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SENATE BILL NO. 1160

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce & Labor
on February 3, 1997)

(Patron Prior to Substitute—Senator Woods)

A BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 39, consisting of sections numbered 59.1-467 through 59.1-471, 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 39, consisting of sections numbered 59.1-467 through 59.1-471, as follows:

CHAPTER 39.

VIRGINIA ASSISTIVE TECHNOLOGY DEVICE WARRANTIES ACT.

§ 59.1-467. 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) 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 communicate; 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.

"Nonconformity" means a condition or defect that significantly impairs the use, 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 that is the result of (i) abuse, neglect by a consumer, (ii) modifications or alterations not authorized by the manufacturer, or (iii) normal wear.

"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 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

60 performed because of conditions beyond the control of the manufacturer, its agents or authorized dealers,
61 including war, invasion, strike, fire, flood or other natural disasters.

62 § 59.1-468. Implied warranty; responsibility for repair, return, or replacement.

63 A. Notwithstanding any other provision of law, in addition to any express warranty furnished by the
64 manufacturer of an assistive device, such manufacturer shall also be deemed to have warranted to any
65 consumer purchasing or leasing such device within this Commonwealth having a retail value of least
66 \$250, that for a period of one year from date of first delivery to the consumer (i) the device, when used
67 as intended, will be free from any condition or defect which substantially impairs the function of the
68 assistive device to the consumer, and (ii) any nonconformity will be repaired (parts and labor) by the
69 manufacturer or its agent, without charge to the consumer.

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

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

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

77 § 59.1-469. Returned devices; subsequent sale or lease; disclosure.

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

81 § 59.1-470. Legal action or arbitration.

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

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

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

92 § 59.1-471. Certain actions deemed void.

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

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

97 2. That the provisions of this act shall not become effective unless reenacted by the 1998 Session of
98 the General Assembly.