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# Rules of Elected Officials

## Division 60—Attorney General

### Chapter 11—Rules for Assistive Devices

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**Title 15—ELECTED OFFICIALS****Division 60—Attorney General****Chapter 11—Rules for Assistive Devices****15 CSR 60-11.010 Appointment of Arbitration Firm**

*PURPOSE: The attorney general administers provisions of the Wheelchair Lemon Law and Assistive Devices for Major Life Activity, sections 407.950 to 407.970, RSMo. The attorney general is required to establish regulations controlling the arbitration of disputes arising under these provisions. This rule specifies procedures to be followed by the attorney general in appointing a professional arbitrator or arbitration firm.*

(1) Any controversy or claim arising out of or relating to consumer rights or remedies under sections 407.950 to 407.970, RSMo shall, at the option of the consumer, be settled by arbitration.

(2) The attorney general shall appoint a professional arbitrator or arbitration firm to administer the program for a term not to exceed two (2) years ending on the thirty-first day of December of the final year of appointment. At the option of the attorney general, the term shall be renewable.

(3) The following criteria shall be considered in the selection of a professional arbitrator or arbitration firm: capability, objectivity, non-affiliation with an assistive device manufacturer, dealer or lessor, reliability, experience, financial stability, extent of geographic coverage, and fee structure.

(4) Each professional arbitrator or arbitration firm applying for appointment shall submit a fee schedule to the attorney general. Upon appointment by the attorney general, the arbitration firm shall adhere to its submitted fee schedule until the expiration of its appointed term.

*AUTHORITY: sections 407.965 and 407.970, RSMo 2000.\* Original rule filed Jan. 27, 2003, effective Aug. 30, 2003.*

*\*Original authority: 407.965, RSMo 1995 and 409.970, RSMo 1995.*

**15 CSR 60-11.020 Notice to Consumers**

*PURPOSE: The attorney general administers provisions of the Wheelchair Lemon Law and Assistive Devices for Major Life Activity, sections 407.950 to 407.970, RSMo. The attorney*

*general is required to establish regulations controlling the arbitration of disputes arising under these provisions. This rule specifies the notice which must be given by sellers of the assistive device to consumers.*

(1) Each manufacturer who sells or leases an assistive device to a Missouri consumer, either directly or through an assistive device dealer, shall furnish the consumer contemporaneously with the express warranty required by section 407.953, RSMo, a clear and conspicuous notice of the consumer's right to elect arbitration. This notice shall be in (10) ten point boldface type and shall include the following words or words of similar import and meaning:

“Pursuant to Missouri law, you have the right to have certain disputes regarding the purchase of an Assistive device resolved through binding arbitration. To obtain a request for arbitration form, contact the manufacturer.”

(2) The notice shall also include the name, address and telephone number of the person whom the consumer may contact to obtain a “Request for Arbitration” form.

*AUTHORITY: sections 407.965 and 407.970, RSMo 2000.\* Original rule filed Jan. 27, 2003, effective Aug. 30, 2003.*

*\*Original authority: 407.965, RSMo 1995 and 407.970, RSMo 1995.*

**15 CSR 60-11.030 Filing for Arbitration**

*PURPOSE: The attorney general administers provisions of the Wheelchair Lemon Law and Assistive Devices for Major Life Activity, sections 407.950 to 407.970, RSMo. The attorney general is required to establish regulations controlling the arbitration of disputes arising under these provisions. This rule specifies procedures to be followed by the parties in arbitration.*

(1) Each manufacturer who sells or leases an assistive device to a Missouri consumer, either directly or through an assistive device dealer, shall make available to the consumer, upon request a “Request for Arbitration” form.

(2) The “Request for Arbitration” form shall be in a format substantially similar to that set out in 15 CSR 60-11.160.

(3) To apply for arbitration under the program, a consumer shall obtain a “Request for Arbitration” form from the manufacturer,

complete the form and submit it to the arbitration firm along with the prescribed filing fee.

(4) For claims made pursuant to sections 407.950 to 407.970, RSMo, the consumer shall indicate on the form his/her choice of remedy (i.e., refund, repair or replacement with a comparable assistive device), in the event the arbitrator rules in favor of the consumer. If the consumer prevails, such choice shall be followed by the arbitrator unless the consumer advises the arbitrator, in writing, of a change in his/her choice of remedy prior to the arbitrator's rendering of a decision.

(5) On the day the arbitration firm receives the “Request for Arbitration” form together with the filing fee, the arbitration firm shall date stamp the form. Such date shall be considered the “filing date.”

(6) Within five (5) business days of the filing date, the arbitration firm shall send the manufacturer's designee a copy of the consumer's completed form along with a notice that it may respond in writing.

(7) Within fifteen (15) days of the filing date, the manufacturer shall respond in triplicate to the arbitration firm, who shall promptly forward one (1) copy to the consumer. Failure by the manufacturer to respond shall be deemed to be an admission of all claims made by the consumer.

(8) The consumer may respond in writing to the manufacturer's submission within twenty-five (25) days of the filing date. Such response shall be sent in triplicate to the arbitration firm, who shall promptly forward a copy to the manufacturer.

*AUTHORITY: sections 407.965 and 407.970, RSMo 2000.\* Original rule filed Jan. 27, 2003, effective Aug. 30, 2003.*

*\*Original authority: 407.965, RSMo 1995 and 407.970, RSMo 1995.*

**15 CSR 60-11.040 Cost of Arbitration**

*PURPOSE: The attorney general administers provisions of the Wheelchair Lemon Law and Assistive Devices for Major Life Activity, sections 407.950 to 407.970, RSMo. The attorney general is required to establish regulations controlling the arbitration of disputes arising under these provisions. This rule specifies procedures concerning the cost of arbitration.*

(1) Each consumer who files a “Request for Arbitration” form shall pay a processing fee to the arbitration firm of fifty dollars (\$50).

(2) All other costs of arbitration shall be paid to the arbitration firm by the manufacturer.

*AUTHORITY: sections 407.965 and 407.970, RSMo 2000.\* Original rule filed Jan. 27, 2003, effective Aug. 30, 2003.*

*\*Original authority: 407.965, RSMo 1995 and 407.970, RSMo 1995.*

**15 CSR 60-11.050 Assignment of Arbitrator**

*PURPOSE: The attorney general administers provisions of the Wheelchair Lemon Law and Assistive Devices for Major Life Activity, sections 407.950 to 407.970, RSMo. The attorney general is required to establish regulations controlling the arbitration of disputes arising under these provisions. This rule specifies procedures to be followed by the arbitration firm in selecting an arbitrator.*

(1) After the filing date, the arbitration firm shall assign an arbitrator to hear and decide the case. Notice of assignment shall be mailed to the arbitrator and the parties along with a copy of these regulations and sections 407.950 to 407.970, RSMo.

(2) The arbitrator assigned shall not have any bias, any financial or personal interest in the outcome of the hearing, or any current connection to the sale or manufacture of assistive devices.

*AUTHORITY: sections 407.965 and 407.970, RSMo 2000.\* Original rule filed Jan. 27, 2003, effective Aug. 30, 2003.*

*\*Original authority: 407.965, RSMo 1995 and 407.970, RSMo 1995.*

**15 CSR 60-11.060 Scheduling of Arbitration Hearings**

*PURPOSE: The attorney general administers provisions of the Wheelchair Lemon Law and Assistive Devices for Major Life Activity, sections 407.950 to 407.970, RSMo. The attorney general is required to establish regulations controlling the arbitration of disputes arising under these provisions. This rule specifies procedures to be followed by the parties and the arbitrator.*

(1) The arbitration shall be conducted as an oral hearing unless the consumer has requested, on the “Request for Arbitration” form, a hearing on documents only and both parties agree to a documents-only hearing; provided, however, that the parties may mutually agree in writing to change the mode of hearing. Upon such change, the parties shall notify the arbitrator who shall comply with the request.

(2) An oral hearing, unless waived by the parties, shall be scheduled to take place no later than forty (40) days from the filing date, unless a later date is agreed to by both parties. The arbitrator shall notify both parties of the date, time and place of the hearing at least ten (10) days prior to its scheduled date.

(3) Hearings shall be scheduled to accommodate, where possible, time-of-day needs of the consumer and the manufacturer, including evening and weekend hours.

(4) Hearings shall also be scheduled to accommodate geographic needs of the consumer. The hearing site shall be no more than one hundred (100) miles from the consumer’s residence unless the consumer agrees, in writing, to a hearing at a location farther than one hundred (100) miles from his or her residence.

(5) A party may present its case by telephone, provided that notice, in writing, is given to the arbitrator and to the other party at least two (2) business days prior to the scheduled hearing date. In such cases, the arbitrator and both parties shall be included.

(6) Either party may make a request to adjourn and reschedule the hearing. Except in unusual circumstances, such request shall be made to the arbitrator, orally or in writing, at least two (2) business days prior to the hearing date. Upon a finding of good cause, the arbitrator may reschedule the hearing. In unusual circumstances, the arbitrator may reschedule the hearing at any time prior to its commencement.

*AUTHORITY: sections 407.965 and 407.970, RSMo 2000.\* Original rule filed Jan. 27, 2003, effective Aug. 30, 2003.*

*\*Original authority: 407.965, RSMo 1995 and 407.970, RSMo 1995.*

**15 CSR 60-11.070 Request for Additional Information or Documents**

*PURPOSE: The attorney general administers provisions of the Wheelchair Lemon Law and*

*Assistive Devices for Major Life Activity, sections 407.950 to 407.970, RSMo. The attorney general is required to establish regulations controlling the arbitration of disputes arising under these provisions. This rule specifies procedures to be followed in conducting discovery.*

(1) A party, by application in writing to the arbitrator, may request the arbitrator to direct the other party to produce any documents or information. The arbitrator shall, upon receiving such request, or on his or her own initiative, direct the production of documents or information which he or she believes will reasonably assist a party in presenting his or her case or assist the arbitrator in deciding the case. The arbitrator’s direction for the production of documents and information shall allow a reasonable time for the gathering and production of such documents and information.

(2) All documents and information forwarded in compliance with the arbitrator’s direction shall be legible and received by the arbitrator and other party no later than three (3) business days prior to the date of the hearing. Each party shall bear its own photocopying costs.

(3) Upon failure of a party to comply with the arbitrator’s direction to produce documents and/or information, the arbitrator may draw a negative inference concerning any issue involving such documents or information.

(4) The term “documents” in this section shall include, but not be limited to, relevant manufacturer’s service bulletins, dealer work orders, diagnoses, bills, and all communication relating to the consumer’s claim.

(5) At the request of either party or on his or her own initiative, the arbitrator, when he or she believes it appropriate, may subpoena any witnesses to appear or documents to be presented at the hearing.

(6) Where a witness cannot be subpoenaed or is unable to attend the hearing, the arbitrator may, at the written request of either party or on his or her own initiative, permit a deposition to be taken, in a manner and upon terms designated by the arbitrator. Such deposition may be used as evidence and considered by the arbitrator in making his or her decision.

*AUTHORITY: sections 407.965 and 407.970, RSMo 2000.\* Original rule filed Jan. 27, 2003, effective Aug. 30, 2003.*

\*Original authority: 407.965, RSMo 1995 and 407.970, RSMo 1995.

### 15 CSR 60-11.080 Representation by Counsel or Third Party

*PURPOSE: The attorney general administers provisions of the Wheelchair Lemon Law and Assistive Devices for Major Life Activity, sections 407.950 to 407.970, RSMo. The attorney general is required to establish regulations controlling the arbitration of disputes arising under these provisions. This rule specifies procedures related to participation by a third party.*

(1) Any party may be represented by counsel or assisted by any third party.

*AUTHORITY: sections 407.965 and 407.970, RSMo 2000.\* Original rule filed Jan. 27, 2003, effective Aug. 30, 2003.*

\*Original authority: 407.965, RSMo 1995 and 407.970, RSMo 1995.

### 15 CSR 60-11.090 Hearing Procedure

*PURPOSE: The attorney general administers provisions of the Wheelchair Lemon Law and Assistive Devices for Major Life Activity, sections 407.950 to 407.970, RSMo. The attorney general is required to establish regulations controlling the arbitration of disputes arising under these provisions. This rule specifies procedures to be followed at the arbitration hearing.*

(1) The conduct of the hearing shall afford each party a full and reasonable opportunity to present his or her case.

(2) The arbitrator shall administer an oath or affirmation to each individual who testifies.

(3) Formal rules of evidence shall not apply; the parties may introduce any relevant evidence at the discretion of the arbitrator.

(4) The arbitrator may receive relevant evidence of witnesses by affidavit and such affidavits shall be given such weight as the arbitrator deems appropriate.

(5) The arbitrator shall have discretion to examine the consumer's assistive device. Both parties shall be afforded the opportunity to be present and accompany the arbitrator on any such examination.

(6) The consumer shall first present evidence in support of his or her claim, and the manu-

facturer shall then present its evidence. Each party may question the witnesses called by the other. The arbitrator may question any party or witness at any time during the hearing.

(7) The arbitrator may request additional evidence after closing the hearing. All such evidence shall be submitted to the arbitration firm for transmission to the arbitrator and the parties.

*AUTHORITY: sections 407.965 and 407.970, RSMo 2000.\* Original rule filed Jan. 27, 2003, effective Aug. 30, 2003.*

\*Original authority: 407.965, RSMo 1995 and 407.970, RSMo 1995.

### 15 CSR 60-11.100 Accommodations for the Disabled

*PURPOSE: The attorney general administers provisions of the Wheelchair Lemon Law and Assistive Devices for Major Life Activity, sections 407.950 to 407.970, RSMo. The attorney general is required to establish regulations controlling the arbitration of disputes arising under these provisions. This rule specifies procedures related to accommodations for the disabled.*

(1) Any party may request reasonable accommodations at a hearing, including access and auxiliary aids and services, in accordance with the Americans With Disabilities Act (42 U.S.C. 12101 et seq) and the regulations thereunder (28 CFR part 35) as such Act and regulations may, from time-to-time, be amended.

(2) Such request shall be made to the arbitration firm at the time the consumer submits his or her "Request for Arbitration" form.

*AUTHORITY: sections 407.965 and 407.970, RSMo 2000.\* Original rule filed Jan. 27, 2003, effective Aug. 30, 2003.*

\*Original authority: 407.965, RSMo 1995 and 407.970, RSMo 1995.

### 15 CSR 60-11.110 Hearing on Documents Only

*PURPOSE: The attorney general administers provisions of the Wheelchair Lemon Law and Assistive Devices for Major Life Activity, sections 407.950 to 407.970, RSMo. The attorney general is required to establish regulations controlling the arbitration of disputes arising under these provisions. This rule*

*specifies procedures related to submission of the case on documents only.*

(1) If the hearing is on documents only, all documents shall be submitted to the arbitrator no later than thirty-five (35) days from the filing date. The arbitrator shall render a decision within ten (10) business days based on all documents submitted.

*AUTHORITY: sections 407.965 and 407.970, RSMo 2000.\* Original rule filed Jan. 27, 2003, effective Aug. 30, 2003.*

\*Original authority: 407.965, RSMo 1995 and 407.970, RSMo 1995.

### 15 CSR 60-11.120 Defaults

*PURPOSE: The attorney general administers provisions of the Wheelchair Lemon Law and Assistive Devices for Major Life Activity, sections 407.950 to 407.970, RSMo. The attorney general is required to establish regulations controlling the arbitration of disputes arising under these provisions. This rule specifies procedures to be followed by the arbitrator in conducting the hearing.*

(1) Upon the failure of a party to appear at an oral hearing, the arbitrator shall nevertheless conduct the hearing and render a decision based on the evidence presented and documents contained in the file.

(2) If neither party appears at a scheduled oral hearing, the arbitrator shall dismiss the case without a decision and so notify the parties. The dismissal shall be without prejudice to future reffiling.

(3) In a documents-only hearing, where the manufacturer fails to respond to the claim, the arbitrator shall render a decision based upon the documents contained in the file.

*AUTHORITY: sections 407.965 and 407.970, RSMo 2000.\* Original rule filed Jan. 27, 2003, effective Aug. 30, 2003.*

\*Original authority: 407.965, RSMo 1995 and 407.970, RSMo 1995.

### 15 CSR 60-11.130 Withdrawal or Settlement Prior to Decision

*PURPOSE: The attorney general administers provisions of the Wheelchair Lemon Law and Assistive Devices for Major Life Activity, sections 407.950 to 407.970, RSMo. The attorney general is required to establish regulations controlling the arbitration of disputes*



arising under these provisions. This rule specifies procedures related to withdrawal of claims or settlement.

(1) A consumer may withdraw his or her request for arbitration at any time prior to decision. If the arbitration firm is notified by the consumer of his or her request to withdraw the claim within seven (7) business days of the filing date, the arbitration firm shall refund the filing fee.

(2) If the parties agree to a settlement more than seven (7) business days after the filing date but prior to the issuance of a decision, they shall notify the arbitrator in writing of the terms of the settlement. Upon the request of the parties, the arbitrator shall issue a decision reflecting the settlement.

*AUTHORITY:* sections 407.965 and 407.970, RSMo 2000.\* Original rule filed Jan. 27, 2003, effective Aug. 30, 2003.

\*Original authority: 407.965, RSMo 1995 and 407.970, RSMo 1995.

#### 15 CSR 60-11.140 Arbitrator's Decision

*PURPOSE:* The attorney general administers provisions of the Wheelchair Lemon Law and Assistive Devices for Major Life Activity, sections 407.950 to 407.970, RSMo. The attorney general is required to establish regulations controlling the arbitration of disputes arising under these provisions. This rule specifies procedures to be followed by the arbitrator in reaching the decision.

(1) The arbitrator shall render a decision within ten (10) business days of the hearing date which shall be in writing and shall include findings of fact and conclusions of law. The decision shall be dated and signed by the arbitrator.

(2) In his or her decision, the arbitrator shall determine whether the consumer is entitled to relief pursuant to sections 407.950 to 407.970, RSMo. If the arbitrator finds that the consumer is so entitled, he or she shall award the specific remedies prescribed by the statute.

(3) The decision shall specify the monetary award, where applicable. A calculation of the amount, in accordance with sections 407.950 to 407.970, RSMo, shall be included in the decision. If the consumer prevails, the decision may also award the prescribed filing fee along with reasonable attorney fees, if appli-

cable, and any equitable relief that the arbitrator deems appropriate.

(4) The decision shall, where applicable, require that any action required to be taken by the manufacturer be completed within thirty (30) days from the date the arbitrator notifies the manufacturer of the decision.

(5) The arbitrator shall, within five (5) days of rendering a decision, mail a copy of the final decision to both parties and the attorney general.

(6) Failure to mail the decision to the parties within the specified time period or failure to hold the hearing within the prescribed time shall not invalidate the decision.

(7) The arbitrator's decision is binding on both parties and is final. The decision shall include a statement to this effect.

(8) An award rendered by the arbitrator may be confirmed, vacated or modified in the manner set out in sections 435.400–435.440, RSMo.

*AUTHORITY:* sections 407.965 and 407.970, RSMo 2000.\* Original rule filed Jan. 27, 2003, effective Aug. 30, 2003.

\*Original authority: 407.965, RSMo 1995 and 407.970, RSMo 1995.

#### 15 CSR 60-11.150 Record Keeping

*PURPOSE:* The attorney general administers provisions of the Wheelchair Lemon Law and Assistive Devices for Major Life Activity, sections 407.950 to 407.970, RSMo. The attorney general is required to establish regulations controlling the arbitration of disputes arising under these provisions. This rule specifies procedures related to making a record.

(1) The arbitration firm shall keep all records pertaining to each arbitration for a period of at least two (2) years and shall make the records of a particular arbitration available for inspection upon written request by a party to that arbitration, and shall make records of all arbitrations available to the attorney general upon written request.

(2) At the expiration of the arbitration firm's appointment, if that appointment is not renewed, all records pertaining to arbitrations conducted pursuant to sections 407.950 to 407.970, RSMo shall be turned over to the attorney general.

*AUTHORITY:* sections 407.965 and 407.970, RSMo 2000.\* Original rule filed Jan. 27, 2003, effective Aug. 30, 2003.

\*Original authority: 407.965, RSMo 1995 and 407.970, RSMo 1995.

#### 15 CSR 60-11.160 Sample "Request For Arbitration" Form

*PURPOSE:* The attorney general administers provisions of the Wheelchair Lemon Law and Assistive Devices for Major Life Activity, sections 407.950 to 407.970, RSMo. The attorney general is required to establish regulations controlling the arbitration of disputes arising under these provisions. This rule specifies a sample Request for Arbitration form.

MISSOURI WHEELCHAIR AND ASSISTIVE DEVICE LEMON LAW

CONSUMER INFORMATION

1. Name: Address: City: State: Zip: Phone: Home ( ) Work: ( )

ASSISTIVE DEVICE INFORMATION (Attach Copy of Bill of Sale or Lease)

1. Type of Device: (For example, Wheelchair or Hearing Aid)
2. Manufacturer:
3. Year: Model:
4. [ ] I purchased my assistive device [ ] I leased my assistive device
5. Did you purchase or lease your assistive device in Missouri? [ ] Yes [ ] No
6. Date of delivery?
7. Do you still own or lease your assistive device? [ ] Yes [ ] No

DEALER INFORMATION

8. Name: Address: City: State: Zip:

LEASING COMPANY (if leased)

9. Name: Address: City: State: Zip:

ASSISTIVE DEVICE PROBLEM(S)

10. Briefly describe the existing problem(s) for which you now seek relief:
11. (a) What date did you first report the problem(s) to the dealer or the manufacturer?
(b) Did you make the assistive device available for repair before one year after the first delivery?
12. Were there one or more unsuccessful repair attempts within one year from the date of original delivery?
13. Does the problem continue to exist?
14. Give the date and work order number for each of the repair attempts by the dealer or manufacturer and attach copies of them. If you do not have copies of the work orders, once accepted into the program, you may request copies from the manufacturer, with the arbitrator's approval.
Problem (Specify)

Date Work Order Number
(1)
(2)
(3)
(4)
15. List the dates your assistive device was out of service:
From: To: Days out:
From: To: Days out:
From: To: Days out:
From: To: Days out:

TYPE OF HEARING

16. [ ] Oral
(a) in person [ ]
(b) by telephone [ ]
[ ] Documents only (if manufacturer agrees)

RELIEF REQUESTED

17. If successful, I wish to receive a:
[ ] full refund [ ] comparable new replacement device

Attach copies of all relevant documents (including your purchase or lease agreement, all service or work orders relating to the problem for which you seek this arbitration, and any correspondence between you and the manufacturer or its dealer relating to such problem). DO NOT SEND ORIGINAL DOCUMENTS.

Please enclose the filing fee of \$50.00. Upon receipt of the filing fee, your claim will begin to be processed.

NOTICE: The decision of the arbitrator under this program is binding on both parties. You may wish to consult an attorney before participating in this program.

Sign below and return the completed form, together with your documents and the filing fee, to

SIGNATURE: Date:

AUTHORITY: sections 407.965 and 407.970, RSMo 2000.\* Original rule filed Jan. 27, 2003, effective Aug. 30, 2003.

\*Original authority: 407.965, RSMo 1995 and 407.970, RSMo 1995.