CHAPTER 227

ASSISTIVE DEVICES FOR PERSONS WITH DISABILITIES

§1500. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1997, c. 235, §1 (NEW).]

1. Assistive device. "Assistive device" means any device that a consumer purchases or accepts transfer of in this State that is used within manufacturer specifications by a person with a disability within the meaning of the federal Americans with Disabilities Act to offset the effect of the disability and enhance function in carrying out a major life activity. "Assistive device" includes, but is not limited to, manual wheelchairs, motorized wheelchairs, motorized scooters and other aids that enhance the mobility of the individual; hearing aids, telephone communications devices for the deaf, or TDD, assistive listening devices and other aids that enhance an individual's ability to hear; voice synthesized computer modules, optical scanners, talking software, braille printers and other devices that enhance a sight-impaired individual's ability to communicate; and any other assistive device that enables a person with a disability to communicate, see, hear or maneuver. "Assistive device" does not include a hearing aid as defined by Title 32, section 17101, subsection 8.
[PL 2007, c. 369, Pt. B, §1 (AMD); PL 2007, c. 369, Pt. C, §5 (AFF).]

2. Consumer. "Consumer" means a person who purchases or leases an assistive device from a dealer or manufacturer for purposes other than resale; a person to whom an assistive device is transferred for purposes other than resale while an express warranty is in effect; a funding source that purchases a device for a person with a disability; or a person otherwise legally qualified to enforce a warranty.
[PL 1997, c. 235, §1 (NEW).]

3. Nonconformity. "Nonconformity" means a condition or a defect that substantially impairs the use, value or safety of an assistive device that is covered by an express warranty applicable to that assistive device, or to a component of that assistive device, but does not include a condition or defect that is the result of abuse, neglect or unauthorized modification or alteration of the assistive device by the consumer.
[PL 1997, c. 235, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 235, §1 (NEW). PL 2007, c. 369, Pt. B, §1 (AMD). PL 2007, c. 369, Pt. C, §5 (AFF).

§1500-A. Trial period

All assistive devices as defined in this chapter must be sold subject to a 30-day trial. A consumer may return an assistive device to the dealer from which it was purchased within the 30-day trial period if the device is not specifically fit for the consumer's particular needs and receive a full refund, after satisfaction of any perfected security interests, if the assistive device has not been damaged, abused or altered by the consumer. If the assistive device was purchased with insurance or public funds, the refund must be returned to the funding source. This section does not apply to an assistive device for which a trial period is already specifically addressed by another law. [PL 1997, c. 235, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 235, §1 (NEW).

§1500-B. Express warranty

1. Warranty. A manufacturer who sells or leases an assistive device to a consumer, either directly or through an assistive device dealer, shall warranty that the assistive device is in conformity with the terms of this subsection and shall furnish the consumer with a written express warranty for the assistive device. In the case of a sale, the duration of the express warranty must be at least one year from the date of the initial setup of the assistive device for the consumer. In the case of a lease, the duration of the express warranty must be for the duration of the lease. In both cases, the warranty must provide that the assistive device is free from any condition or defect that substantially impairs its value to the consumer during the warranty period. In the absence of an express warranty, the manufacturer is deemed to have made this warranty.
[PL 1997, c. 235, §1 (NEW).]

2. Repair. If a new 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 during the warranty period, the nonconformity must be repaired at no charge to the consumer or the funding source. If a repair is required, a replacement or loan of a comparable assistive device must be provided to the consumer as soon as feasible at no charge. In the case of a lease, lease payments must be suspended during any part of the repair period that a comparable assistive device has not been provided.
[PL 1997, c. 235, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 235, §1 (NEW).

§1500-C. Replacement of defective devices; refunds

1. Reasonable attempt to repair. A reasonable attempt to repair an assistive device to conform it to the express warranty is deemed to have been undertaken if:

A. The same conformity has been subject to repair 3 or more times by the manufacturer or its agents or authorized dealers within the express warranty term and the nonconformity continues; or [PL 1997, c. 235, §1 (NEW).]

B. The assistive device is out of service for a cumulative total of 30 days or more because of warranty nonconformity. [PL 1997, c. 235, §1 (NEW).]

[PL 1997, c. 235, §1 (NEW).]

2. Refund and replacement. If, after a reasonable attempt to repair the nonconformity, the nonconformity is not repaired, the manufacturer must accept return of the assistive device and, at the option of the consumer, refund the full purchase price to the consumer after satisfaction of any applicable perfected security interests or replace the assistive device with a comparable new assistive device. If the assistive device was purchased with public funds or insurance coverage on behalf of the consumer, the manufacturer shall notify the funder and, at the option of the consumer, replace the assistive device with a comparable new assistive device or refund to the funder the total reimbursement amount so that another suitable device may be purchased.
[PL 1997, c. 235, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 235, §1 (NEW).

§1500-D. Disclosure at time of resale

An assistive device that is returned to the manufacturer under section 1500-C may not be sold without clear written disclosure to any subsequent purchaser, whether that purchaser is a consumer or a dealer, that the assistive device was returned to the manufacturer under this chapter and a written

description of the nonconformity for which the assistive device was returned. [PL 1997, c. 235, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 235, §1 (NEW).

§1500-E. Other remedies

1. Rights. This section may not be construed to limit rights or remedies available to a consumer under any other law.
[PL 1997, c. 235, §1 (NEW).]

2. Enforcement. A consumer may bring an action to recover for damages caused by a violation of this chapter. The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, plus reasonable costs and attorney's fees.

It is a valid defense to an action brought under this subsection if, at the time of sale, the dealer had no reasonable way of knowing that the device was intended to be used within manufacturer specifications by the consumer as an assistive device as defined by section 1500, subsection 1.
[PL 1997, c. 235, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 235, §1 (NEW).

§1500-F. Waiver

Any waiver of rights under this chapter by a consumer is void. [PL 1997, c. 235, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 235, §1 (NEW).

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