

TITLE 4: ECONOMIC RESOURCES
DIVISION 5: BUSINESS REGULATION

§ 5161. Definitions.

As used in this article:

(a) “Assistive device” means any device, including a demonstrator, that a consumer purchases or accepts transfer in the Commonwealth, which is used for a major life activity. This includes, but is not limited to, manual wheelchairs, motorized scooters and other aides that enhance the mobility of an individual; hearing aide, telephone communication devices for the deaf (TTY), assistive listening devices and other aides 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.

(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 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 purchase 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;

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

(f) “Demonstrator” means an assistive device used primarily for the purpose of demonstration to the public.

(g) “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 a finance arrangement.

(h) “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

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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.

(i) “Manufacturer” means a person who manufactures or assembles assistive devices and agent of that person, including an importer, a distributor, factory branch, distributor branch and any warrantors of the manufacturer’s assistive device, but does not include an assistive device dealer.

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

(k) “Reasonable attempt to repair” means within the terms of an express warranty applicable to a new assistive device:

(1) Any nonconformity within the warranty that is either subject to repair by the manufacturer, assistive device lessor or any of the manufacturer’s authorized assistive device dealers, for at least four times and a nonconformity continues.

(2) The assistive device is out of service for an aggregate of at least 30 cumulative days because of warranty nonconformity.

Source: PL 11-101, § 2, modified.

Commission Comment: PL 11-101 took effect September 27, 1999. PL 11-101 contained title, severability, and savings clause provisions as follows:

Section 1. Title. This Act may be cited as the “Assistive Technology Warranty Act of 1998.”

. . .

Section 8. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 9. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this Act becomes effective.