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SENATE BILL NO. 402

Offered January 23, 1998

A BILL 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.

Patrons—Couric, Colgan, Edwards, Gartlan, Hanger, Holland, Houck, Maxwell, Miller, K.G., Miller, Y.B., Newman, Norment, Potts and Saslaw; Delegates: Almand, Barlow, Bennett, Callahan, Clement, Deeds, Diamonstein, Hall, Hargrove, Johnson, Jones, J.C., Keating, Landes, Melvin, Morgan, Orrock, Plum, Reid, Scott, Shuler, Van LANDINGHAM, Wagner and Woodrum

Referred to the Committee on Commerce and Labor

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 at retail, 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 aides 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.

"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 any of the following:

1. The individual who has purchased an assistive device from an assistive device dealer or manufacturer for purposes other than resale, or an entity which purchases or leases an assistive device using state or federal funds for the use of a covered/insured individual;

2. A person to whom the assistive device is transferred for purposes other than resale, if the transfer occurs before the expiration of any warranty applicable to the assistive device, including one established by this chapter;

3. A legal representative of an individual who will use an assistive device for a major life activity or for communicating, seeing, hearing, or maneuvering; or

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

"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 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, and that is covered by any warranty, including one established by this chapter, applicable to the assistive device or to a component of the assistive device, but does not include a condition or defect of the device that is the result of (i) abuse or neglect by a consumer, (ii) modifications or alterations not authorized by the manufacturer, (iii) normal wear, or (iv) normal use which may be resolved through a fitting adjustment, routine maintenance, preventative maintenance or proper care.

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

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60 assistive device:

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

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

71 § 59.1-471. Implied warranty; responsibility for repair, return, or replacement.

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

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

80 1. Accept return of the nonconforming assistive technology device and refund to the consumer or
81 consumers, to the extent of each consumer's participation in the initial purchase of the device or
82 collateral costs, within fourteen days thereof, (i) the manufacturer's suggested retail price, if available
83 or (ii) the full purchase price, together with reasonable collateral costs; or

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

86 § 59.1-472. Returned devices; subsequent sale or lease; disclosure.

87 No assistive device returned by a consumer or assistive device lessor in this Commonwealth or any
88 other state may be sold or leased again in this Commonwealth unless full disclosure of the reason for
89 such return is made to any prospective buyer or lessee.

90 § 59.1-473. Legal action or arbitration.

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

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

96 C. All persons subject to this chapter shall have the option of submitting any disputes arising under
97 the provisions of this chapter to the arbitration mechanism established and administered by the Dispute
98 Resolution Unit of the Office of Consumer Affairs pursuant to subdivision A 5 of § 3.1-14. Such
99 mechanism shall ensure that the arbitration is conducted by a neutral third party whose qualifications
100 and conduct conform to the requirements of Chapter 20.2 (§ 8.01-576.4 et seq.) of Title 8.01.

101 § 59.1-474. Certain actions deemed void.

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

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