

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 242

An Act to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 40, consisting of sections numbered 59.1-470 through 59.1-474, relating to trade and commerce; the Virginia Assistive Technology Device Warranties Act.

[H 941]

Approved April 3, 1998

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 40, consisting of sections numbered 59.1-470 through 59.1-474, as follows:

CHAPTER 40.

VIRGINIA ASSISTIVE TECHNOLOGY DEVICE WARRANTIES ACT.

§ 59.1-470. Definitions.

As used in this chapter:

"Assistive device dealer" means a person or company that is in the business of selling assistive devices, including a manufacturer who sells assistive technology devices directly to consumers.

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

"Assistive technology device," "assistive device," or "device" means any new device, including a demonstrator, that a consumer purchases or accepts transfer of in this Commonwealth which is used for a major life activity or any other assistive device that enables a person with a disability to communicate, see, hear, or maneuver. These devices include (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 (TTD/TTY), assistive listening devices, visual and audible signal systems, and other aids that enhance an individual's ability to hear; and (iii) voice-synthesized computer modules, optical scanners, talking software, Braille printers, and other devices that enhance a sight-impaired individual's ability to communicate.

"Authorized dealer" means any seller of an assistive device that (i) has, within a specified geographic area, an exclusive distribution arrangement with any person or entity that manufactures or assembles such device or (ii) is designated by the person or company that manufactures or assembles such device to repair or accept for repair such device.

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

"Consumer" means:

1. A person with a disability as defined in the Americans With Disabilities Act, 42 U.S.C. § 12101 (2), or his legal representative, (i) who has purchased an assistive device from an assistive device dealer or manufacturer for purposes other than resale; (ii) to whom the assistive device is transferred for purposes other than resale, if the transfer occurs before the expiration of any warranty established by this chapter; or (iii) who leases a new assistive device from an assistive device lessor under a written lease;

2. An entity which purchases or leases an assistive device using state or federal funds for the use of a person with a disability; or

3. An insurer or self-insurer which purchases or leases an assistive device for the use of a person with a disability.

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

"Manufacturer" means a person or company that manufactures or assembles assistive devices and agents of that person or company, including an authorized dealer, an importer, a distributor, factory branch, distributor branch and any warrantors of the manufacturer's assistive device, but does not include a professional who fabricates, without charge, a device for use in the course of treatment.

"Nonconformity" means a condition or defect that significantly impairs the use, value, function or safety of an assistive device or any of its components, but does not include a condition or defect of the device that is the result of (i) abuse, misuse or neglect by a consumer, (ii) modifications or alterations not authorized by the manufacturer, (iii) normal wear, (iv) normal use which may be resolved through a fitting adjustment, routine maintenance, preventative maintenance or proper care, or (v) a consumer's failure to follow any manufacturer's written service and maintenance guidelines furnished to the customer at the time of purchase.

"Reasonable attempt to repair" means that within one year after the date of first delivery of the assistive device:

1. The same nonconformity has been subject to repair three or more times by the manufacturer, assistive device lessor or any assistive device dealer authorized by the manufacturer to repair such device, and the nonconformity continues to exist and interfere with the device's operation; or

2. The assistive device is out of service, with no fungible loaner available, for a cumulative total of at least thirty days, exclusive of any necessary time in shipment, due to repair by the manufacturer, assistive device lessor or any assistive device dealer authorized by the manufacturer to repair such device, all of which is due to warranty nonconformities. The provisions of this subdivision shall not be applicable if the repairs could not be performed because of conditions beyond the control of the manufacturer, its agents or authorized dealers, including war, invasion, strike, fire, flood or other natural disasters.

§ 59.1-471. Implied warranty; responsibility for repair, return, or replacement.

A. Notwithstanding any other provision of law, in addition to any express warranty furnished by the manufacturer of an assistive device, such manufacturer shall also be deemed to have warranted to any consumer purchasing or leasing such device within this Commonwealth, that for a period of one year from the date of first delivery to the consumer (i) the device, when used as intended, will be free from any nonconformity and (ii) any nonconformity will be repaired (parts and labor) by the manufacturer or its agent, without charge to the consumer.

B. If, after reasonable attempt to repair, any nonconformity is not repaired, the manufacturer shall either:

1. Accept return of the nonconforming assistive technology device and refund to the consumer or consumers, to the extent of each consumer's participation in the initial purchase or lease of the device or collateral costs, within fourteen days thereof, (i) the manufacturer's suggested retail price, if available, (ii) the full purchase price of the device, excluding the cost of services associated with the device's initial purchase, together with reasonable collateral costs, or (iii) if the device was leased, all lease payments made through the date of return together with a proportional share of any required deposit; or

2. Accept return of the nonconforming assistive technology device and replace such nonconforming device with one of comparable market value, function and usefulness within thirty days of such request.

§ 59.1-472. Returned devices; subsequent sale or lease; disclosure.

No assistive device returned due to a nonconformity under the provisions of § 59.1-471 by a consumer or assistive device lessor in this Commonwealth or any other state, may be sold or leased again in this Commonwealth unless full disclosure of the reason for such return is made to any prospective buyer or lessee.

§ 59.1-473. Legal action or arbitration.

A. The remedies afforded by this chapter are cumulative and not exclusive and shall be in addition to any other legal or equitable remedies otherwise available to the consumer.

B. In addition to any other remedies otherwise available to him, any consumer who suffers loss as a result of any violation of this chapter may bring an action to recover damages. Such damages may also be recovered through the arbitration mechanism described in subsection C.

C. All persons subject to this chapter shall have the option of submitting any disputes arising under the provisions of this chapter to the arbitration mechanism established and administered by the Dispute Resolution Unit of the Office of Consumer Affairs, Division of Consumer Protection, pursuant to subdivision A 5 of § 3.1-14. Such mechanism shall ensure that the arbitration is conducted by a neutral third party.

§ 59.1-474. Certain actions deemed void.

A. Any manufacturer's exclusion or limitation of the implied warranties or consumer remedies prescribed by this chapter shall be deemed void.

B. Any purported waiver of rights to legal action or arbitration by a consumer within an assistive device purchase agreement shall be deemed void.