

**SENATE CS FOR CS FOR HOUSE BILL NO. 451(RLS)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY THE SENATE RULES COMMITTEE**

**Offered: 5/9/98**

**Referred: Today's Calendar**

**Sponsor(s): REPRESENTATIVES GREEN, Davies, Berkowitz, Porter**

**SENATORS Ellis, Kelly, Leman, Mackie, Wilken, Taylor, Duncan**

**A BILL**

**FOR AN ACT ENTITLED**

**1 "An Act relating to assistive technology devices and mobility aids for physically**  
**2 disabled persons."**

**3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

**4 \* Section 1.** AS 45.45 is amended by adding new sections to read:

**5 Article 8A. Warranties For Assistive Technology Devices and Mobility Aids.**

**6 Sec. 45.45.600. Express warranty required.** A manufacturer who sells an  
**7** assistive technology device or a mobility aid to a consumer, either directly or through  
**8** a dealer, shall furnish the consumer with an express warranty stating that the assistive  
**9** technology device or mobility aid is free from any nonconformity. The duration of the  
**10** express warranty shall be not less than one year after first delivery of the assistive  
**11** technology device or mobility aid to a consumer. If a manufacturer fails to furnish an  
**12** express warranty as required by this section, the assistive technology device or  
**13** mobility aid shall be covered by the express warranty as if the manufacturer had  
**14** furnished an express warranty to the consumer as required by this section.

**Sec. 45.45.610. Repairs of nonconformities.** If a new assistive technology device or mobility aid does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the lessor, or any of the manufacturer's authorized dealers and makes the assistive technology device or mobility aid available for repair before one year after first delivery of the assistive technology device or mobility aid to a consumer, the nonconformity shall be repaired and the manufacturer shall pay collateral costs incurred by the consumer.

**Sec. 45.45.620. Returns of nonrepairable goods; refunds.** If, after a reasonable attempt to repair, the nonconformity reported under AS 45.45.610 is not repaired, the manufacturer shall

(1) at the direction of a consumer who has not leased the assistive technology device or the mobility aid from a dealer, do one of the following:

(A) accept return of the assistive technology device or mobility aid and replace the assistive technology device or mobility aid with a comparable new assistive technology device or mobility aid and, within 30 days, refund any collateral costs;

(B) accept return of the assistive technology device or mobility aid and, within 30 days, refund to the consumer and to a holder of a perfected security interest in the consumer's assistive technology device or mobility aid, as their interest may appear, the full purchase price plus any finance charge, amount paid by the consumer at the point of sale, and collateral costs, less a reasonable allowance for use; a reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the assistive technology device or mobility aid by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the assistive technology device or mobility aid was used before the consumer first reported the nonconformity to the dealer;

(2) with respect to a consumer who has leased the assistive technology device or mobility aid from a dealer, accept return of the assistive technology device or mobility aid, refund to the lessor and to a holder of a perfected security interest in the assistive technology device or mobility aid, as their interest may appear, the current

1 value of the written lease, and refund to the consumer the amount that the consumer  
 2 paid under the written lease plus any collateral costs, less a reasonable allowance for  
 3 use; in this paragraph,

4 (A) the current value of the written lease equals the total  
 5 amount for which that lease obligates the consumer during the period of the  
 6 lease remaining after its early termination, plus the dealer's early termination  
 7 costs and the value of the assistive technology device or mobility aid at the  
 8 lease expiration date if the lease sets out that value, less the lessor's early  
 9 termination savings;

10 (B) a reasonable allowance for use may not exceed the amount  
 11 obtained by multiplying the total amount for which the written lease obligates  
 12 the consumer by a fraction, the denominator of which is 1,825 and the  
 13 numerator of which is the number of days that the consumer used the assistive  
 14 technology device or mobility aid before first reporting the nonconformity to  
 15 the manufacturer, lessor, or dealer.

16 **Sec. 45.45.630. Procedures for returns and refunds.** (a) To receive a  
 17 comparable new assistive technology device or mobility aid or a refund under  
 18 AS 45.45.620(1), a consumer shall offer to transfer possession of the assistive  
 19 technology device or mobility aid having the nonconformity to its manufacturer. No  
 20 later than 30 days after that offer, the manufacturer shall provide the consumer with  
 21 the comparable new assistive technology device or mobility aid or with a refund.  
 22 When the manufacturer provides the new assistive technology device or mobility aid  
 23 or refund, the consumer shall return the assistive technology device or mobility aid  
 24 having the nonconformity to the manufacturer, along with any endorsements necessary  
 25 to transfer real possession to the manufacturer.

26 (b) To receive a refund under AS 45.45.620(2), a consumer shall offer to  
 27 return the assistive technology device or mobility aid having the nonconformity to its  
 28 manufacturer. No later than 30 days after that offer, the manufacturer shall provide  
 29 the refund to the consumer. When the manufacturer provides the refund, the consumer  
 30 shall return to the manufacturer the assistive technology device or mobility aid having  
 31 the nonconformity.

(c) To receive a refund under AS 45.45.620(2), a lessor shall offer to transfer possession of the assistive technology device or mobility aid having the nonconformity to its manufacturer. No later than 30 days after that offer, the manufacturer shall provide the refund to the lessor. When the manufacturer provides the refund, the lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

**Sec. 45.45.640. Lease unenforceable after refund.** A person may not enforce the lease for an assistive technology device or a mobility aid against the consumer after the consumer receives a refund under AS 45.45.600 - 45.45.690.

**Sec. 45.45.650. Limits on sale or lease of returned equipment.** An assistive technology device or mobility aid returned by a consumer or a lessor in this state under AS 45.45.600 - 45.45.690, or by a consumer or lessor in another state under a similar law of that state, may not be sold or leased again in this state unless full disclosure of the reasons for return is made to any prospective buyer or lessee.

**Sec. 45.45.660. Rights may not be waived.** A waiver by a consumer of rights under AS 45.45.600 - 45.45.690 is void.

**Sec. 45.45.670. No limitation of other rights.** AS 45.45.600 - 45.45.690 do not limit rights or remedies available to a consumer under any other law.

**Sec. 45.45.680. Action for damages authorized.** In addition to pursuing another remedy, a consumer may bring an action to recover for damages caused by a violation of AS 45.45.600 - 45.45.690. The court shall award a consumer who prevails in an action under this section twice the amount of any pecuniary loss, together with costs, disbursements, and reasonable attorney fees, and any equitable relief that the court determines is appropriate.

**Sec. 45.45.690. Definitions.** In AS 45.45.600 - 45.45.690,

(1) "assistive technology device" means an item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used or designed to be used to increase, maintain, or improve a functional capability of an individual with disabilities; an assistive technology device system that, as a whole, is within the definition of "assistive technology device," is itself an assistive technology device, and in such case the term also applies to each

1 component product of the assistive technology device system that is itself ordinarily  
 2 an assistive technology device; to the extent that a device otherwise meets the  
 3 requirements of this paragraph, "assistive technology device" includes

4 (A) wheelchairs and scooters of any kind, and other aids that  
 5 enhance the mobility or positioning of an individual, such as motorization,  
 6 motorized positioning features, and the switches and controls for motorized  
 7 features;

8 (B) hearing aids, telephone communication devices for the deaf,  
 9 and other assistive listening devices;

10 (C) computer equipment and reading devices with voice output,  
 11 optical scanners, talking software, braille printers, and other aids and devices  
 12 that provide access to text;

13 (D) computer equipment with voice output, artificial larynges,  
 14 voice amplification devices, and other alternative and augmentative  
 15 communication devices;

16 (E) voice recognition computer equipment, software and  
 17 hardware accommodations, switches, and other forms of alternative access to  
 18 computers;

19 (F) environmental control units; and

20 (G) simple mechanical aids that enhance the functional  
 21 capabilities of an individual with disabilities;

22 (2) "assistive technology device system" means the final product  
 23 resulting from a manufacturer customizing, adapting, reconfiguring, refitting,  
 24 refurbishing, or composing into a system one or more component products, whether  
 25 or not new, that may be assistive technology devices or standard products of the same  
 26 or other manufacturer;

27 (3) "collateral costs" means the following expenses incurred by a  
 28 consumer:

29 (A) medical expenses for the treatment of a physical injury  
 30 caused by a nonconformity in an assistive technology device or mobility aid;

31 (B) the cost to rent a substitute assistive technology device or

mobility aid during the time repairs are attempted for an assistive technology device or mobility aid that has a nonconformity and during the time preceding receipt of a replacement when repairs have been unsuccessful;

(C) the cost of shipping an assistive technology device or mobility aid that has a nonconformity to a manufacturer, lessor, or authorized dealer for repair or replacement; and

(D) the documented costs of long-distance telephone calls and facsimile transmissions used to contact the manufacturer, lessor, or authorized dealer for the purpose of effecting a repair or replacement of an assistive technology device or mobility aid that has a nonconformity;

(4) "consumer" means

(A) the purchaser of an assistive technology device or mobility aid, if the assistive technology device or mobility aid was purchased from a dealer or manufacturer for purposes other than resale;

(B) a person to whom the assistive technology device or mobility aid is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the assistive technology device or mobility aid;

(C) a person who may enforce the warranty; or

(D) a person who leases an assistive technology device or a mobility aid from a lessor under a written lease;

(5) "dealer" means a person who is in the business of selling assistive technology devices or mobility aids without assembly or modification;

(6) "demonstrator" means an assistive technology device or a mobility aid used primarily for the purpose of demonstration to the public;

(7) "early termination cost" means any expense or obligation that a lessor incurs as a result of both the termination of a written lease before the termination date set out in that lease and the return of an assistive technology device or mobility aid to a manufacturer; "early termination cost" includes a penalty for prepayment under a finance arrangement;

(8) "early termination savings" means any expense or obligation that

1 a lessor avoids as a result of both the termination of a written lease before the  
 2 termination date set out in that lease and the return of an assistive technology device  
 3 or mobility aid to a manufacturer; "early termination savings" includes an interest  
 4 charge that the lessor would have paid to finance the assistive technology device or  
 5 mobility aid or, if the lessor does not finance the assistive technology device or  
 6 mobility aid, the difference between the total amount for which the lease obligates the  
 7 consumer during the period of the lease term remaining after the early termination and  
 8 the present value of that amount at the date of the early termination;

9 (9) "lessor" means a person who leases an assistive technology device  
 10 or mobility aid to a consumer, or who holds the lessor's rights, under a written lease;

11 (10) "manufacturer" means a person who is in the business of  
 12 manufacturing, modifying, or assembling assistive technology devices or mobility aids  
 13 and agents of that person, including an importer, a distributor, factory branch,  
 14 distributor branch, and any warrantors of the manufacturer's assistive technology  
 15 devices or mobility aids, but does not include a dealer;

16 (11) "mobility aid" means equipment or a device, including a  
 17 demonstrator, designed to assist the mobility of a physically disabled person, that a  
 18 consumer purchases or accepts transfer of in this state; in this paragraph, "device"  
 19 includes

20 (A) a motorized or nonmotorized wheelchair;

21 (B) a scooter;

22 (C) an automotive crane;

23 (D) a van lift; and

24 (E) special hand controls for a motor vehicle;

25 (12) "nonconformity" means a condition or defect that substantially  
 26 impairs the use, value, or safety of an assistive technology device or mobility aid or  
 27 a component of the assistive technology device or mobility aid, but does not include  
 28 a condition or defect that is the result of abuse, neglect, or unauthorized modification  
 29 or alteration of the assistive technology device or mobility aid or a component of the  
 30 assistive technology device or mobility aid by a consumer;

31 (13) "reasonable attempt to repair" means either of the following

1 occurring within the term of an express warranty applicable to a new assistive  
 2 technology device or mobility aid or within one year after first delivery of the assistive  
 3 technology device or mobility aid to a consumer, whichever is sooner:

4 (A) the same nonconformity with the warranty is subject to  
 5 repair by the manufacturer, lessor, or any of the manufacturer's authorized  
 6 dealers at least four times and the nonconformity continues;

7 (B) the assistive technology device or mobility aid is out of  
 8 service for an aggregate of at least 30 days because of warranty  
 9 nonconformities.

10 \* **Sec. 2.** AS 47.80 is amended by adding a new section to read:

11 **Article 5A. Teachers Who Teach the Use of Certain Aids or Devices**  
 12 **for the Blind and Visually Impaired.**

13 **Sec. 47.80.400. Qualifications for teaching the use of certain aids or**  
 14 **devices for the blind and visually impaired.** (a) A person who is employed to teach  
 15 the use of orientation and mobility aids or assistive technology devices to students who  
 16 are 16 years of age or older and who are blind or visually impaired may not receive  
 17 payment from the state or a political subdivision of the state unless the person meets  
 18 the training and experience requirements established by the department under this  
 19 section.

20 (b) The department shall, by regulation, establish minimum requirements for  
 21 training and experience of persons who teach the use of orientation and mobility aids  
 22 or assistive technology devices to students who are 16 years of age or older and who  
 23 are blind or visually impaired. The department shall consider the standards adopted  
 24 by national organizations that provide services to the blind and visually impaired when  
 25 setting requirements under this section.

26 \* **Sec. 3. GRACE PERIOD FOR CURRENT TEACHERS.** Notwithstanding the  
 27 requirements of AS 47.80.400, enacted by sec. 2 of this Act, a person employed on the  
 28 effective date of this Act to teach the use of orientation and mobility aids or assistive  
 29 technology devices to students who are 16 years of age or older and who are blind or visually  
 30 impaired may continue to be employed by that employer without meeting the requirements  
 31 of AS 47.80.400(b), enacted by sec. 2 of this Act, until one year after the effective date of this



1 Act.

2 \* **Sec. 4.** EFFECT ON CONTRACTS. Nothing in this Act modifies or terminates a  
3 contract in effect on the effective date of this Act.

4 \* **Sec. 5.** APPLICABILITY. Section 1 of this Act applies to sales and leases of assistive  
5 technology devices or mobility aids entered into on or after the effective date of this Act.