

Senate Bill 731

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Advocacy Center)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Adds certain medical devices to definition of "assistive device" for purposes of warranty coverage.

A BILL FOR AN ACT

1
2 Relating to warranties for assistive devices; creating new provisions; and amending ORS 646.482.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 646.482 is amended to read:

5 646.482. As used in ORS 646.482 to 646.498:

6 (1)(a) "Assistive device" or "device" means:

7 [(a)] (A) Wheelchairs and scooters of any kind, including other aids that enhance the mobility
8 or positioning of an individual using a wheelchair or scooter of any kind, such as motorization,
9 motorized positioning features and the switches and controls for any motorized features[; *and*].

10 [(b)] (B) Hearing aids as defined in ORS 694.015.

11 (C)(i) **Medical devices, or components thereof, fabricated or fitted specifically for a user
12 and designed to support, align, prevent or correct a neuromuscular or musculoskeletal dis-
13 ease, injury or deformity.**

14 (ii) **Medical devices fabricated or fitted specifically for but not surgically implanted into
15 an individual and designed to replace a missing limb, appendage or other external human
16 body part, including artificial limbs, hands or feet.**

17 (b) "Assistive device" or "device" does not include:

18 (A) **Fabric or elastic supports or corsets;**

19 (B) **Arch supports;**

20 (C) **Low-temperature plastic splints;**

21 (D) **Trusses;**

22 (E) **Elastic hoses;**

23 (F) **Canes or crutches;**

24 (G) **Soft cervical collars;**

25 (H) **Medical devices used for diagnostic or evaluative purposes;**

26 (I) **Dental appliances;**

27 (J) **Artificial eyes, ears, fingers or toes;**

28 (K) **Cosmetic devices such as artificial breasts, artificial eyelashes or wigs; or**

29 (L) **Devices similar to those listed in this paragraph and carried in stock and sold by
30 drugstores, department stores or corset shops, or other medical devices that do not have a
31 significant impact on the musculoskeletal functions of the human body.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 [(2) “Assistive device system” means a system of assistive devices. An “assistive device system” may
2 be a single assistive device, or each component part of the assistive device system may be considered
3 a separate assistive device.]

4 [(3)] (2) “Authorized dealer” means a dealer authorized by a manufacturer to sell or lease
5 assistive devices manufactured or assembled by the manufacturer.

6 [(4)] (3) “Collateral costs” means expenses incurred by a consumer in connection with the repair
7 of a nonconformity, including the cost of delivering the assistive device to the manufacturer or
8 dealer for repair and obtaining an alternative device if no loaner was offered.

9 [(5)] (4) “Consumer” means any of the following:

10 (a) The purchaser of an assistive device, if the device was purchased from a dealer or man-
11 ufacturer for purposes other than resale;

12 (b) A person to whom the assistive device is transferred for purposes other than resale, if the
13 transfer occurs before the expiration of an express warranty applicable to the device;

14 (c) A person who may enforce the warranty; or

15 (d) A person who leases an assistive device from a dealer under a written lease.

16 [(6)] (5) “Current value of the [*written*] lease” means the total amount for which the lease obli-
17 gates the consumer during the period of the lease remaining after its early termination, plus the
18 dealer’s early termination costs and the market value of the assistive device at the lease expiration
19 date if the lease sets forth that market value, less the dealer’s early termination savings.

20 [(7)] (6) “Dealer” means a person who is in the business of selling or leasing assistive devices.

21 [(8)] (7) “Demonstrator” means an assistive device that would be new but for its use, since its
22 manufacture, only for the purpose of demonstrating the device to the public or prospective buyers
23 or lessees.

24 [(9)] (8) “Early termination cost” means any expense or obligation that a dealer incurs as a re-
25 sult of both the termination of a written lease before the termination date set forth in the lease and
26 the return of an assistive device to a manufacturer under ORS 646.486 (4). “Early termination
27 cost” includes a penalty for prepayment under a finance arrangement.

28 [(10)] (9) “Early termination savings” means any expense or obligation that a dealer avoids as
29 a result of both the termination of a written lease before the termination date set forth in the lease
30 and the return of an assistive device to a manufacturer under ORS 646.486 (4). “Early termination
31 savings” includes the interest charge that the dealer would have paid to finance the device or, if the
32 dealer does not finance the device, the difference between the total amount for which a lease obli-
33 gates the consumer during the period of the lease term remaining after the early termination and
34 the present market value of that amount at the date of the early termination.

35 [(11)] (10) “Individual with a disability” means any individual who is considered to have a
36 mental or physical disability[,] or impairment [*or handicap*] for the purposes of any law of this state
37 or of the United States, including any rules or regulations adopted under those laws.

38 [(12)] (11) “Loaner” means an assistive device, provided to the consumer for use by the user free
39 of charge, that need not be new or be identical to or have functional capabilities equal to or greater
40 than those of the original assistive device, but that meets the following conditions:

41 (a) It is in good working order;

42 (b) It performs at a minimum the most essential functions of the original assistive device, in light
43 of the disabilities of the user; and

44 (c) Any differences between it and the original assistive device do not create a threat to safety.

45 [(13)] (12) “Manufacturer” means a person who manufactures or assembles assistive devices and

1 agents of that person, including an importer, a distributor, factory branch, distributor branch and
 2 any warrantor of the manufacturer's device, but does not include a dealer.

3 [(14)(a)] (13)(a) "Nonconformity" means a condition or defect that substantially impairs the use,
 4 market value or safety of an assistive device [*and that is covered by an express warranty applicable*
 5 *to the device or to a component of the device*].

6 (b) "Nonconformity" does not include a condition or defect that:

7 (A) Is the result of abuse or neglect of the device by a consumer;

8 (B) Is the result of an unauthorized modification or alteration of the device by a consumer if the
 9 modification or alteration substantially affects the performance of the device; or

10 (C) For hearing aids, is the result of normal use of the hearing aid and when the condition or
 11 defect could be resolved through fitting adjustments, cleaning or proper care.

12 [(15)(a)] (14)(a) "Reasonable allowance for use" means:

13 (A) When an assistive device has been sold to a consumer, no more than the amount obtained
 14 by multiplying the full purchase price of the device by a fraction, the denominator of which is the
 15 number of days in the useful life of the device and the numerator of which is the number of days
 16 that the device was used before the consumer first reported the nonconformity to the manufacturer
 17 or any authorized dealer.

18 (B) When an assistive device has been leased to a consumer, no more than the amount obtained
 19 by multiplying the total amount for which the written lease obligates the consumer by a fraction,
 20 the denominator of which is the useful life of the device and the numerator of which is the number
 21 of days that the device was used before the consumer first reported the nonconformity to the man-
 22 ufacturer or any authorized dealer.

23 (b) As used in this subsection, the useful life of the assistive device is the greater of:

24 (A) Five years; or

25 (B) Such other time that the consumer may prove to be the expected useful life of assistive de-
 26 vices of the same kind.

27 [(16)] (15) "Reasonable attempt to repair" means, within the terms of an express warranty ap-
 28 plicable to an assistive device:

29 (a) The same nonconformity is subject to repair at least two times by the manufacturer or any
 30 authorized dealer and the nonconformity continues; or

31 (b) The assistive device is out of service, by reason of repair or correction, for an aggregate of
 32 at least 30 days after notification to the manufacturer or any authorized dealer because of the
 33 nonconformity.

34 [(17)] (16) "User" means an individual with a disability who, by reason thereof, needs and actu-
 35 ally uses the assistive device.

36 **SECTION 2. The amendments to ORS 646.482 by section 1 of this 2007 Act apply to**
 37 **assistive devices manufactured, assembled, sold or leased on or after the effective date of**
 38 **this 2007 Act and to assistive device manufacturers and dealers in operation on or after the**
 39 **effective date of this 2007 Act.**

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