ENROLLED HOUSE
BILL NO. 2255

By: Blackburn of the House

and

Brown and Henry of the Senate

An Act relating to contracts; enacting the Defective Assistive Device Act; providing short title; defining terms; requiring certain express warranties for certain purchases; specifying such warranty; providing for procedures and actions for nonconforming assistive devices; requiring certain actions from the manufacturers concerning nonconforming assistive devices; defining and specifying certain terms; providing for procedures and certain actions relating to leased nonconforming assistive devices; defining and specifying terms relating to such leased nonconforming assistive devices; providing for rights and procedures relating to the receipt of a new assistive device or refund due to a nonconforming assistive device; prohibiting certain sales or leases under certain conditions; providing for certain alternate arbitration under the Dispute Resolution Act; providing for construction of act; voiding certain waiver of rights; providing for additional remedies; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910 of Title 15, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Defective Assistive Device Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910.1 of Title 15, unless there is created a duplication in numbering, reads as follows:

As used in the Defective Assistive Device Act:

1. "Assistive device" means any device, including a demonstrator, that a consumer purchases or accepts transfer of in this state which is used for a major life activity which includes, but is not limited to:

a. manual wheelchairs, motorized wheelchairs, motorized scooters, and other aids that enhance the mobility of an individual,

b. hearing aids, telecommunications devices for the deaf (TDD), assistive listening devices, and other aids that enhance an individual's ability to hear,

c. voice-synthesized computer modules, optical scanners, talking software, braille printers, and other devices that enhance a sight-impaired individual's ability to communicate, and

d. any other assistive device that enables a person with a disability to communicate, see, hear, or maneuver;

2. "Assistive device dealer" means a person who is in the business of selling assistive devices;

3. "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;

4. "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;

5. "Consumer" means any of the following:

a. the purchaser of an assistive device, if the assistive device was purchased from an assistive device dealer or manufacturer for purposes other than resale,

b. 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,

c. a person who may enforce the warranty, or

d. a person who leases an assistive device from an assistive device lessor under a written lease;

6. "Demonstrator" means an assistive device used primarily for the purpose of demonstration to the public;

7. "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 the Defective Assistive Device Act. Early termination cost includes a penalty for prepayment under a finance arrangement;

8. "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 the Defective Assistive Device Act. 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;

9. "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 warrantors of the manufacturer's assistive device, but does not include an assistive device dealer;

10. "Nonconformity" means a condition or defect that substantially impairs the 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; and

11. "Reasonable attempt to repair" means within the terms of an express warranty applicable to a new assistive device:

a. 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, or

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910.2 of Title 15, unless there is created a duplication in numbering, reads as follows:

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 (1) 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 (1) 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. If a new assistive device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the assistive device lessor or any of the manufacturer's authorized assistive device dealers and makes the assistive device available for repair before one (1) year after return delivery of the assistive device to a consumer, the nonconformity shall be repaired at no charge to the consumer.

C. If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out the requirement set forth under Section 4 of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910.3 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. If, after a reasonable attempt to repair, the nonconformity is not repaired, then at the direction of a consumer described under subparagraph a, b or c of paragraph 5 of Section 2 of this act, the manufacturer shall do one of the following:

1. Accept return of the assistive device and replace the assistive device with a comparable new assistive device and refund any collateral costs; or

2. Accept return of the assistive device and refund to the consumer and to any holder of a perfected security interest in the consumer's assistive device, as their interest may appear, the full purchase price plus any finance charge amount paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use. A reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the assistive device by a fraction, the denominator of which is one thousand eight hundred twenty-five (1,825) and the numerator of which is the number of days that the assistive device was used before the consumer first reported the nonconformity to the assistive device dealer.

B. 1. With respect to a consumer described under subparagraph d of paragraph 5 of Section 2 of this act, accept return of the assistive device, refund to the assistive device lessor and to any holder of a perfected security interest in the assistive device, as their interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid under

the written lease plus any collateral costs, less a reasonable allowance for use.

2. The current value of the written lease equals 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.

3. A reasonable allowance for use may not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is one thousand eight hundred twenty-five (1,825) 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.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910.4 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. To receive a comparable new assistive device or a refund due under Section 4 of this act, a consumer shall offer to the manufacturer of the assistive device having the nonconformity to transfer possession of that assistive device to that manufacturer. No later than thirty (30) days after that offer, the manufacturer shall provide the consumer with the comparable assistive device or refund. When the manufacturer provides the new assistive device or refund, the consumer shall return the assistive device having the nonconformity to the manufacturer, along with any endorsements necessary to transfer real possession to the manufacturer.

B. To receive a refund due under subsection B of Section 4 of this act, a consumer described under subparagraph d of paragraph 5 of Section 2 of this act shall offer to return the assistive device having the nonconformity to its manufacturer. No later than thirty (30) days after that offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return to the manufacturer the assistive device having the nonconformity.

C. To receive a refund due under subsection B of Section 4 of this act, an assistive device lessor shall offer to transfer possession of the assistive device having the nonconformity to its manufacturer. No later than thirty (30) days after that offer, the manufacturer shall provide the refund to the assistive device lessor. When the manufacturer provides the refund, the assistive device lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

D. No person shall enforce the lease against the consumer after the consumer receives a refund due under subsection B of Section 4 of this act.

E. 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.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 910.5 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. Each consumer shall have the option of submitting any dispute arising under the Defective Assistive Device Act to alternate arbitration, and all manufacturers shall submit to such

alternate arbitration pursuant to the Dispute Resolution Act, Section 1801 et seq. of Title 12 of the Oklahoma Statutes.

B. The Defective Assistive Device Act shall not be construed to limit rights or remedies available to a consumer under any other law.

C. Any waiver by a consumer of rights under this section is void.

D. In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of the Defective Assistive Device Act. 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 is appropriate.

SECTION 7. This act shall become effective November 1, 1996.

Passed the House of Representatives the 5th day of March, 1996.

Speaker of the House of Representatives

Passed the Senate the 1st day of April, 1996.

President of the Senate