

AMENDED IN SENATE APRIL 23, 2012

AMENDED IN SENATE APRIL 11, 2012

SENATE BILL

No. 1444

Introduced by Senator Anderson

(Coauthors: Senators Correa, Negrete McLeod, and Strickland)

February 24, 2012

An act to ~~add Section 2530.7 to the Business and Professions~~ *amend Section 1793.02 of the Civil Code*, relating to assistive devices.

LEGISLATIVE COUNSEL'S DIGEST

SB 1444, as amended, Anderson. Assistive devices: ~~warranty: regulations:~~ *warranty.*

Existing law provides that all new and used assistive devices sold at retail in this state shall be accompanied by the retail seller's written warranty which is required to contain specified language including that the assistive device is warranted to be specifically fit for the particular needs of the buyers.

This bill would, with respect to hearing aids, delete the warranty requirement that the devices be specifically fit for the particular needs of the buyer.

~~Existing law creates the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board in the Department of Consumer Affairs with various powers and duties. Existing law requires all new and used assistive devices sold at retail, with specified exceptions, to be accompanied by a written warranty.~~

~~This bill would authorize the board to adopt regulations that define the express terms that must be provided in a purchase agreement for a hearing aid, notwithstanding the existing provisions otherwise applicable to a warranty for a hearing aid.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1793.02 of the Civil Code is amended to
2 read:

3 1793.02. (a) All new and used assistive devices, *with the*
4 *exception of hearing aids*, sold at retail in this state shall be
5 accompanied by the retail seller’s written warranty which shall
6 contain the following language: “This assistive device is warranted
7 to be specifically fit for the particular needs of you, the buyer. If
8 the device is not specifically fit for your particular needs, it may
9 be returned to the seller within 30 days of the date of actual receipt
10 by you or completion of fitting by the seller, whichever occurs
11 later. If you return the device, the seller will either adjust or replace
12 the device or promptly refund the total amount paid. This warranty
13 does not affect the protections and remedies you have under other
14 laws.” In lieu of the words “30 days” the retail seller may specify
15 any longer period.

16 (b) The language prescribed in subdivision (a) shall appear on
17 the first page of the warranty in at least 10-point bold type. The
18 warranty shall be delivered to the buyer at the time of the sale of
19 the device.

20 (c) If the buyer returns the device within the period specified
21 in the written warranty, the seller shall, without charge and within
22 a reasonable time, adjust the device or, if appropriate, replace it
23 with a device that is specifically fit for the particular needs of the
24 buyer. If the seller does not adjust or replace the device so that it
25 is specifically fit for the particular needs of the buyer, the seller
26 shall promptly refund to the buyer the total amount paid, the
27 transaction shall be deemed rescinded, and the seller shall promptly
28 return to the buyer all payments and any assistive device or other
29 consideration exchanged as part of the transaction and shall
30 promptly cancel or cause to be canceled all contracts, instruments,
31 and security agreements executed by the buyer in connection with
32 the sale. When a sale is rescinded under this section, no charge,
33 penalty, or other fee may be imposed in connection with the
34 purchase, fitting, financing, or return of the device.

1 (d) With respect to the retail sale of an assistive device to an
2 individual, organization, or agency known by the seller to be
3 purchasing for the ultimate user of the device, this section and
4 subdivision (b) of Section 1792.2 shall be construed to require that
5 the device be specifically fit for the particular needs of the ultimate
6 user.

7 (e) This section and subdivision (b) of Section 1792.2 shall not
8 apply to any of the following sales of assistive devices:

9 (1) A catalog or similar sale, as defined in subdivision (q) of
10 Section 1791, except a sale of a hearing aid.

11 (2) A sale which involves a retail sale price of less than fifteen
12 dollars (\$15).

13 (3) A surgical implant performed by a physician and surgeon,
14 or a restoration or dental prosthesis provided by a dentist.

15 (f) The rights and remedies of the buyer under this section and
16 subdivision (b) of Section 1792.2 are not subject to waiver under
17 Section 1792.3. The rights and remedies of the buyer under this
18 section and subdivision (b) of Section 1792.2 are cumulative, and
19 shall not be construed to affect the obligations of the retail seller
20 or any other party or to supplant the rights or remedies of the buyer
21 under any other section of this chapter or under any other law or
22 instrument.

23 (g) Section 1795.5 shall not apply to a sale of used assistive
24 devices, and for the purposes of the Song-Beverly Consumer
25 Warranty Act the buyer of a used assistive device shall have the
26 same rights and remedies as the buyer of a new assistive device.

27 (h) The language in ~~subdivision~~ subdivisions (a) and (i) shall
28 not constitute an express warranty for purposes of Sections 1793.2
29 and 1793.3.

30 (i) (1) (A) *All new and used hearing aids sold in this state shall*
31 *be accompanied by the retail seller's written warranty, which shall*
32 *appear on the first page of the warranty in at least 10-point bold*
33 *type, delivered to the buyer at the time of the sale of the device,*
34 *and shall contain the following language:*

35
36 *This assistive device may be returned to the seller within 30 days*
37 *from the date you are fitted with the assistive device and take*
38 *possession of the device. If you return the device, the seller will*
39 *either adjust or replace the device, or promptly refund the total*

1 amount paid. This warranty does not affect the protections and
2 remedies you have under other laws.

3
4 (B) In lieu of the words “30 days” the retail seller may specify
5 any longer period.

6 (2) If the buyer returns a hearing aid within the period specified
7 in the written warranty, the seller shall, without charge and within
8 a reasonable time, adjust the device or, if appropriate, replace it.
9 If the seller does not adjust or replace the device, the seller shall
10 promptly refund to the buyer the total amount paid. The transaction
11 shall be deemed rescinded, and the seller shall promptly return to
12 the buyer all payments and any assistive device or other
13 consideration exchanged as part of the transaction. The seller
14 shall promptly cancel or cause to be canceled all contracts,
15 instruments, and security agreements executed by the buyer in
16 connection with the sale. When a sale is rescinded under this
17 section, no charge, penalty, or other fee may be imposed in
18 connection with the purchase, fitting, financing, or return of the
19 device.

20 (3) If the hearing aid must be repaired, remade, or adjusted
21 during the 30-day warranty period, or longer period if specified
22 by the seller, the warranty period is suspended for one day for
23 each 24-hour period that the hearing aid is not in the buyer’s
24 possession. The warranty period shall resume on the day the buyer
25 reclaims the repaired, remade, or adjusted hearing aid or five
26 working days after notification of availability, whichever is earlier.

27 ~~SECTION 1. Section 2530.7 is added to the Business and~~
28 ~~Professions Code, to read:~~

29 ~~2530.7. Notwithstanding Section 1793.02 of the Civil Code,~~
30 ~~the board may adopt regulations that define the express terms that~~
31 ~~must be provided in a purchase agreement for a hearing aid.~~

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