

1 SB303  
2 166067-1  
3 By Senator Ward  
4 RFD: Judiciary  
5 First Read: 31-MAR-15

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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, costing five  
2 hundred dollars (\$500) or more, including a demonstrator, that  
3 a consumer purchases or accepts transfer of in this state  
4 which is used for a major life activity which includes, but is  
5 not limited to, the following:

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

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

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

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

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

24           (4) COLLATERAL COSTS. Expenses incurred by a  
25 consumer in connection with the repair of a nonconformity,  
26 including the cost of sales tax and of obtaining an  
27 alternative assistive device.

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

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

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

12 c. A person who may enforce the warranty.

13 d. A person who leases an assistive device from an  
14 assistive device lessor under a written lease.

15 e. Any person, with authority, acting on behalf of  
16 the consumer or the agency.

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

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

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

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

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

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

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

25 (2) If the consumer or the agency requests a refund  
26 for a device which was leased, the manufacturer shall refund  
27 to the assistive device lessor and to any holder of a

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

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

19 (b) This section regarding a manufacturer's duty  
20 shall apply for the period of the manufacturer's express  
21 warranty.

22 Section 5. This act shall not apply to either of the  
23 following:

24 (1) Disposable assistive devices with a useful life  
25 of one year or less.

26 (2) Batteries or nonfunctional accessories.

1                   Section 6. (a) This act shall not limit rights or  
2 remedies available to a consumer under any other law.

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

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

12                   Section 7. This act shall become effective on the  
13 first day of the third month following its passage and  
14 approval by the Governor, or its otherwise becoming law.