

AMENDED IN SENATE APRIL 21, 2014

SENATE BILL

No. 1326

Introduced by Senator Roth

February 21, 2014

~~An act to add Section 2530.7 to the Business and Professions Code, relating to assistive devices. An act to amend Sections 1793.02 and 1795.6 of the Civil Code, relating to hearing aids.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1326, as amended, Roth. ~~Assistive devices: warranty: regulations. Hearing aids: warranty: work order or receipt.~~

Existing law requires all new and used assistive devices sold at retail in this state to be accompanied by the retail seller's written warranty which is required to contain specified language including, among other things, that the assistive device may be returned to the seller within 30 days of the date of the actual receipt by the buyer or completion of fitting by the seller, whichever occurs later.

This bill would, with respect to hearing aids, require all new and used hearing aids sold in this state to be accompanied by the retail seller's written warranty which is required to contain specified language including, among other things, that if the device is not initially fit for the buyer's particular needs, it may be returned to the seller within 30 days of the initial date of delivery to the buyer.

Existing law requires the warranty period relating to an implied or express warranty accompanying a sale or consignment for sale of consumer goods selling for \$50 or more to automatically be tolled from the date upon which the buyer takes certain actions.

This bill would, with respect to hearing aids, require the warranty period to resume on the date upon which the repaired or serviced

hearing aid is delivered to the buyer or 5 days after the buyer is notified that the hearing aid is repaired or serviced and is available for the buyer's possession, whichever is earlier.

Existing law requires every manufacturer or seller of consumer goods selling for \$50 or more to provide a receipt to the buyer showing the date of purchase. Existing law requires every manufacturer or seller performing warranty repairs or service on the goods to provide to the buyer a work order or receipt with the date of return and either the date the buyer was notified that the goods were repaired or serviced, as specified.

This bill would, with respect to hearing aids, require the seller, after receiving the hearing aid for warranty repairs or service, to provide at the time of delivery to the buyer a work order or receipt with the date the warranty period resumes and the revised expiration date of the warranty, as adjusted to reflect the suspension of the warranty period provided pursuant to these provisions.

~~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, notwithstanding the existing provisions otherwise applicable to a warranty for new and used assistive devices, to adopt regulations that define the express terms that are required to be provided in a purchase agreement 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~~(1) Except as provided in paragraph (2), all
 4 new and used assistive devices 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

1 later. If you return the device, the seller will either adjust or replace
2 the device or promptly refund the total amount paid. This warranty
3 does not affect the protections and remedies you have under other
4 laws.” In lieu of the words “30 days” the retail seller may specify
5 any longer period.

6 (2) (A) *All new and used hearing aids sold in this state shall*
7 *be accompanied by the retail seller’s written warranty and shall*
8 *contain the following language: “This hearing aid is warranted*
9 *to be specifically fit for the particular needs of you, the buyer. If*
10 *the hearing aid is not initially fit for your particular needs, it may*
11 *be returned to the seller within 30 days of the initial date of*
12 *delivery to you. If you return the hearing aid, the seller will either*
13 *adjust or replace the hearing aid or promptly refund the total*
14 *amount paid. This warranty does not affect the protections and*
15 *remedies you have under other laws.”*

16 (B) *In lieu of the words “30 days” the retail seller may specify*
17 *any longer period.*

18 (C) *The retail seller’s written warranty shall include the initial*
19 *date of delivery to the buyer of the hearing aid and expiration date*
20 *of the warranty.*

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

25 (c) If the buyer returns the device within the period specified
26 in the written warranty, the seller shall, without charge and within
27 a reasonable time, adjust the device or, if appropriate, replace it
28 with a device that is specifically fit for the particular needs of the
29 buyer. If the seller does not adjust or replace the device so that it
30 is specifically fit for the particular needs of the buyer, the seller
31 shall promptly refund to the buyer the total amount paid, the
32 transaction shall be deemed rescinded, and the seller shall promptly
33 return to the buyer all payments and any assistive device or other
34 consideration exchanged as part of the transaction and shall
35 promptly cancel or cause to be canceled all contracts, instruments,
36 and security agreements executed by the buyer in connection with
37 the sale. When a sale is rescinded under this section, no charge,
38 penalty, or other fee may be imposed in connection with the
39 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 (a) shall not constitute an
28 express warranty for purposes of Sections 1793.2 and 1793.3.

29 *SEC. 2. Section 1795.6 of the Civil Code is amended to read:*

30 1795.6. (a) ~~Every~~(1) *Except as provided in paragraph (2)*
31 warranty period relating to an implied or express warranty
32 accompanying a sale or consignment for sale of consumer goods
33 selling for fifty dollars (\$50) or more shall automatically be tolled
34 for the period from the date upon which the buyer either (1)
35 delivers nonconforming goods to the manufacturer or seller for
36 warranty repairs or service or (2), pursuant to subdivision (c) of
37 Section 1793.2 or Section 1793.22, notifies the manufacturer or
38 seller of the nonconformity of the goods up to, and including, the
39 date upon which (1) the repaired or serviced goods are delivered
40 to the buyer, (2) the buyer is notified the goods are repaired or

1 serviced and are available for the buyer’s possession or (3) the
2 buyer is notified that repairs or service is completed, if repairs or
3 service is made at the buyer’s residence.

4 (2) *With respect to hearing aids, the warranty period shall*
5 *resume on the date upon which (1) the repaired or serviced hearing*
6 *aid is delivered to the buyer or (2) five days after the buyer is*
7 *notified the hearing aid is repaired or serviced and is available*
8 *for the buyer’s possession, whichever is earlier.*

9 (b) Notwithstanding the date or conditions set for the expiration
10 of the warranty period, such warranty period shall not be deemed
11 expired if either or both of the following situations occur: (1) after
12 the buyer has satisfied the requirements of subdivision (a), the
13 warranty repairs or service has not been performed due to delays
14 caused by circumstances beyond the control of the buyer or (2)
15 the warranty repairs or service performed upon the nonconforming
16 goods did not remedy the nonconformity for which such repairs
17 or service was performed and the buyer notified the manufacturer
18 or seller of this failure within 60 days after the repairs or service
19 was completed. When the warranty repairs or service has been
20 performed so as to remedy the nonconformity, the warranty period
21 shall expire in accordance with its terms, including any extension
22 to the warranty period for warranty repairs or service.

23 (c) For purposes of this section only, “manufacturer” includes
24 the manufacturer’s service or repair facility.

25 (d) ~~Every~~—(1) *Except as provided in paragraph (2), every*
26 *manufacturer or seller of consumer goods selling for fifty dollars*
27 *(\$50) or more shall provide a receipt to the buyer showing the date*
28 *of purchase. Every manufacturer or seller performing warranty*
29 *repairs or service on the goods shall provide to the buyer a work*
30 *order or receipt with the date of return and either the date the buyer*
31 *was notified that the goods were repaired or serviced or, where*
32 *applicable, the date the goods were shipped or delivered to the*
33 *buyer.*

34 (2) *With respect to hearing aids, the seller, after receiving the*
35 *hearing aid for warranty repairs or service, shall also provide at*
36 *the time of delivery to the buyer a work order or receipt with the*
37 *following: (1) the date the warranty period resumes and (2) the*
38 *revised expiration date of the warranty, as adjusted to reflect the*
39 *suspension of the warranty period provided under this section.*

1 ~~SECTION 1. Section 2530.7 is added to the Business and~~
2 ~~Professions Code, to read:~~
3 ~~2530.7. Notwithstanding Section 1793.02 of the Civil Code,~~
4 ~~the board may adopt regulations that define the express terms that~~
5 ~~are required to be provided in a purchase agreement for a hearing~~
6 ~~aid.~~

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