

1 HB316  
2 147269-1  
3 By Representative Todd  
4 RFD: Commerce and Small Business  
5 First Read: 21-FEB-13

2  
3  
4  
5  
6  
7  
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, including a  
2 demonstrator, that a consumer purchases or accepts transfer of  
3 in this state which is used for a major life activity which  
4 includes, but is not limited to, the following:

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

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

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

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

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

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

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

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

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

11           c. A person who may enforce the warranty.

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

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

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

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

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

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

26           (b) Once a nonconformity is reported and the  
27 assistive device is made available for repair, the

1 manufacturer, the assistive device lessor, or any of the  
2 manufacturer's authorized assistive device dealers shall make  
3 an attempt to repair the nonconformity.

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

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

23 (2) If the consumer or the agency requests a refund  
24 for a device which was leased, the manufacturer shall refund  
25 to the assistive device lessor and to any holder of a  
26 perfected security interest in the assistive device, as their  
27 interest may appear, the current value of the written lease

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

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

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

20 Section 5. This act shall not apply to either of the  
21 following:

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

24 (2) Batteries or nonfunctional accessories.

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

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

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

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