

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

No. 1214

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H.P. 897

House of Representatives, February 25, 1997

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**An Act to Provide a Warranty for Assistive Devices for Persons with Disabilities.**

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Reference to the Committee on Business and Economic Development suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative FULLER, of Manchester.  
Cosponsored by Representatives: FARNSWORTH of Portland, MAYO of Bath,  
TOWNSEND of Portland.

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Be it enacted by the People of the State of Maine as follows:

Sec. 1. 10 MRSA c. 227 is enacted to read:

CHAPTER 227

ASSISTIVE DEVICES FOR PERSONS WITH  
DISABILITIES

§1500. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Assistive device. "Assistive device" means any device that a consumer purchases or accepts transfer of in this State that is used by a person with a disability within the meaning of the federal Americans with Disabilities Act to offset the effect of the disability and enhance function in carrying out a major life activity. "Assistive device" includes, but is not limited to, manual wheelchairs, motorized wheelchairs, motorized scooters and other aids that enhance the mobility of the individual; hearing aids, telephone communications devices for the deaf, or TDD, assistive listening devices and other aids 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.

2. Consumer. "Consumer" means a person who purchases or leases an assistive device from a dealer or manufacturer for purposes other than resale; a person to whom an assistive device is transferred for purposes other than resale while an express warranty is in effect; a funding source that purchases a device for a person with a disability; or a person otherwise legally qualified to enforce a warranty.

3. Nonconformity. "Nonconformity" means a condition or a defect that substantially impairs the use, value or safety of an assistive device that is covered by an express warranty applicable to that assistive device, or to a component of that 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 the consumer.

§1500-A. Trial period

All assistive devices as defined in this chapter must be sold subject to a 30-day trial. A consumer may return an

2 assistive device to the dealer from which it was purchased within  
4 the 30-day trial period and receive a full refund, after  
6 satisfaction of any perfected security interests, if the  
8 assistive device has not been damaged, abused or altered by the  
consumer. If the assistive device was purchased with insurance  
or public funds, the refund must be returned to the funding  
source. This section does not apply to an assistive device for  
which a trial period is already specifically addressed by another  
law.

10 **§1500-B. Express warranty**

12 1. Warranty. A manufacturer who sells or leases an  
14 assistive device to a consumer, either directly or through an  
16 assistive device dealer, shall warranty that the assistive device  
18 is in conformity with the terms of this subsection and shall  
20 furnish the consumer with a written express warranty for the  
22 assistive device. In the case of a sale, the duration of the  
24 express warranty must be at least one year from the date of first  
26 delivery of the assistive device to the consumer. In the case of  
a lease, the duration of the express warranty must be for the  
duration of the lease. In both cases, the warranty must provide  
that the assistive device is free from any condition or defect  
that substantially impairs its value to the consumer during the  
warranty period. In the absence of an express warranty, the  
manufacturer is deemed to have made this warranty.

28 2. Repair. If a new assistive device does not conform to  
30 an applicable express warranty and the consumer reports the  
32 nonconformity to the manufacturer, the assistive device lessor or  
34 any of the manufacturer's authorized assistive device dealers and  
36 makes the assistive device available for repair during the  
38 warranty period, the nonconformity must be repaired at no charge  
to the consumer. If the repair requires longer than 3 days to  
complete, the consumer must be provided with a loan of a  
comparable assistive device during the remaining repair period.  
In the case of a lease, lease payments must be suspended during  
any part of the repair period that a comparable assistive device  
has not been provided.

40 **§1500-C. Replacement of defective devices; refunds**

42 1. Reasonable attempt to repair. A reasonable attempt to  
44 repair an assistive device to conform it to the express warranty  
46 is deemed to have been undertaken if:

48 A. The same conformity has been subject to repair 3 or more  
50 times by the manufacturer or its agents or authorized  
dealers within the express warranty term and the  
nonconformity continues; or



2 funding source if the device was purchased with insurance or  
public funds.

4 This bill also requires a manufacturer who sells or leases  
6 assistive devices to guarantee expressly that the assistive  
device is free from any condition or defect that substantially  
8 impairs its value. In the case of a sale, the warranty must be  
in effect at least one year after first delivery. A warranty  
10 must be in effect for the duration of a lease. The bill requires  
that a nonconformity reported during the warranty period be  
12 repaired at no charge to the consumer and that a comparable  
assistive device be loaned if the repair requires more than 3  
14 days. If a reasonable attempt to repair the assistive device has  
been made without success, the manufacturer must accept return of  
16 the assistive device and either refund the purchase price or  
replace the assistive device.

18 This bill further requires that a manufacturer of an  
assistive device that is returned provide a clear written  
20 disclosure and description of the nonconformity to any subsequent  
purchaser. The bill allows a consumer to bring an action to  
22 recover for damages caused by a violation and to collect twice  
the amount of a pecuniary loss, plus reasonable costs and  
24 attorney's fees. Under this bill, any waiver of rights by a  
consumer is void.