



## **Warranties for New Assistive Devices**

**Cited as  
Kentucky New Assistive Device Warranty Act  
KRS 151B.300 to 151B.335  
Effective July 15, 1998**

### **151B.300. Definitions for KRS 151B.300 to 151B.335.**

As used in KRS 151B.300 to 151B.335, unless the context indicates otherwise:

- 1) "Individual with disabilities" means any individual who is considered to have a mental or physical disability, impairment, or handicap for purposes of any other law of this state or of the United States, including any rules or regulations there under. "
- 2) "Assistive device" means any item, device, piece of equipment, or product system or component thereof, including a demonstrator, that is designed and used to increase, maintain, or improve functional capabilities of individuals with disabilities in the areas of seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself, or working. The term includes, but is not limited to:
  - (a) Manual wheelchairs;
  - (b) Motorized wheelchairs;
  - (c) Motorized scooters;
  - (d) Other aids that enhance the mobility of an individual;
  - (e) Hearing aids;
  - (f) Assistive listening devices;
  - (g) Other aids that enhance an individual's ability to hear or communicate;
  - (h) Voice-synthesized computer modules;
  - (i) Optical scanners;
  - (j) Talking software;
  - (k) Braille printers;
  - (l) Large print materials;
  - (m) Other devices that enhance an individual's ability to access print or communicate;
  - (n) Other devices such as environmental controls;
  - (o) Adaptive transportation aids;
  - (p) Communication boards; and
  - (q) Modified environments.
- 3) "Assistive device dealer" means a person who is in the business of selling new assistive devices.
- 4) "Assistive device leaser" means a person who leases new assistive devices to consumers, or who holds the leaser's rights, under a written lease.
- 5) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the cost of sales tax and of obtaining an alternative assistive device.
- 6) "Consumer" means any person including a public agency or other private organization, who acquires an assistive device on behalf of or for the benefit of an individual with a disability who:
  - (a) Purchases an assistive device from an assistive device manufacturer, its agent, or authorized dealer for the purposes other than resale;
  - (b) Obtains or otherwise receives an assistive device for purposes other than resale, provided the transfer occurs before the expiration of an express warranty applicable to the assistive device;
  - (c) Possesses the right to enforce the express warranty; or
  - (d) Leases an assistive device from an authorized assistive device leaser under a written lease.
- 7) "Demonstrator" means an assistive device used primarily for the purpose of demonstration to the public.
- 8) "Early termination cost" means an expense or obligation that an assistive device leaser 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 the manufacturer. The term includes any penalty for prepayment under a finance arrangement.

- 9) "Early termination savings" means an expense or obligation that an assistive device leaser avoids 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 the manufacturer. The term includes an interest charge that the assistive device leaser would have paid to finance the assistive device or, if the assistive device leaser does not finance the assistive device, the difference between the total period of the lease remaining after the early termination and the present value of that amount at the date of the early termination.
- 10) "Manufacturer" means a person who manufactures or assembles assistive devices including agents of that person, an importer, a distributor, a factory branch, distributor branch, and any warrantors of the manufacturer's assistive device, but does not include an assistive device dealer or an assistive device leaser.
- 11) "Nonconformity" means a specific condition or generic defect or malfunction, or a defect or condition of a component of the assistive device 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) A condition of the device that is the result of abuse, neglect, unauthorized modification, or alteration of the assistive device by the consumer.
  - (b) A condition of the device that is the result of normal use which may be resolved through a fitting or other routine adjustment, proper preventative maintenance, or care in accordance with written instructions provided with the assistive device.
- 12) "Reasonable attempt to repair" means any of the following occurring within the term of an express warranty applicable to a new assistive device:
  - (a) The new assistive device has been subject to repair two (2) or more times, for the same nonconformity, by the manufacturer, its agent, or authorized assistive device dealer or leaser, and the nonconformity continues; or
  - (b) The assistive device is out of service for an aggregate of at least thirty (30) cumulative calendar days because of warranty nonconformities. The thirty (30) days shall begin upon the day the consumer first makes the assistive device available for repair to the manufacturer, its agent, or authorized dealer or leaser.

(Enact. Acts 1998, ch. 221, § 1, effective July 15, 1998.)

**151B.305. Manufacturer's express warranty on new assistive devices – Effect of failure to furnish – Nonexclusivity of warranty.**

- 1) A manufacturer who sells or leases a new assistive device to a consumer, either directly or through an assistive device dealer or leaser, shall expressly warrant that the assistive device shall be free of any condition, defect, or malfunction which substantially impairs the use, value, or safety of the assistive device for a period of one (1) year after first possession of the assistive device by the consumer.
- 2) If a manufacturer fails to furnish an express warranty as required by this section, the assistive device shall be covered by an express warranty as if the manufacturer had furnished an express warranty to the consumer as required by this section.
- 3) Nothing in KRS 151B.300 to 151B.335 shall limit the ability of the manufacturer or any dealer or leaser from providing additional warranties on assistive devices nor limit or affect any other warranties applicable to assistive devices, whether implied or expressed.

(Enact. Acts 1998, ch. 221, § 2, effective July 15, 1998.)

**151B.310. Repair under warranty.**

If a new assistive device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, its agent, or authorized dealer or leaser within one (1) year after first possession of the assistive device by the consumer, the manufacturer, its agent, or authorized dealer or leaser shall make repairs necessary to conform the assistive device to the warranty, whether or not the repairs are made after one (1) year from the date of first possession of the assistive device by the consumer. Repairs made under warranty shall be made at no charge to the consumer.

(Enact. Acts 1998, ch. 221, § 3, effective July 15, 1998.)

**151B.315. Manufacturer's duty when nonconformities not repaired after reasonable attempt – Lease value – Allowance for use.**

- 1) If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out, at the option of the consumer, the requirements under paragraph (a) or (b) of this subsection.
  - (a) To provide for refunds, at the request of the consumer, the manufacturer shall do one (1) of the following:
    - i. 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 the interest may appear, the full purchase price including any finance charge paid by the consumer at the point of sale, plus collateral costs, less a reasonable allowance for use; except that in the case of hearing aids, the manufacturer's invoice price shall be refunded; or
    - ii. Accept return of the assistive device, refund to the assistive device leaser and to any holder of a perfected security interest in the assistive device, as the 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 collateral costs, less a reasonable allowance for use.
  - (b) To receive a comparable new assistive device to that having the nonconformity or a refund, the consumer shall offer to transfer possession of the nonconforming assistive device to its manufacturer. No later than thirty (30) days after that offer, the manufacturer shall provide the consumer with the comparable new assistive device or a refund. When the manufacturer provides the comparable new assistive device or the refund, the consumer shall return the assistive device having the nonconformity to the manufacturer, along with any endorsements necessary to transfer legal possession to the manufacturer.
- 2) If, after a reasonable attempt to repair, the nonconformity is not repaired, an assistive device leaser shall receive a refund from the manufacturer. To receive a refund, the assistive device leaser shall offer to transfer possession of a nonconforming assistive device to its manufacturer. No later than thirty (30) days after that offer, the manufacturer shall provide the refund to the assistive device leaser. When the manufacturer provides the refund, the assistive device leaser shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.
- 3) Under this section, 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 leaser's early termination savings.
- 4) Under this section, a reasonable allowance for use may not exceed the amount obtained by multiplying the total amount paid by the consumer under a purchase or for which the consumer is obligated under a written lease by a fraction, the denominator of which is one thousand eight hundred twenty five (1,825), which is the number of days in a five (5) year period, 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 leaser, or assistive device dealer.
- 5) No person may enforce the lease against the consumer after the consumer receives a refund.

(Enact. Acts 1998, ch. 221, § 4, effective July 15, 1998.)

**151B.320. Disclosure requirement on sale or lease of returned assistive device.**

No assistive device returned by a consumer or assistive device leaser in this state or returned in another state as a result of a nonconformity to a warranty may be sold or leased in this state unless full disclosure of the reason for return is made to a prospective buyer or lessee.

(Enact. Acts 1998, ch. 221, § 5, effective July 15, 1998.)

**151B.325. Manufacturer's duty to provide substitute assistive device or rental reimbursement during warranty repair – Conditions.**

- 1) Whenever an assistive device covered by a manufacturer's express warranty is tendered by a consumer to the dealer from whom it was purchased or exchanged for the repair of a defect, malfunction, or nonconformity to which the warranty is applicable, and at least one (1) of the following conditions exists, the manufacturer shall provide directly to the consumer for the duration of the repair period, a comparable replacement assistive device or a rental assistive device reimbursement to pay for the cost incurred by the consumer for renting a comparable replacement assistive device. The applicable conditions are as follows:
  - (a) The repair period exceeds ten (10) working days, including the day on which the device is tendered to the dealer for repair; or
  - (b) The defect, malfunction, or nonconformity is the same for one for which the assistive device has been tendered to the dealer for repair on at least two (2) previous occasions.
- 2) This section applies for the period of the manufacturer's express warranty or the period prescribed in KRS 151B.305(2), whichever is greater, whether or not the repairs extend beyond that period.

(Enact. Acts 1998, ch. 221, § 6, effective July 15, 1998.)

**151B.330. Consumer's right of action for damages – Nonlimitation of rights and remedies – Nonwaiverability.**

- 1) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of KRS 151B.300 to 151B.335 in a court of appropriate jurisdiction in the county where the consumer resides or where the manufacturer resides or has its principal place of business. The court shall award a consumer who prevails in such an action the amount of any pecuniary loss, together with costs, disbursements, and reasonable attorney's fees, and any equitable relief the court determines is appropriate.
- 2) KRS 151B.300 to 151B.335 shall not be construed to limit rights or remedies available to the consumer under any other law, and the remedies provided under Sections 1 to 8 of this Act are inclusive and in addition to any other remedies provided by law.
- 3) Any agreement entered into by a consumer which waives, limits, or disclaims the rights set forth in KRS 151B.300 to 151B.335 shall be void as contrary to public policy.

(Enact. Acts 1998, ch. 221, § 7, effective July 15, 1998.)

**151B.335. Short title for KRS 151B.300 to 151B.335.**

KRS 151B.300 to 151B.335 may be cited as the "Kentucky New Assistive Device Warranty Act."

(Enact. Acts 1998, ch. 221, § 8, effective July 15, 1998.)

