

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



# ENROLLED

## Com. Sub. for House Bill No. 4429

(By Delegates Miller, Compton, Underwood,  
Leach, Douglas, Capito and Thompson)



Passed March 14, 1998

In Effect Ninety Days from Passage

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## ENROLLED

COMMITTEE SUBSTITUTE

FOR

# H. B. 4429

(BY DELEGATES MILLER, COMPTON, UNDERWOOD,  
LEACH, DOUGLAS, CAPITO AND THOMPSON)

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[Passed March 14, 1998; in effect ninety days from passage.]

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AN ACT to amend chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-e, relating to providing consumer protection regarding assistive devices; definitions; warranty requirements and remedies; lease enforcement; required disclosures; arbitration; and actions for damages.

*Be it enacted by the Legislature of West Virginia:*

That chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article six-e, to read as follows:

### **ARTICLE 6E. CONSUMER PROTECTION-ASSISTIVE DEVICES.**

#### **§46A-6E-1. Definitions.**

- 1 (a) "Assistive device" means any device enabling a
- 2 person with a disability to communicate, see, hear or
- 3 maneuver, which a consumer purchases or accepts transfer
- 4 of in this state. This definition includes a demonstrator.

5 Examples of assistive devices include, but are not limited  
6 to, manual and motorized wheelchairs, motorized scooters,  
7 hearing aids, telephone communication devices for the  
8 deaf (TTY), assistive listening devices, voice synthesized  
9 computer modules, optical scanners, talking software and  
10 braille printers.

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

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

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

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

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

24 (2) A person to whom the assistive device is  
25 transferred for purposes other than resale, if the transfer  
26 occurs before the expiration of an express warranty  
27 applicable to the assistive device;

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

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

31 (f) "Current value of the written lease" means the total  
32 amount for which that lease obligates the consumer during  
33 the period of the lease remaining after its early  
34 termination, plus the assistive device dealer's early  
35 termination costs and the value of the assistive device at  
36 the lease expiration date if the lease sets forth that value,  
37 less the assistive device lessor's early termination savings.

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

40 (h) "Early termination cost" means any expense or  
41 obligation that an assistive device lessor incurs as a result  
42 of both the termination of a written lease before the  
43 termination date set forth in that lease and the return of an  
44 assistive device to a manufacturer pursuant to this section.  
45 Early termination cost includes a penalty for prepayment  
46 under finance arrangement.

47 (i) "Early termination saving" means any expense or  
48 obligation that an assistive device lessor avoids as a result  
49 of both the termination of a written lease before that  
50 termination date set forth in that lease and the return of an  
51 assistive device to a manufacturer pursuant to this section.  
52 Early termination saving includes an interest charge that  
53 the assistive device lessor would have paid to finance the  
54 assistive device or, if the assistive device lessor does not  
55 finance the assistive device, the difference between the  
56 total amount for which the lease obligates the consumer  
57 during the period of the lease term remaining after the  
58 early termination and the present value of that amount at  
59 the date of the early termination.

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

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

70 (l) "Reasonable allowance for use" means an amount  
71 obtained by multiplying the total amount for which the  
72 lease obligates the consumer by a fraction, the  
73 denominator of which is one thousand eight hundred  
74 twenty-five and the numerator of which is the number of  
75 days that the consumer used the assistive device before  
76 first reporting the nonconformity to the manufacturer,  
77 assistive device lessor or assistive device dealer.

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

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

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

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

1 (a) A manufacturer who sells an assistive device to a  
2 consumer, either directly or through an assistive device  
3 dealer, shall furnish the consumer with an express  
4 warranty for the assistive device. The duration of the  
5 express warranty shall be not less than one year after first  
6 delivery of the assistive device to the consumer. In the  
7 absence of an express warranty from the manufacturer, the  
8 manufacturer shall be deemed to have expressly warranted  
9 to the consumer of an assistive device that, for a period of  
10 one year from the date of first delivery to the consumer,  
11 the assistive device will be free from any condition or  
12 defect which substantially impairs the value of the assistive  
13 device to the consumer.

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

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

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

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

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

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

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

21 (1) Accept return of the assistive device;

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

24 (3) Refund collateral costs to the consumer;

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

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

**§46A-6E-4. Lease enforcement.**

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

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

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

**§46A-6E-6. Arbitration.**

1 (a) Each consumer shall have the option of submitting  
2 any dispute arising under this section upon the payment  
3 of a prescribed filing fee to an alternate arbitration  
4 mechanism established by the attorney general. Upon  
5 application of the consumer and payment of the filing fee,  
6 all manufacturers shall submit to such alternate arbitration.

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

14 (c) The attorney general shall propose a legislative  
15 rule or rules for promulgation in accordance with the  
16 provisions of chapter twenty-nine-a of this code to  
17 establish the arbitration mechanism provided for in this  
18 section.

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

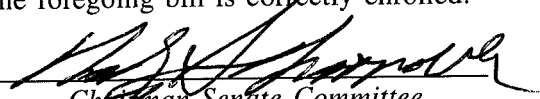
1 (a) This section does not limit rights or remedies  
2 available to a consumer under any other law.

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

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



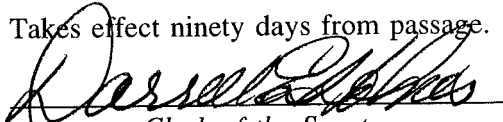
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

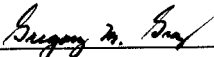
  
Chairman Senate Committee

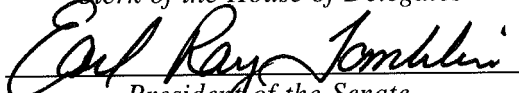
  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

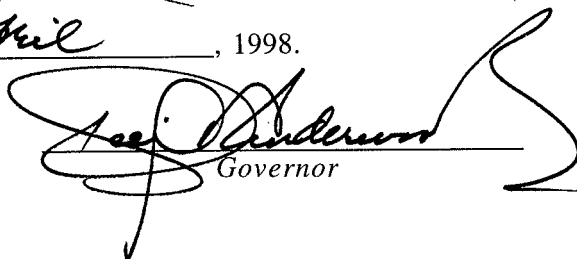
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within approved this the 8th  
day of April, 1998.

  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98.

Time 2:42 pm