

HOUSE BILL No. 5320

October 29, 1997, Introduced by Reps. Mans, Varga, Brater, Parks, LaForge, Prusi, Cherry, Bogardus, Thomas, DeHart, Kelly and Callahan and referred to the Committee on Consumer Protection.

A bill to regulate the selling and leasing of hearing aids; to require manufacturers to provide an express warranty; and to provide for remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Hearing aid" means both of the following:

3 (i) An electronic device worn by an individual for amplify-
4 ing sound before it reaches the individual's receptor organs.

5 (ii) A telephone communication device for the hearing
6 impaired.

7 (b) "Hearing aid dealer" means a person who is in the busi-
8 ness of selling hearing aids.

9 (c) "Hearing aid lessor" means a person who leases a hearing
10 aid to a consumer, or who possesses a lessor's right under a
11 written lease for a hearing aid.

1 (d) "Collateral costs" means expenses incurred by a consumer
2 that arise from a nonconforming hearing aid, including the cost
3 of an alternative hearing aid or service.

4 (e) "Consumer" means any of the following:

5 (i) The purchaser of a hearing aid, if the hearing aid was
6 purchased from a hearing aid dealer or manufacturer for purposes
7 other than resale.

8 (ii) A person to whom the hearing aid is transferred, if the
9 transfer occurs before the expiration of an express warranty
10 applicable to the hearing aid.

11 (iii) A person who may enforce the warranty created under
12 section 3.

13 (iv) A person who leases a hearing aid from a hearing aid
14 lessor under a written lease.

15 (f) "Demonstrator" means a hearing aid used primarily for
16 demonstrations for the public.

17 (g) "Early termination cost" means an expense or obligation
18 that a hearing aid lessor incurs as a result of both the termina-
19 tion of a written lease before the termination date of the lease
20 and the return of a hearing aid to a manufacturer under section
21 4. Early termination costs include a penalty for prepayment
22 under a finance arrangement.

23 (h) "Early termination savings" means an expense or obliga-
24 tion that a hearing aid lessor avoids as a result of both the
25 termination of a written lease before the termination date of the
26 lease and the return of a hearing aid to a manufacturer under
27 section 4. Early termination savings include an interest charge

1 that the hearing aid lessor would have paid to finance the
2 hearing aid or, if the hearing aid lessor does not finance the
3 hearing aid, the difference between the total amount for which
4 the lease obligates the consumer during the period of the lease
5 term remaining after the early termination and the value of that
6 amount at the date of the early termination.

7 (i) "Express warranty" means an express warranty as deter-
8 mined under the uniform commercial code, 1962 PA 174, MCL
9 440.1101 to 440.11102. An express warranty under this act covers
10 components of a hearing aid, except batteries, if any.

11 (j) "Manufacturer" means a person who manufactures or assem-
12 bles hearing aids and any agent of that person, including an
13 importer, distributor, factory branch, distributor branch, or
14 warrantor of the manufacturer's hearing aids. Manufacturer does
15 not include a hearing aid dealer or a person who refers a con-
16 sumer to a hearing aid dealer or manufacturer.

17 (k) "Nonconformity" means a condition or defect that sub-
18 stantially impairs the use, value, or safety of a hearing aid or
19 that is covered by an express warranty applicable to the hearing
20 aid or a component of the hearing aid, but does not include a
21 condition or defect that is the result of a consumer's abuse,
22 neglect, or unauthorized modification or alteration of the hear-
23 ing aid.

24 (l) "Reasonable attempt to repair" means either or both of
25 the following occurring within the term of an express warranty
26 for a new hearing aid:

1 (i) The same nonconformity is subject to repair at least 4
2 times by the manufacturer, hearing aid lessor, or any of the
3 manufacturer's authorized hearing aid dealers.

4 (ii) The hearing aid is out of service for an aggregate of
5 at least 30 consecutive or nonconsecutive calendar days, or, if
6 the hearing aid is used by a consumer solely for learning or
7 working, 30 business days.

8 Sec. 3. (1) A manufacturer who sells or leases a hearing
9 aid to a consumer, either directly or through a hearing aid
10 dealer, shall furnish the consumer with an express warranty for
11 the hearing aid. The express warranty shall be in effect for not
12 less than 1 year after the date a new hearing aid is delivered to
13 a consumer, or not less than 60 days after a used, refurbished,
14 or reconditioned hearing aid is first delivered to the consumer.

15 (2) An express warranty required by this section exists
16 regardless of whether the manufacturer expressly furnishes the
17 warranty.

18 Sec. 4. (1) If during the period an express warranty is in
19 effect a hearing aid does not conform to the express warranty and
20 both of the following occur, the manufacturer shall repair the
21 nonconformity as required by this act:

22 (a) The consumer reports the nonconformity to the manufac-
23 turer, the hearing aid lessor, or any of the manufacturer's
24 authorized hearing aid dealers.

25 (b) The consumer tenders the hearing aid for repair during
26 that warranty period.

1 (2) If the manufacturer has authorized a dealer to make the
2 repair, the manufacturer shall reimburse the dealer for the
3 dealer's costs of repair. The manufacturer shall respond to a
4 dealer's request for authorization not later than the end of the
5 business day following the date of the request.

6 (3) If either of the following conditions is met after a
7 hearing aid is tendered for repair in accordance with subsection
8 (1), the hearing aid manufacturer shall provide the consumer with
9 reimbursement of the per-day cost incurred for the use of an
10 equivalent hearing aid:

11 (a) The repair period exceeds 10 business days, including
12 the day that the device is tendered to the hearing aid manufac-
13 turer or dealer for repair.

14 (b) The defect, malfunction, or nonconformity is the same as
15 a defect, malfunction, or nonconformity for which the hearing aid
16 has been tendered for repairs on at least 2 previous occasions.

17 (4) If a hearing aid is tendered to a hearing aid dealer for
18 repairs and that dealer fails to tender the hearing aid to the
19 hearing aid manufacturer in time for the manufacturer to make the
20 repairs within 10 days after the device was tendered to the
21 dealer, the dealer shall pay to the manufacturer the amount the
22 manufacturer pays to provide the reimbursement described in sub-
23 section (3).

24 (5) If, after a reasonable attempt to repair, the noncon-
25 formity is not repaired, the manufacturer shall do 1 of the
26 following:

1 (a) If the hearing aid was purchased, do 1 of the following
2 as directed by the consumer:

3 (i) Accept return of the hearing aid and replace it with 1
4 of comparable quality, size, and function, and refund any collat-
5 eral costs incurred by the consumer, a holder of a security
6 interest, or a third party who purchased the hearing aid.

7 (ii) Accept return of the hearing aid and refund to the con-
8 sumer and to any holder of a perfected security interest in the
9 consumer's hearing aid or third party who purchased the hearing
10 aid not more than the full purchase plus any finance charge,
11 sales tax, shipping costs, and collateral costs paid by the con-
12 sumer, the holder of a security interest, or third party who pur-
13 chased the hearing aid, less a reasonable allowance for use. A
14 reasonable allowance for use shall not exceed the amount obtained
15 by multiplying the full purchase price of the hearing aid by a
16 fraction, the denominator of which is 1,825 and the numerator of
17 which is the number of days that the hearing aid was used before
18 the consumer first reported the nonconformity to the hearing aid
19 manufacturer or dealer.

20 (b) If the hearing aid is leased, accept return of the hear-
21 ing aid, refund to the hearing aid lessor and to any holder of a
22 perfected security interest in the hearing aid the value of the
23 written lease at the time of the return, and refund to the con-
24 sumer or third party the amount the consumer or third party paid
25 under the written lease plus any collateral costs, less a reason-
26 able allowance for use. The value of the written lease at the
27 time of return equals the total amount for which that lease

1 obligates the consumer during the period of the lease remaining
2 after its early termination, plus the hearing aid dealer's early
3 termination costs and the value of the hearing aid at the lease
4 expiration date, if the lease specifies that value, less the
5 hearing aid lessor's early termination savings. A reasonable
6 allowance for use shall not exceed the amount obtained by multi-
7 plying the total amount for which the written lease obligates the
8 consumer by a fraction, the denominator of which is 1,825 and the
9 numerator of which is the number of days that the hearing aid was
10 used before the consumer first reported the nonconformity to the
11 hearing aid manufacturer, lessor, or dealer.

12 Sec. 5. (1) To receive a refund or a hearing aid of com-
13 parable quality, size, and function, a consumer of a purchased
14 hearing aid shall first offer to transfer the purchased hearing
15 aid to its manufacturer.

16 (2) Not more than 30 days after the offer described in sub-
17 section (1), the manufacturer shall provide the consumer with a
18 refund or a hearing aid of comparable quality, size, and
19 function.

20 (3) Upon receiving a refund or replacement hearing aid in
21 accordance with this act, the consumer shall return the noncon-
22 forming hearing aid to the manufacturer or dealer, along with any
23 endorsements necessary to transfer possession of the hearing aid
24 to the manufacturer.

25 Sec. 6. (1) To receive a refund due on a nonconforming
26 hearing aid that is leased, a consumer shall offer to return the
27 nonconforming leased hearing aid to the hearing aid lessor.

1 (2) Not more than 30 business days after the offer described
2 in subsection (1), the hearing aid lessor shall provide the
3 refund to the consumer.

4 (3) Upon receiving a refund, the consumer shall return the
5 hearing aid to the lessor.

6 (4) A hearing aid lessor shall offer to transfer possession
7 of a hearing aid returned in accordance with subsection (3) to
8 the hearing aid manufacturer. Not more than 30 days after that
9 offer, the manufacturer shall provide the refund to the hearing
10 aid lessor. When the manufacturer provides the refund, the
11 lessor shall provide the manufacturer with any endorsements nec-
12 essary to transfer possession to the manufacturer.

13 Sec. 7. A hearing aid returned by a consumer in this state
14 under this act, or by a consumer in another state under a similar
15 law of that state, shall not be sold or leased again in this
16 state unless the prospective buyer or lessee is provided with
17 full disclosure of the reasons for the hearing aid's return.

18 Sec. 8. (1) This act does not limit the rights and remedies
19 available to a consumer under any other statute of this state.

20 (2) A consumer's waiver of rights conferred under this act
21 is void.

22 (3) In addition to pursuing any other remedy, a consumer may
23 bring an action to recover damages caused by a violation of this
24 act. If a court determines that a manufacturer violated this
25 act, the court shall award the consumer the amount of actual dam-
26 ages caused by the violation and may award the consumer costs and
27 reasonable attorney fees.