

AN ACT

Concerning assistive devices used for major life activities; warranties for such devices; rights of consumer to return such devices; refunds and allowances; providing for arbitration of disputes in certain circumstances; providing for enforcement of the Act.

**BE IT ENACTED BY THE ELEVENTH NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

Section 1. Title. This Act may be cited as the "Assistive Technology Warranty Act of 1998."

Section 2. Definitions. As Used in this title:

(a) "Assistive device" means any device, including a demonstrator, that a consumer purchases or accepts transfer in the Commonwealth, which is used for a major life activity. This includes, but is not limited to, manual wheelchairs, motorized scooters and other aides that enhance the mobility of an individual; hearing aide, telephone communication devices for the deaf (TTY), assistive listening devices and other aides 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; and any other assistive device that enables a person with a disability to communicate, see, hear or maneuver.

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

(c) "Assistive device lessor" means a person who leases an assistive device to a consumer, or who holds the lessor's rights under written lease.

(d) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative assistive device.

(e) "Consumer" means any of the following:

(1) The purchase of an assistive device, if the assistive device was purchased from an assistive device dealer or manufacturer for purposes other than resale;

(2) A person to whom the assistive device is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the assistive device;

(3) A person who may enforce the warranty;

(4) A person who leases an assistive device from an assistive device lessor under a written lease.

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

(g) "Early termination cost" means any expense or obligation that an assistive 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 device to a manufacturer pursuant to this section. Early termination cost includes a penalty for prepayment under a finance arrangement.

(h) "Early termination saving" means any expense or obligation that an assistive device lessor avoids as a result of both the termination of a written lease before that termination date set forth in that lease and the return of an assistive device to a manufacturer pursuant to this section. Early termination saving includes an interest charge that the assistive device lessor would have paid to finance the assistive device or, if the assistive device lessor does not finance the assistive 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.

(i) "Manufacturer" means a person who manufactures or assembles assistive devices and agent of that person, including an importer, a distributor, factory branch, distributor branch and any warrantors of the manufacturer's assistive device, but does not include an assistive device dealer.

(j) "Nonconformity" means a condition or defect that substantially impairs the use, value or safety of an assistive device, and that is covered by an express warranty

applicable to the assistive device or to a component of the assistive device, but does not include a condition or defect that is the result of abuse, neglect or unauthorized modification or alteration of the assistive device by a consumer.

(k) "Reasonable attempt to repair" means within the terms of an express warranty applicable to a new assistive device:

(1) Any nonconformity within the warranty that is either subject to repair by the manufacturer, assistive device lessor or any of the manufacturer's authorized assistive device dealers, for at least four times and a nonconformity continues.

(2) The assistive device is out of service for an aggregate of at least 30 cumulative days because of warranty nonconformity.

Section 3.

(a) A manufacturer who sells an assistive device to a consumer, either directly or through an assistive device dealer, shall furnish the consumer with an express warranty for the assistive device. The duration of the express warranty shall be not less than one year after first deliver of the assistive device to the consumer. In the absence of an express warranty from the manufacturer, the manufacturer shall be deemed to have expressly warranted to the consumer of an assistive device that, for a period of one year from the date first delivery to the consumer, the assistive device will be free from any condition or defect which substantially impairs the use or the value, or both, of the assistive device to the consumer.

(b) If a new assistive device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the assistive device lessor or any of the manufacturer's authorized assistive device dealers and makes the assistive device available for repair before one year after return delivery of the assistive device to a consumer, the nonconformity shall be repaired at no charge to the consumer.

(c) If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out the requirement set for under subsection (d).

(d) If, after a reasonable attempt to repair, the nonconformity is not repaired, then at the direction of a consumer described under paragraph (1), (2), or (3) of

subsection (e) of Section 2 and amendment thereto, the manufacturer shall do one of the following:

(1) Accept return of the assistive device and replace the assistive device with a comparable new assistive device and refund any collateral costs;

(2) Accept return of the assistive device and refund to the consumer and to any holder of a perfected security interest in the consumer's assistive device, as their interest may appear, the full purchase price plus any finance charge amount paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use. A reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the assistive device by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the assistive device was used before the consumer first reported the nonconformity to the assistive device dealer;

(3) With respect to a consumer described under paragraph (4) of subsection (e) of Section 2 and amendments thereto, accept return of the assistive device, refund to the assistive device lessor and to any holder of a perfected security interest in the assistive device lessor and to any holder of a perfected security interest in the assistive device, as their interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use.

(e) 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 device dealer's early termination costs and the value of the assistive device at the lease expiration date if the lease sets forth that value, less the assistive device lessor's early termination savings.

(f) A reasonable allowance for use may not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is 1,825 and the numerator of which is a number of days that the consumer used the assistive device before first reporting the nonconformity to the manufacturer, assistive device lessor or assistive device dealer.

Section 4.

(a) To receive a comparable new assistive device or a refund due under subsection (d) of Section 3 and amendments thereto, a consumer shall offer to the manufacturer of the assistive device having the nonconformity to transfer possession of that assistive device to that manufacturer. No later than 30 days after that offer, the manufacturer shall provide the consumer with the comparable assistive device or refund. When the manufacturer provides the new assistive device or refund, the consumer shall return the assistive device having the nonconformity to the manufacturer, along with any endorsements necessary to transfer real possession to the manufacturer.

(b) To receive a refund due under paragraph (3) of subsection (d) of Section 3 and amendments thereto, a consumer described under paragraph 4 of subsection 2 and amendments thereto shall offer to return the assistive device having the nonconformity to its manufacturer. No later than 30 days after that offer, the manufacturer shall provide the refund to the consumer. When the manufacture provides the refund, the consumer shall return to the manufacturer the assistive device having the nonconformity.

(c) To receive a refund due under paragraph (3) of subsection (d) of Section 3 and amendments thereto, an assistive device lessor shall offer to transfer possession of the assistive device having the nonconformity to its manufacture. No later than 30 days after that offer, the manufacturer shall provide the refund to the assistive device lessor. When the manufacturer provides the refund, the assistive device lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

Section 5.

(a) No person shall enforce the lease against the consumer after the consumer receives a refund due under paragraph (3) of subsection (d) of Section 3 and amendments thereto.

Section 6.

(a) This act shall not be construed to limit rights or remedies available to a consumer under any other law.

(b) Any waiver by a consumer of rights under this act is void.

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

Section 7.

(a) This act shall be part of an supplemental to the CNMI consumer protection act.

(b) Any failure to comply with the provisions or requirements, or both, of this act is a deceptive act or practice with the meaning of P.L. 6-46 and amendments thereto.

(c) The attorney general shall have jurisdiction to enforce this section in the event the consumer elects not to pursue violations of this act through private action.

Section 8. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 9. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this Act becomes effective.

Section 10. Effective Date. This Act shall take effect as upon its approval by the Governor or upon its becoming law without such approval.

CERTIFIED BY:

ATTESTED BY:

/s/ Diego T. Benavente
DIEGO T. BENAVENTE
Speaker
House of Representatives

/s/ Evelyn C. Fleming
EVELYN C. FLEMING
House Clerk

Approved this 27th day of September, 1999

/s/ Pedro P. Tenorio
PEDRO P. TENORIO
Governor
Commonwealth of the Northern Mariana Islands