WEST VIRGINIA CODE CHAPTER 46a ARTICLE 6E

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§46A-6E-1. Definitions.

(a) "Assistive device" means any device enabling a person with a disability to communicate, see, hear or maneuver, which a consumer purchases or accepts transfer of in this state. This definition includes a demonstrator. Examples of assistive devices include, but are not limited to, manual and motorized wheelchairs, motorized scooters, hearing aids, telephone communication devices for the deaf (TTY), assistive listening devices, voice synthesized computer modules, optical scanners, talking software and braille printers.

(b) "Assistive device dealer" means a person who is in the business of selling assistive devices.

(c) "Assistive device lessor" means a person who leases an assistive device to a consumer, or who holds the lessor's rights, under a written lease.

(d) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative assistive device.

(e) "Consumer" means any of the following:

(1) The purchaser of an assistive device, if the assistive device was purchased from an assistive device dealer or manufacturer for purposes other than resale;

(2) 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;

(3) A person who may enforce the warranty; and

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

(f) "Current value of the written lease" means 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 dealer'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.

(g) "Demonstrator" means an assistive device used primarily for the purpose of demonstration to the public.

(h) "Early termination cost" 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 that lease and the return of an assistive device to a manufacturer pursuant to this section. Early termination cost includes a penalty for prepayment under finance arrangement.

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(i) "Early termination saving" means any expense or obligation that an assistive device lessor avoids as a result of both the termination of a written lease before that termination date set forth in that lease and the return of an assistive device to a manufacturer pursuant to this section. Early termination saving includes 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 amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(j) "Manufacturer" means a person who manufactures or assembles assistive devices and agents of that person, including an importer, a distributor, factory branch, distributor branch and any warrantor of the manufacturer's assistive device, but does not include an assistive device dealer.

(k) "Nonconformity" means a condition or defect that substantially impairs the use, value or safety of an assistive device and is covered by a warranty applicable to the assistive device or to a component of the assistive device.

(l) "Reasonable allowance for use" means an amount obtained by multiplying the total amount for which the 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.

(m) "Reasonable attempt to repair" means within the terms of a warranty applicable to a new assistive device:

(1) A nonconformity within the manufacturer's warranty continues after three attempts at repair by the manufacturer, assistive device lessor, or any of the manufacturer's authorized assistive device dealers; or

(2) The assistive device is out of service for thirty cumulative days because of warranty nonconformity.

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§46A-6E-2. Express warranty requirement; express warranty duration; implied warranty.

(a) A manufacturer who sells 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. The duration of the express warranty shall be not less than one year after first delivery of the assistive device to the consumer. In the absence of an express warranty from the manufacturer, the manufacturer shall be deemed to have expressly warranted to the consumer of an assistive device that, for a period of one year from the date of first delivery to the consumer, the assistive device will be free from any condition or defect which substantially impairs the value of the assistive device to the consumer.

(b) Notwithstanding any other provision of law to the contrary with respect to assistive devices subject to the provisions of this article, no manufacturer, assistive device dealer or assistive device lessor shall:

(1) Exclude, modify or otherwise attempt to limit any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose; or

(2) Exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express or implied.

Any such exclusion, modification or attempted limitation shall be void.

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§46A-6E-3. Warranty remedies; procedures for obtaining remedies.

(a) Repair. -- If a new assistive device does not conform to an express or implied warranty and the consumer reports the nonconformity to the manufacturer, the assistive device lessor, or a manufacturer's authorized assistive device dealer and makes the assistive device available for repair on or before one year after return delivery of the assistive device to a consumer, the nonconformity shall be repaired at no charge to the consumer.

(b) Return, refund, reimbursement, replacement. -- After a reasonable attempt to repair, if the nonconformity in an assistive device is not repaired, the consumer may request remedies within this section by offering to transfer possession of the assistive device to the manufacturer. No later than thirty days after the consumer's offer, the manufacturer shall provide to the consumer as many of the following remedies as are applicable and elected by the consumer, whereupon the consumer shall return to the manufacturer the assistive device and any endorsements necessary to transfer its possession to the manufacturer:

(1) Accept return of the assistive device;

(2) Replace the assistive device with a comparable new assistive device;

(3) Refund collateral costs to the consumer;

(4) Refund to the consumer and to any holder of a perfected security interest in the assistive device the full purchase price, plus any finance charge paid by the consumer, plus collateral costs, less a reasonable allowance for use; or

(5) Refund to the lessor and to any holder of a perfected security interest in the assistive device the current value of the written lease, and refund to the consumer the amount paid by the consumer pursuant to the written lease, plus collateral costs, less a reasonable allowance for use.

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§46A-6E-4. Lease enforcement.

No person may enforce the lease of an assistive device against the consumer after the consumer receives a refund pursuant to section three of this article.

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§46A-6E-5. Disclosure upon further sale or lease.

No assistive device returned by a consumer or assistive device lessor in this state, or by a consumer or assistive device lessor in another state under a similar law of that state, may be sold or leased again in this state unless full disclosure of the reasons for return is made to any prospective buyer or lessee.

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§46A-6E-6. Arbitration.

(a) Each consumer shall have the option of submitting any dispute arising under this section upon the payment of a prescribed filing fee to an alternate arbitration mechanism established by the Attorney General. Upon application of the consumer and payment of the filing fee, all manufacturers shall submit to such alternate arbitration.

(b) Such alternate arbitration shall be conducted by a professional arbitrator or arbitration firm appointed by the Attorney General. The arbitration process shall ensure that personal objectivity of its arbitrators and the right of each party to present its case, to be in attendance during any presentation made by the other party and to rebut or refute such presentation.

(c) The Attorney General shall propose a legislative rule or rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code to establish the arbitration mechanism provided for in this section.

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§46A-6E-7. Limitations; waiver of rights; action for damages; punitive damages.

(a) This section does not limit rights or remedies available to a consumer under any other law.

(b) Any waiver by a consumer of rights under this article is void.

(c) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this section. The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, and any equitable relief that the court determines appropriate.

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