device" includes, but is not limited to, manual wheelchairs, motorized wheelchairs, motorized scooters, and other mobility aids for moving, walking, standing, sitting, and positioning; telephone communication devices for the hearing impaired; augmentative communication devices; assistive listening devices, systems, and other aids 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; home, vehicle, and workplace modifications, prosthetics, and orthotics; and any other assistive device that enables a person with a disability to communicate, see, hear, or maneuver. As used in this chapter, assistive technology device or devices do not include contact lenses, glasses, or dental prostheses.

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

 (3) "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.

 (4) "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 if not already provided for in the warranty.

 (5) "Consumer" means an individual or a public or private agency including, but not limited to, a school district:

 (a) who purchases an assistive technology device from an assistive technology device dealer or manufacturer for purposes other than resale;

 (b) 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) who may enforce the warranty; or

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

 "Consumer" also means the parent or guardian of a person who is a consumer under subitems (a) through (d).

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

 (7) "Early termination cost" means an 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 under Section 39‑54‑40(B)(2). "Early termination cost" includes a penalty for prepayment under a finance arrangement.

 (8) "Early termination savings" means an 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 that lease and the return of an assistive technology device to a manufacturer under Section 39‑54‑40(B)(2). "Early termination savings" 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.

 (9) "Loaner" means an assistive device, provided free of charge to the consumer, for use by the consumer, while the original assistive technology device is being repaired, that need not be new, identical to, or have functional capabilities equal to or greater than those of the original assistive device, but that meets all of the following conditions:

 (a) The loaner is in good working order.

 (b) The loaner performs, at a minimum, the most essential functions of the original assistive device, in light of the disabilities of the consumer.

 (c) Any differences between the loaner and the original assistive device do not create a threat to the consumer's health or safety.

 (10) "Manufacturer" means a person and any agent of that person who manufactures or assembles assistive technology devices. "Manufacturer" includes an importer, a distributor, factory branch, distributor branch, and warrantor of the manufacturer's assistive technology devices, but does not include an assistive technology device, dealer, or assistive technology device lessor. As used in this chapter, manufacturer does not include a person licensed to provide healthcare services pursuant to Title 40, nor is any warranty made, either express or implied, as a seller, or otherwise, of products used in the delivery of healthcare services by persons licensed to provide healthcare services pursuant to Title 40.

 (11) "Nonconformity" means a condition or defect that substantially impairs the intended purpose or safety of an assistive technology device and that is covered by an express warranty applicable to the assistive technology device or to a component of the assistive technology device. "Nonconformity" does not include a condition or defect that is the result of a consumer's abuse, misuse, negligence, or unauthorized modification or alteration of the assistive technology device. Nonconformity also does not include a condition that can be resolved through routine fittings or a condition wherein the consumer undergoes physical change which renders the assistive technology device unsuitable for use by the consumer.

 (12) "Reasonable attempt to repair" means if within the term of an express warranty applicable to a new assistive technology device or within one year after first delivery of the assistive technology device to a consumer, whichever is sooner:

 (a) any nonconformity within the warranty that is subject to repair at least two times for any reason by the manufacturer, assistive technology device lessor, or any of the manufacturer's authorized assistive technology device dealers for continuous nonconformity of the product; or

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

HISTORY: 1998 Act No. 403, Section 1, eff June 8, 1998.

**SECTION 39‑54‑30.** Manufacturers' warranties.

 A manufacturer who sells an assistive technology device to a consumer, either directly or through an assistive technology device dealer, shall furnish the consumer with an express written warranty for the assistive technology device. At a minimum, the warranty shall guarantee that there are no defects in parts or performance. The duration of the express written warranty must be not less than one year after the first delivery of the assistive technology device to the consumer. In the absence of an express written warranty from the manufacturer, the assistive technology device shall be considered to have been expressly warranted by the manufacturer as if the manufacturer had explicitly furnished the warranty to the consumer as required by this section. All other requirements in this section will govern the product that is statutorily considered expressly warranted. Assistive technology dealers and lessors shall have the right to reimbursement or compensation from the manufacturer or other prior parties in the sales or distribution chain. It is expressly understood that assistive technology devices that are sold in an "as is" condition, and is so stated on the bill of sale, carry no warranty unless one is specifically stated on the bill of sale.

HISTORY: 1998 Act No. 403, Section 1, eff June 8, 1998.

**SECTION 39‑54‑40.** Warranty repairs; replacements; refunds; disclosure of defect to subsequent purchaser or lessor.

 (A) If an assistive technology device does not conform to an applicable express warranty and the consumer (1) reports the nonconformity to the manufacturer, the assistive technology device lessor, or any of the manufacturer's authorized assistive technology device dealers and (2) makes the assistive technology device available for repair before one year after first delivery of the assistive technology device to the consumer, the nonconformity must be repaired at the manufacturer's expense to correct the nonconformity regardless of whether the repairs are made after expiration of the warranty rights period. If in any subsequent proceeding it is determined that the repair did not qualify under this chapter and the manufacturer was not otherwise obligated to repair the assistive technology device, the consumer is liable to the manufacturer for costs of repair actually made by the manufacturer.

 (B) If after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall accept return of the assistive technology device and:

 (1) at the direction of a consumer, as defined in Section 39‑54‑20(5)(a), (b), or (c), the manufacturer shall do one of the following:

 (a) replace the assistive technology device with a comparable assistive technology device and refund collateral costs; or

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

 (2) at the direction of a consumer, as defined in Section 39‑54‑20(5)(d), the manufacturer shall do the following:

 (a) refund to the assistive technology device lessor and to any holder of a perfected security interest in the assistive technology device, as their interest may appear, the current value of the written lease. For purposes of this subitem, 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 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 that value, less the assistive technology device lessor's early termination savings; and

 (b) return to the consumer the amount the consumer paid under the written lease plus collateral costs.

 (C) To receive a comparable new assistive technology device or a refund due under subsection (B)(1), a consumer, as defined in Section 39‑54‑20(5)(a), (b), or (c), shall offer to transfer possession of the assistive technology device having the nonconformity to the manufacturer of that assistive technology device. No later than thirty days after that offer, the manufacturer shall provide the consumer with a comparable new assistive technology device or a refund. When the manufacturer provides the new 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 legal possession to the manufacturer. A consumer transferring possession of an assistive technology device under this subsection shall transfer possession in the same manner and method that the consumer obtained the device, and if the nonconformity occurs within the warranty period, the manufacturer shall bear the cost of transferring possession of the device.

 (D) To receive a refund due under subsection (B)(2):

 (1) a consumer, as defined in Section 39‑54‑20(5)(d), shall offer to return the assistive technology device having the nonconformity to the manufacturer of that assistive technology device. No later than thirty days after that offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return the assistive technology device having the nonconformity to the manufacturer; or

 (2) an assistive technology device lessor, as defined in Section 39‑54‑20(3) shall offer to transfer possession of the assistive technology device having the nonconformity to the manufacturer of that assistive technology device. No later than thirty days after that 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 any endorsements necessary to transfer legal possession to the manufacturer and all costs due to the consumer as defined in Section 39‑54‑20(5)(d).

 No person may enforce the lease against the consumer after the consumer receives the refund due under subsection (B)(2).

 (E) No assistive technology device returned by a consumer or assistive technology device lessor in this State under subsection (B) or by a consumer or assistive technology device lessor in another state under a similar law of that state may be sold or leased again in this State unless full disclosure of the reasons for return is made to a prospective buyer or lessee.

HISTORY: 1998 Act No. 403, Section 1, eff June 8, 1998.

**SECTION 39‑54‑50.** Availability of other consumer rights and remedies; damages.

 (A) This chapter must not be considered to limit rights or remedies available to a consumer under any other law or contract.

 (B) A waiver by a consumer of rights under this chapter is void.

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

HISTORY: 1998 Act No. 403, Section 1, eff June 8, 1998.

**SECTION 39‑54‑60.** Exceptions.

 This chapter does not apply to:

 (1) Hearing aid specialists licensed to fit and sell hearing aids pursuant to Chapter 25 of Title 40. Nothing in this chapter is in lieu of or shall conflict with or supersede Chapter 25 of Title 40 and the rights of those persons licensed under Chapter 25 of Title 40 or regulations promulgated pursuant to Chapter 25 of Title 40.

 (2) Speech pathologists and audiologists licensed to fit and dispense hearing aids pursuant to Chapter 67 of Title 40. Nothing in this chapter is in lieu of or shall conflict with or supersede Chapter 67 of Title 40 and the rights of those persons licensed under Chapter 67 of Title 40 or regulations promulgated pursuant to Chapter 67 of Title 40.

 (3) Any medical device, surgical device, or organ implanted or transplanted to the consumer.

HISTORY: 1998 Act No. 403, Section 1, eff June 8, 1998.