

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 28.
COMMERCIAL INSTRUMENTS AND
TRANSACTIONS.

CHAPTER 40A.
ASSISTIVE TECHNOLOGY DEVICE WARRANTY.

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DISTRICT OF COLUMBIA OFFICIAL CODE
CHAPTER 40A. ASSISTIVE TECHNOLOGY DEVICE
WARRANTY.

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CHAPTER 40A. ASSISTIVE TECHNOLOGY DEVICE WARRANTY.

§ 28-4031. DEFINITIONS.

For the purposes of this chapter, the term:

(1) "Assistive device dealer" means an individual or entity that is in the business of selling assistive technology devices, including a manufacturer who sells assistive technology devices directly to consumers.

(2) "Assistive device lessor" means an individual or entity that leases an assistive technology device to a consumer, or who holds the lessor's rights, under a written lease.

(3)(A) "Assistive technology device" means:

(i) An item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used or designed to be used to increase, maintain, or improve a functional capability of an individual with a disability; and

(ii) Each component of the assistive technology device system that is itself ordinarily an assistive technology device.

(B) The term "assistive technology device" includes:

(i) Wheelchairs and scooters of any kind, and other aids that enhance the mobility or positioning of an individual, such as motorization, motorized positioning features, and the switches and controls for motorized features;

(ii) Hearing aids, telephone communication devices for the deaf, and other assistive listening devices;

(iii) Computer equipment and reading devices with voice output, optical scanners, talking software, Braille printers, and other aids and devices that provide access to text;

(iv) Computer equipment with voice output, artificial larynges, voice amplification devices, and other alternative and augmentative communication devices;

(v) Voice recognition computer equipment, software and hardware accommodations, switches, and other forms of alternative access to computers;

(vi) Environmental control units; and

(vii) Simple mechanical aids that enhance the functional capabilities of an individual with disabilities.

(4) "Authorized dealer" means any seller of an assistive technology device that:

(A) Has, within a specified geographic area, an exclusive distribution arrangement with any person or entity that manufactures or assembles an assistive technology device; or

(B) Is designated by the individual or entity that manufactures or assembles the assistive technology device to repair or accept for repair the assistive technology device.

(5) "Collateral costs" means the following expenses incurred by a consumer:

(A) Medical expenses for the treatment of a physical injury caused by a nonconformity in an assistive technology device;

(B) The cost to rent a substitute assistive technology device during the time repairs are attempted for an assistive technology device or mobility aid that has a nonconformity and during the time preceding receipt of a replacement when repairs have been unsuccessful;

(C) The cost of shipping an assistive technology device that has a nonconformity to a manufacturer, lessor, or authorized dealer for repair or replacement; and

(D) The documented costs of long-distance telephone calls and facsimile transmissions used to

contact the manufacturer, lessor, or authorized dealer for the purpose of effecting a repair or replacement of an assistive technology device that has a nonconformity.

(6) "Consumer" means:

- (A) The purchaser of an assistive technology device, if the device was purchased from an authorized dealer or manufacturer for purposes other than resale;
- (B) A person to whom the device is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the device;
- (C) A person who may enforce the warranty; or
- (D) A person who leases a device from an assistive device lessor under a written lease.

(7) "Manufacturer" means an individual or entity that manufactures or assembles devices, and agents of that person or company, including an authorized dealer, an importer, distributor, factory branch, distributor branch, and any warrantors of the manufacturer's device. The term "manufacturer" shall not include a professional who fabricates, without charge, a device for use in the course of treatment.

(8) "Nonconformity" means a condition or defect that significantly impairs the use, value, function, or safety of a device or any of its components, but shall not include a condition or defect of the device that is the result of:

- (A) Abuse, misuse, or neglect by a consumer;
- (B) Modifications or alterations not authorized by the manufacturer; or
- (C) Failure to follow any manufacturer's written service and maintenance guidelines furnished at the time of purchase.

(9)(A) "Reasonable attempt to repair" means that:

(i) Within one year after the date of the 1st delivery of the device:

(l) The same nonconformity has been subject to repair 3 or more times by the manufacturer, assistive device lessor, or any assistive device dealer authorized by the manufacturer to repair the assistive technology device, and the nonconformity continues to exist and interfere with the assistive technology device's operation; or

(ii) The assistive technology device is out of service, with no fungible loaner available, for a cumulative total of at least 30 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 the assistive technology device, all of which is due to warranty nonconformities.

(B) The term "reasonable attempt to repair" shall not include repairs:

(i) Unable to be performed because of conditions beyond the control of the manufacturer, or its agents or authorized dealers, such as invasion, strike, fire, and natural disasters.

(ii) Related to the routine fittings and adjustments to hearing aids.

(Oct. 26, 2010, D.C. Law 18-241, § 2, 57 DCR 7550; Sept. 26, 2012, D.C. Law 19-171, § 83(b), (c), 59 DCR 6190.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 19-171 enacted into law Chapter 40A of Title 28; and validated previously made technical corrections in this section.

Legislative History of Laws

Law 18-241, the "Assistive Technology Device Warranty Act of 2010", was introduced in Council and assigned Bill No. 18-527, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on June 29, 2010, and July 13, 2010, respectively. Signed by the Mayor on July 30, 2010, it was assigned Act No. 18-492 and transmitted to both Houses of Congress for its review. D.C. Law 18-241 became effective on October 26, 2010.

For history of Law 19-171, see notes under § 28-3814.

§ 28-4032. IMPLIED WARRANTY; RESPONSIBILITY FOR REPAIR; RETURN OR REPLACEMENT; CERTAIN ACTIONS DEEMED VOID.

(a) Notwithstanding any other provision of law or express warranty furnished by the manufacturer, the manufacturer shall be deemed to have warranted that for a period of one year from date of 1st delivery to the consumer the assistive technology device, when used as intended, will be free from any nonconformity.

Any nonconformity shall be repaired, including parts and labor, by the manufacturer or its agent without cost to the consumer.

(b) If, after a reasonable attempt to repair, the nonconformity is not repaired, the assistive device dealer, assistive device lessor, or manufacturer shall, within 30 days after a consumer's request:

(1) Refund to the consumer all collateral costs; and

(2)(A) Accept return of the nonconforming assistive technology device and replace the nonconforming assistive technology device with one of comparable value, function, and usefulness; or

(B) Refund the full purchase price to the consumer.

(c) A manufacturer or dealer exclusion or limitation of the implied warranties or consumer remedies prescribed by this section shall be void.

(d) A purported waiver of rights to legal action by a consumer within an assistive technology device purchase agreement or assistive technology device lease agreement shall be void.

(Oct. 26, 2010, D.C. Law 18-241, § 3, 57 DCR 7550; Sept. 26, 2012, D.C. Law 19-171, § 83(d), 59 DCR 6190.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 19-171 enacted into law Chapter 40A of Title 28.

Legislative History of Laws

For history of Law 18-241, see notes under § 28-4031.

For history of Law 19-171, see notes under § 28-3814.

§ 28-4033. RETURNED DEVICES; SUBSEQUENT SALE OR LEASE; DISCLOSURE.

An assistive technology device returned due to nonconformity under the provisions of this chapter shall not be sold or leased unless full disclosure in writing of the reason for the return is made to any prospective consumer.

(Oct. 26, 2010, D.C. Law 18-241, § 4, 57 DCR 7550; Sept. 26, 2012, D.C. Law 19-171, § 83(c), (e), 59 DCR 6190.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 19-171 enacted into law Chapter 40A of Title 28; and validated previously made technical corrections in this section.

Legislative History of Laws

For history of Law 18-241, see notes under § 28-4031.

For history of Law 19-171, see notes under § 28-3814.

§ 28-4034. LEGAL ACTION.

(a) In addition to any other remedies otherwise available to a consumer, a consumer who suffers loss as a result of any violation of this chapter may bring an action to recover damages. The court shall award a consumer who prevails in an action twice the amount of any pecuniary loss, costs, reasonable attorneys' fees, and any equitable relief that the court determines is appropriate.

(b) The remedies under this chapter shall be cumulative and not exclusive and shall be in addition to any other legal or equitable remedies otherwise available to the consumer.

(Oct. 26, 2010, D.C. Law 18-241, § 5, 57 DCR 7550; Sept. 26, 2012, D.C. Law 19-171, § 83(c), (f), 59 DCR 6190.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

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