

1 HB450  
2 135531-2  
3 By Representative Todd  
4 RFD: Commerce and Small Business  
5 First Read: 01-MAR-12



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

4           c. Voice synthesized computer modules, optical  
5 scanners, talking software, Braille printers, and other  
6 devices that enhance a sight impaired individual's ability to  
7 communicate.

8           d. Any other assistive device that enables a person  
9 with a disability to communicate, see, hear, or maneuver, but  
10 does not include batteries or nonfunctional accessories.

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

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

19           (4) COLLATERAL COSTS. Expenses incurred by a  
20 consumer in connection with the repair of a nonconformity,  
21 including the cost of sales tax and of obtaining an  
22 alternative assistive device.

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

24           a. The purchaser of an assistive device, including  
25 government entities purchasing a device for the benefit of an  
26 individual and the individual for whose benefit the device is  
27 purchased, if the assistive device was purchased from an

1 assistive device dealer or manufacturer for purposes other  
2 than resale.

3 b. A person to whom the assistive device is  
4 transferred for purposes other than resale, if the transfer  
5 occurs before the expiration of an express warranty applicable  
6 to the assistive device.

7 c. A person who may enforce the warranty.

8 d. A person who leases an assistive device from an  
9 assistive device lessor under a written lease.

10 e. Any person, with authority, acting on behalf of  
11 the consumer or the agency.

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

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

17 (1) Report the nonconformity to the manufacturer,  
18 the assistive device lessor, or any of the manufacturer's  
19 authorized device dealers.

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

22 (b) Once a nonconformity is reported and the  
23 assistive device is made available for repair, the  
24 manufacturer, the assistive device lessor, or any of the  
25 manufacturer's authorized assistive device dealers shall make  
26 an attempt to repair the nonconformity.

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

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

20                   (2) If the consumer or the agency requests a refund  
21                   for a device which was leased, the manufacturer shall refund  
22                   to the assistive device lessor and to any holder of a  
23                   perfected security interest in the assistive device, as their  
24                   interest may appear, the current value of the written lease  
25                   and refund to the consumer the amount that the consumer paid  
26                   under the written lease plus any collateral costs, less a  
27                   reasonable allowance for use. The manufacturer shall have a

1 cause of action against the dealer or lessor for reimbursement  
2 of any amount that it pays to a consumer which exceeds the net  
3 price received by the manufacturer for the assistive device.  
4 When the manufacturer provides the refund, the assistive  
5 device lessor shall provide to the manufacturer any  
6 endorsements necessary to transfer legal possession to the  
7 manufacturer.

8 (3) If the consumer elects to receive a comparable  
9 new assistive device, the manufacturer shall provide the  
10 consumer or the agency with the comparable new assistive  
11 device no later than 30 days after the consumer or lessor  
12 offers to transfer possession of the assistive device having  
13 the nonconformity to the manufacturer.

14 (b) This section regarding a manufacturer's duty  
15 shall apply for the period of the manufacturer's express  
16 warranty.

17 Section 5. (a) This act shall not limit rights or  
18 remedies available to a consumer under any other law.

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

21 (c) In addition to pursuing any other remedy, a  
22 consumer may bring an action to recover any damages caused by  
23 a violation of this act within ~~one~~ two year of the violation.  
24 The court shall award a consumer who prevails in such an  
25 action no more than twice the amount of any pecuniary loss,  
26 together with costs, disbursements, and reasonable attorney

1 fees, and any equitable relief that the court determines is  
2 appropriate.

3 Section 6. This act shall become effective on the  
4 first day of the third month following its passage and  
5 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Commerce and  
Small Business..... . . . . 01-MAR-12

Read for the second time and placed  
on the calendar 1 amendment ..... . . . . 22-MAR-12

Read for the third time and passed  
as amended..... . . . . 17-APR-12

Yeas 101, Nays 0, Abstains 0

Greg Pappas  
Clerk