

CHAPTER 216E

ASSISTIVE DEVICES

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216E.1 Definitions.

As used in this chapter, unless the context otherwise provides:

1. “*Assistive device*” means any item, piece of equipment, or product system which is purchased, or whose transfer is accepted in this state, and which is used to increase, maintain, or improve the functional capabilities of individuals with disabilities concerning a major life activity. “*Assistive device*” does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. “*Assistive device*” does not mean any device for which a certificate of title is issued by the state department of transportation but does mean any item, piece of equipment, or product system otherwise meeting the definition of “*assistive device*” that is incorporated, attached, or included as a modification in or to such a certificated device.

2. “*Assistive device dealer*” means a person who is in the business of selling assistive devices.

3. “*Assistive device lessor*” means a person who leases assistive devices to consumers, or who holds the lessor’s rights, under a written lease.

4. “*Collateral costs*” means expenses incurred by a consumer in connection with the repair of a nonconformity, including the cost of shipping, sales tax, and of obtaining an alternative assistive device.

5. “*Consumer*” means any one of the following:

a. The purchaser of an assistive device, if the assistive device was purchased from an assistive device dealer or manufacturer for purposes other than resale.

b. 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.

c. A person who may enforce the warranty.

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

6. “*Demonstrator*” means an assistive device used primarily for the purpose of demonstration to the public.

7. “*Early termination costs*” 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 the lease and the return of an assistive device to the manufacturer. “*Early termination costs*” includes a penalty for prepayment under a finance arrangement.

8. “*Early termination savings*” means any expense or obligation that an assistive device lessor avoids as a result of both the termination of a written lease before the termination date set forth in the lease and the return of an assistive device to a manufacturer which shall include 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 payments remaining for the period of the lease term remaining after the early termination and the present value of those remaining payments at the date of the early termination.

9. “*Loaner*” means an assistive device, provided free of charge to the consumer, for use by the consumer, that need not be new or be identical to, or have functional capabilities equal

to or greater than, those of the original assistive device, but that meets all of the following conditions:

- a. The loaner is in good working order.
- b. The loaner performs, at a minimum, the most essential functions of the original assistive device, in light of the disabilities of the consumer.
- c. Any differences between the loaner and the original assistive device do not create a threat to the consumer's health or safety.

10. "*Major life activity*" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.

11. "*Manufacturer*" means a person who manufactures or assembles assistive devices and agents of that person, including an importer, a distributor, a factory branch, distributor branch, and any warrantors of the assistive device, but does not include an assistive device dealer or assistive device lessor.

12. "*Nonconformity*" means any defect, malfunction, or condition which substantially impairs the use, value, or safety of an assistive device or any of its component parts, but does not include a condition, defect, or malfunction that is the result of abuse, neglect, or unauthorized modification or alteration of the assistive device by the consumer.

13. "*Reasonable attempt to repair*" means any of the following occurring within the terms of an express warranty applicable to a new assistive device or within one year after first delivery of the assistive device to a consumer, whichever is sooner:

- a. The manufacturer, assistive device lessor, or any of the manufacturer's authorized assistive device dealers accepts return of the new assistive device for repair at least two times.

- b. The manufacturer, assistive device lessor, or any of the manufacturer's authorized assistive device dealers places the assistive device out of service for an aggregate of at least thirty cumulative days because of warranty nonconformities.

98 Acts, ch 1042, §1; 2006 Acts, ch 1159, §9, 10

216E.2 Express warranties.

1. A manufacturer or assistive device lessor who sells or leases 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, warranting the assistive device to be free of any nonconformity. The duration of the express warranty shall be not less than one year after first delivery of the assistive device to the consumer. If a manufacturer fails to furnish an express warranty as required by this section, the assistive device shall be covered by an express warranty as if the manufacturer had furnished an express warranty to the consumer as required by this section.

2. An express warranty does not take effect until the consumer takes possession of the new assistive device.

98 Acts, ch 1042, §2

216E.3 Assistive device replacement or refund.

1. If an 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 first delivery of the device to the consumer or within the period of the express warranty if the warranty is longer than one year, a reasonable attempt to repair the nonconformity shall be made.

2. If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out the requirements of either paragraph "a" or "b" upon the request of a consumer.

- a. The manufacturer shall provide for a refund by doing one of the following:

- (1) If the assistive device was purchased by the consumer, accept return of the assistive device and refund to the consumer and to any holder of perfected security interest in the consumer's assistive device, as the holder's interest may appear, the full purchase price plus

any finance charge paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use.

(2) If the assistive device was leased by the consumer, 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, as the holder's 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. The manufacturer shall have a cause of action against the dealer or lessor for reimbursement of any amount that the manufacturer pays to a consumer which exceeds the net price received by the manufacturer for the assistive device.

b. The manufacturer shall provide a comparable new assistive device or offer a refund to the consumer if the consumer does any one of the following:

(1) Offers to transfer possession of the assistive device to the manufacturer. No later than thirty days after that offer, the manufacturer shall provide the consumer with the comparable new assistive device or a 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 legal possession to the manufacturer.

(2) Offers to return the assistive device to the manufacturer. No later than thirty days after the offer, the manufacturer shall provide a refund to the consumer. When the manufacturer provides a refund, the consumer shall return the assistive device having the nonconformity to the manufacturer.

(3) Offers to transfer possession of a leased assistive device to the manufacturer. No later than thirty days after the offer, the manufacturer shall provide a 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.

3. Under the provisions of this section, 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 lessor'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.

4. Under the provisions of this section, a reasonable allowance for use shall 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 one thousand eight hundred twenty-five and the numerator of which is the 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.

5. A person shall not enforce a lease against a consumer after the consumer receives a refund.

98 Acts, ch 1042, §3

216E.4 Manufacturer's duty to provide reimbursement or a loaner for temporary replacement of assistive devices — penalties.

1. Whenever an assistive device covered by a manufacturer's express warranty is tendered by a consumer to the dealer from whom the assistive device was purchased or exchanged for the repair of any defect, malfunction, or nonconformity to which the warranty is applicable, the manufacturer shall provide the consumer, at the consumer's choice, for the duration of the repair period, either a rental assistive device reimbursement of up to twenty dollars per day, or a loaner, without cost to the consumer, if a loaner is reasonably available or obtainable by the manufacturer, assistive device lessor, or assistive device dealer, if any of the following applies:

a. The repair period exceeds ten working days, including the day on which the device is tendered to the manufacturer or an assistive device dealer designated by the manufacturer for repairs. If the assistive device dealer does not tender the assistive device to the manufacturer in a timely enough manner for the manufacturer to make the repairs within

ten days, the manufacturer shall have a cause of action against the assistive device dealer for reimbursement of any penalties that the manufacturer must pay.

b. The nonconformity is the same for which the assistive device has been tendered to the assistive device dealer for repair on at least two previous occasions.

2. The provisions of this section regarding a manufacturer's duty shall apply for the period of the applicable express warranty, or until the date any repair required by the warranty is completed and the assistive device is returned to the consumer with the nonconformity eliminated, whichever is later, even if the assistive device is returned after the end of the warranty period.

98 Acts, ch 1042, §4

216E.5 Nonconformity disclosure requirement.

An assistive device returned by a consumer or assistive device lessor in this state or any other state for nonconformity shall not be sold or leased again in this state unless full written disclosure of the reason for return is made to any prospective buyer or lessee by the manufacturer, assistive device dealer, or assistive device lessor.

98 Acts, ch 1042, §5

216E.6 Remedies.

1. This chapter shall not limit rights or remedies available to a consumer under any other law.

2. Any waiver of rights by a consumer under this chapter is void.

3. In addition to pursuing any other remedy, a consumer may bring an action to recover any damages caused by a violation of this chapter. The court shall award a consumer who prevails in such an action no more than three times the amount of any pecuniary loss, together with costs and reasonable attorney fees, and any equitable relief that the court determines is appropriate.

98 Acts, ch 1042, §6

216E.7 Exemptions.

This chapter does not apply to a hearing aid sold, leased, or transferred to a consumer by an audiologist licensed under chapter 154F, or a hearing aid dispenser licensed under chapter 154A, if the audiologist or dispenser provides either an express warranty for the hearing aid or provides for service and replacement of the hearing aid.

98 Acts, ch 1042, §7; 2005 Acts, ch 3, §49; 2009 Acts, ch 41, §87; 2009 Acts, ch 133, §84