

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2292

SPONSOR: Agriculture and Consumer Services Committee and Senator Forman

SUBJECT: Assistive Technology

DATE: April 7, 1999

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Henderson</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

This bill expands the definition of assistive technology devices to include personal transfer systems and devices to enable individuals with severe speech disabilities to in effect speak.

It clarifies the definition of an assistive technology dealer. It also requires the manufacturer to repair the assistive technology device so that it conforms to the warranty. In addition, dealers of the devices must provide an address and telephone number for the manufacturer to the consumer at the time of the sale.

This bill also authorizes the Department of Agriculture and Consumer Services (department) to accept and investigate a consumer's dispute with an assistive technology dealer (dealer) or leesee. Additionally, the bill requires dealers to register, pay fees and follow procedures of the department. This bill authorizes the department to enter a business to ensure that it is in compliance. It also provides that the department may deny, revoke or suspend a registration if the business is not in compliance and to impose penalties. It authorizes the department, state attorney or a consumer to bring civil action against any violator. It further provides that all fees and fines that are collected are to be deposited into the General Inspection Trust Fund.

This bill provides guidelines for the department to use in spending money generated from fees to increase consumer awareness. The bill authorizes the department to conduct investigations. Furthermore, it provides a \$450,000 appropriation for additional positions.

This bill amends sections 427.802, 427.803 and 427.804, Florida Statutes.

This bill creates section 427.8041, Florida Statutes.

## II. Present Situation:

The Assistive Technology Device Warranty Act (act) requires manufacturers to provide a one-year (minimum) express warranty on an assistive technology device. If, during that year, the device is found to be defective or not conforming with the warranty, the act provides for the repair, refund or replacement of the non-conforming device. The act provides consumers with the option of pursuing alternative arbitration under chapter 682, F.S. It also provides remedies for a consumer under s. 427.806, F.S.

## III. Effect of Proposed Changes:

**Section 1.** Amends s. 427.802, F.S., to expand the definition of “assistive technology devices” to include personal transfer systems and devices that allow individuals with severe speech disabilities to speak. Defines the term “Assistive Technology Device Warranty Act rights period” as the period ending one year after the first delivery of the assistive technology device to the consumer or the manufacturer’s express written warranty, whichever is longer. Clarifies the definition of an assistive technology dealer. Defines “department” to mean the Department of Agriculture and Consumer Services.

**Section 2.** Amends s. 427.803, F.S., to redesignate “Express Warranty” as “Duty of manufacturer and an assistive technology device dealer to conform an assistive technology device to the warranty.” Requires the manufacturer to conform a defective device to the warranty if the consumer reports the problem within the Assistive Technology Device Warranty Act rights period, even if the repairs are made after expiration. Requires such repairs to be made at no cost to the consumer. Requires manufacturers to provide consumers with the address, and phone number for its zone, district or regional office for this state either in the warranty or the owner’s manual. Mandates that the manufacturer forward a copy of the owner’s manual and written warranties for each make and model of assistive technology device that it sells in Florida to the department within 10 days after the department’s written request. Requires the manufacturer to provide the dealer, and the dealer to provide the consumer with a written statement explaining the consumer’s rights under this chapter. Requires the department to prepare the written statement which contains a toll-free number for the consumer to contact the department regarding their rights or to commence arbitration. Specifies that a consumer’s acknowledgment of signed receipt of materials evidences compliance by the manufacturer and dealer. Requires the dealer to maintain the consumer’s signed acknowledgment for three years. Directs the manufacturer or dealer to provide the consumer an itemized, legible diagnostic statement every time the device is returned. The statement is to include the problem reported by the consumer, an identification of the defect or condition, parts and labor, the date the device was submitted for repair, and when the repair or examination was completed.

**Section 3:** Amends s. 427.804, F.S. to allow consumers to file a complaint with the department over any dispute arising under this act. Requires the department to process a consumer complaint according to s. 570.544, F.S.

**Section 4:** Creates s. 427.8041, F.S., to require assistive technology device dealers to register with the department prior to doing business in Florida. Requires the registration form to include the name of the applicant, the business name, and the business address. If the business is mobile, the dealer must provide the home address of the owner, if different than the business address. In addition copies of all licenses, permits and certifications obtained by the applicant or employees of the applicant must be included. Requires a \$300 registration fee for each initial and renewal application. Authorizes the department to issue a registration certificate to each place of business of the applicant. Requires the certificate to have the name and address of the dealer and the registration number of the business and be posted in a visible location within the dealer's primary place of business. Requires any person applying for or renewing a local occupational license on or after July 1, 1999, to show an active registration certification before the department issues or renews a registration. Requires a license to be renewed annually on or before the expiration date or a late fee of \$25 to be assessed. Requires all fees to be paid before the department may issue a license. Authorizes the department to refuse or deny to register or renew an assistive technology dealer's license if the dealer, or any of its directors, officers, owners or general partners:

- Have failed to meet the requirements for registration as provided under the act;
- Have not satisfied a civil or administrative fine, or other penalties from an administrative or enforcement action brought by a governmental agency based upon conduct involving fraud, dishonest dealing or any other violation;
- Have had against them any civil, criminal or administrative adjudication in any jurisdiction, based upon conduct involving fraud, dishonest dealing or any violation of the act; or
- Have had a judgment entered against them in any action brought by the department or the state attorney.

Authorizes the department to enter the assistive technology dealer's place of business to determine if the registration certificate is current. Authorizes the department to impose one or more penalties described under this section, if the department finds a dealer has:

- Violated or is operating in violation of any of the provisions of this part or of the rules adopted or orders issued;
- Made a false statement in any application, document, or record required to be submitted or retained under this section;
- Refused or failed, or any of its principal officers have refused or failed, after noticed, to produce any document or record or disclose any information required to be produced or disclosed under the act or rules of the department;
- Made a material false statement in response to any request or investigation by the department, the Department of Legal Affairs, or the state attorney; or
- Defrauded the public through dishonest or deceptive means.

Upon a finding authorizes the department to:

- Issue a notice of noncompliance according to s. 120.695, F.S.;
- Impose an administrative fine not to exceed \$5,000 per violation;
- Direct the assistive technology dealer to cease and desist specified activities;
- Refuse to register, to revoke or to suspend a registration; or

- Place the registrant on probation for a period of time, subject to conditions specified by the department.

Authorizes the department or the state attorney to bring civil actions in circuit court for temporary or permanent injunctive relief and to seek other appropriate civil relief, including a penalty not to exceed \$5,000 for each violation, restitution and damages for injured customers, court costs, and reasonable attorney's fees. Provides that administrative proceedings shall be conducted in accordance with chapter 120, F.S. Provides that the enforcing authority may terminate any investigation or action when the offender agrees to pay a civil penalty, to make restitution or pay damages to customers, or to satisfy any other relief authorized and requested by the department. Authorizes the department to collect fees and fines to be deposited into the General Inspection Trust Fund. Requires a \$2 fee to be collected by the assistive technology device dealer or lessor from the consumer at the time of sale or lease. Requires all fees, less the cost of administration to be transferred to the department from the Department of Revenue and deposited into the General Inspection Trust Fund. Authorizes the department to use five percent of the fees collected and remitted by the dealers or lessors in fiscal year 1999-2000, and between five and 10 percent in each year thereafter towards the development of an Assistive Technology Device Warranty Act Education Program, or to purchase expert consultation services from an entity having the mission of promoting access to, awareness of, and advocacy for assistive technology devices services to:

- Assist investigators to effectively carry out s. 427.806, F.S., pertaining to the recovery of damages for an injury;
- Conduct sensitivity training for the department's staff as it relates to assistive technology; and
- Assist in the design and strategy of a consumer education program to educate consumers of assistive technology devices and the dealers of this act.

Allows consumers to recover damages for any injury caused by a violation of the act. Authorizes courts to award consumers who prevail, twice the amount of any pecuniary loss, together with costs, disbursements, and reasonable attorney's fees, and any equitable relief that the court determines appropriate.

Requires a dealer that is registered under this act to keep and maintain records relating to each sale or lease of assistive technology devices for two years. Provides that the department may enter any business during business hours to examine the books and records of the dealer. Authorizes the department to adopt rules according to chapter 120, F.S., to implement this section.

**Section 5.** Appropriates \$450,000 from the General Inspection Trust Fund for fiscal year 1999-2000 to provide for six full-time equivalent positions to administer this act.

**Section 6.** Provides an effective date of July 1, 1999.

A. Municipality/County Mandates Restrictions:

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Requires an initial and annual registration fee of \$300 from the assistive technology device dealer and a \$2 fee to be collected from the consumer at the time of the sale.

Requires the dealer to keep a signed receipt by the consumer's signed acknowledgement of their rights under this act for three years. Requires the dealer to keep and maintain records relating to each sale or lease of assistive technology devices for two years.

**C. Government Sector Impact:**

This bill appropriates \$450,000 from the General Inspection Trust Fund of the Department of Agriculture and Consumer Services for fiscal year 1999-2000 to provide for six full-time equivalent positions to administer this act.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.