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SENATE BILL NO. 402

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor
on February 9, 1998)

(Patron Prior to Substitute—Senator Couric)

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.

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 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.

"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

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 fungible loaner available, for a cumulative total of
65 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 nonconformity, and (ii) any nonconformity will be repaired (parts and labor) by the manufacturer or its
77 agent, without charge to the consumer.

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

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 or lease of the device
82 or collateral costs, within fourteen days thereof, (i) the manufacturer's suggested retail price, if
83 available, (ii) the full purchase price of the device, excluding the cost of services associated with the
84 device's initial purchase, together with reasonable collateral costs, or (iii) if the device was leased, all
85 lease payments made through the date of return together with a proportional share of any required
86 deposit; or

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

89 § 59.1-472. Returned devices; subsequent sale or lease; disclosure.

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

94 § 59.1-473. Legal action or arbitration.

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

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

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

105 § 59.1-474. Certain actions deemed void.

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

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