

AN ACT

*Codification  
District of  
Columbia  
Official Code*

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To provide specific consumer protections to purchasers and lessees of assistive technology devices that have become defective or nonconforming due to no fault of the consumer.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Assistive Technology Device Warranty Act of 2010”.

Sec. 2. Definitions.

For the purposes of this act, 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 1<sup>st</sup> delivery of the device:

(I) 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.

Sec. 3. 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 1<sup>st</sup> 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.

**Sec. 4. Returned devices; subsequent sale or lease; disclosure;**

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

**Sec. 5. 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 act 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 act shall be cumulative and not exclusive and shall be in addition to any other legal or equitable remedies otherwise available to the consumer.

**Sec. 6. Fiscal impact statement.**

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

**Sec. 7. Effective date.**

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

**ENROLLED ORIGINAL**

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia