

Part 8 Assistive Technology Warranty Act

70A-2-801 Title.

This part is known as the "Assistive Technology Warranty Act."

Enacted by Chapter 166, 1997 General Session

70A-2-802 Definitions.

As used in this chapter:

- (1) "Assistive technology" means any new device or equipment, including a demonstrator, with a retail price of \$1,000 or more, which is used for a major life activity including breathing, walking, standing, speaking, hearing, seeing, communicating, learning, working, performing manual tasks, or caring for oneself.
 - (a) "Assistive technology" includes:
 - (i) manual wheelchairs, motorized wheelchairs, motorized scooters, and other aids that enhance the mobility of an individual;
 - (ii) hearing aids, telephone communication devices for the deaf (TDD), assistive listening devices, and other aids that enhance an individual's ability to hear or communicate; and
 - (iii) voice-synthesized computer modules, optical scanners, talking software, braille printers, and other devices that enhance an individual's ability to access print or communicate.
 - (b) "Assistive technology" does not include batteries, nonfunctional accessories, and normal recurring maintenance needs.
- (2) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the cost of sales tax and of obtaining alternative assistive technology.
- (3) "Consumer" means any person including a public agency or other private organization, who acquires assistive technology on behalf of or for the benefit of an individual who:
 - (a) purchases assistive technology from a manufacturer, its agent, or authorized dealer for purposes other than resale;
 - (b) obtains or otherwise receives assistive technology for purposes other than resale, but only if the transfer occurs before the expiration of any applicable express warranties;
 - (c) possesses the right to enforce the warranty; or
 - (d) leases assistive technology from an authorized lessor under a written lease.
- (4) "Dealer" means a person who is in the business of selling assistive technology.
- (5) "Demonstrator" means assistive technology used primarily for the purpose of demonstration to the public.
- (6) "Disbursements" means the amount of money consumers may receive as part of a damage award based upon the pro rata share of investment by the consumers.
- (7) "Early termination cost" means any expense or obligation that a 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 the assistive technology to the manufacturer. Early termination cost includes a penalty for prepayment under a finance arrangement.
- (8) "Early termination savings" means any expense or obligation that a 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 assistive technology to a manufacturer which shall include an interest charge that the lessor would have paid to finance the assistive technology or, if the lessor does not finance the

- assistive technology, the difference between the total 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) "Lease price" means the total amount for which the written lease obligates the consumer.
 - (10) "Lessee" means a person who leases assistive technology as a consumer under a written lease.
 - (11) "Lessor" means a person who leases assistive technology to consumers or who holds the lessor's rights under a written lease.
 - (12) "Manufacturer" means a person who manufactures or assembles assistive technology including agents of that person, an importer, a distributor, a factory branch, distributor branch, and any warrantors of the manufacturer's assistive technology, but does not include a dealer or lessor of assistive technology.
 - (13) "Nonconformity" means any defect, condition, or malfunction which substantially impairs the use, value, or safety of assistive technology, but does not include a condition, defect, or malfunction that is the result of abuse, neglect, or unauthorized modification or alternation of the assistive technology by the consumer.

Enacted by Chapter 166, 1997 General Session

70A-2-803 Warranties.

- (1) A manufacturer who sells or leases assistive technology to a consumer in this state, either directly or through an authorized dealer or lessor, shall warrant that the assistive technology shall be free from any condition, defect, or malfunction which substantially impairs the use, value, or safety of the assistive technology for a period of one year from the date of original delivery.
- (2) Nothing in this chapter shall limit the ability of the manufacturer or any dealer or lessor from providing additional warranties on assistive technology nor limit or affect any other warranties applicable to assistive technology, whether implied or expressed.

Enacted by Chapter 166, 1997 General Session

70A-2-804 Nonconforming assistive technology -- Remedies.

- (1)
 - (a) If assistive technology does not conform to any applicable warranties, and the consumer reports the nonconformity to the manufacturer, its agent, or authorized dealer or lessor within one year from the date of original delivery to the consumer, the manufacturer, its agent, or authorized dealer or lessor shall make repairs necessary to conform the assistive technology to the warranties, whether or not the repairs are made after one year from the date of original delivery.
 - (b) Repairs, including parts and labor, made under warranty shall be at no charge to the consumer.
- (2) After a reasonable attempt to repair the assistive technology, if the manufacturer, its agent, or authorized dealer or lessor is unable to conform the assistive technology to applicable warranties by repairing or correcting any defect, condition, or malfunction that substantially impairs the use, value, or safety of the assistive technology, the manufacturer shall, within 30 days of notice from and at the direction of the consumer:
 - (a)
 - (i) replace the assistive technology with comparable new assistive technology; and
 - (ii) refund any collateral costs; or

- (b)
 - (i) accept return of the assistive technology; and
 - (ii) refund:
 - (A) the full purchase price, collateral costs, and any finance charges paid at the point of sale; minus
 - (B) a reasonable allowance for the use of the assistive technology.
- (3)
 - (a) A "reasonable attempt to repair" has been made to conform assistive technology to applicable warranties if:
 - (i) the assistive technology has been subject to repair three or more times, for the same reason, by the manufacturer, its agent, or authorized dealer or lessor; or
 - (ii) the assistive technology is out of service to the consumer for an aggregate of 30 or more calendar days because of warranty nonconformities.
 - (b) The 30-day period described in Subsection (3)(a)(ii) shall begin on the day the consumer first makes the assistive technology available for repair to the manufacturer, its agent, or authorized dealer or lessor.

Amended by Chapter 200, 1999 General Session

70A-2-805 Refunds -- Computation -- Prohibition of enforcement of lease against consumer.

- (1) Refunds paid by the manufacturer shall be made to the consumer, any lessor, and any perfected lienholders as their interests may appear in order of priority.
- (2) A reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price or lease price of the assistive technology by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days the consumer used the assistive technology before first reporting the nonconformity to the manufacturer, its agent, or authorized dealer or lessor.
- (3)
 - (a) For a consumer who leases assistive technology from a lessor, the manufacturer shall refund to the lessor and to any holder of a perfected security interest in the assistive technology, as the interest may appear, the current value of the written lease.
 - (b) 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 dealer's early termination costs and the value of the assistive technology at the lease expiration date if the lease sets forth that value, less the assistive technology lessor's early termination savings.
 - (c) The manufacturer shall refund to the consumer the amount that the consumer paid under the lease plus any collateral costs, less a reasonable allowance for use.
- (4) The lease may not be enforced against the consumer if the consumer receives a refund under this chapter.

Enacted by Chapter 166, 1997 General Session

70A-2-806 Resale or release of returned assistive technology -- Prohibition.

Assistive technology which is replaced by a manufacturer under this chapter or under a similar law of another state may not be sold or leased again in this state unless full written disclosure of the reason for return is made to any prospective purchaser or lessee.

Enacted by Chapter 166, 1997 General Session

Effective until 7/1/2024

70A-2-807 Consumer may not waive rights under chapter -- Enforcement -- Remedies not exclusive.

- (1) Any waiver by a consumer of rights under this chapter is void.
- (2)
 - (a) A consumer may bring an action in district court to enforce the consumer's rights under this chapter.
 - (b) The court shall award a consumer who prevails in an action under this chapter twice the amount of any pecuniary loss, together with costs, disbursements, reasonable attorney's fees, and any equitable relief that the court determines is appropriate.
- (3) The attorney general may file an action in district court to enforce this chapter on behalf of any consumer or in its own behalf. In addition to the other remedies provided in this chapter, the attorney general is also entitled to an award for reasonable attorney's fees, court costs, and investigative expenses.
- (4) This chapter shall not be construed as imposing any liability on an authorized dealer or lessor or as creating a cause of action by a consumer against a dealer or lessor, except regarding any express warranties made by the dealer or lessor apart from the manufacturer's warranties.
- (5) Nothing in this chapter shall limit or impair the rights or remedies which are otherwise available to a consumer under any other provision of law.

Enacted by Chapter 166, 1997 General Session

Effective 7/1/2024

70A-2-807 Consumer may not waive rights under chapter -- Enforcement -- Remedies not exclusive.

- (1) Any waiver by a consumer of rights under this chapter is void.
- (2)
 - (a) A consumer may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to enforce the consumer's rights under this chapter.
 - (b) The court shall award a consumer who prevails in an action under this chapter twice the amount of any pecuniary loss, together with costs, disbursements, reasonable attorney's fees, and any equitable relief that the court determines is appropriate.
- (3)
 - (a) The attorney general may file an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to enforce this chapter on behalf of any consumer or in its own behalf.
 - (b) In addition to the other remedies provided in this chapter, the attorney general is also entitled to an award for reasonable attorney's fees, court costs, and investigative expenses.
- (4) This chapter shall not be construed as imposing any liability on an authorized dealer or lessor or as creating a cause of action by a consumer against a dealer or lessor, except regarding any express warranties made by the dealer or lessor apart from the manufacturer's warranties.
- (5) Nothing in this chapter shall limit or impair the rights or remedies which are otherwise available to a consumer under any other provision of law.