

SENATE BILL NO. 315

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY SENATORS ELLIS, Duncan

Introduced: 2/16/98

Referred: HESS, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to assistive technology and mobility aids for disabled persons."

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

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

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

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

14 **Sec. 45.45.610. Repairs of nonconformities.** If a new assistive technology
15 or mobility aid does not conform to an applicable express warranty and the consumer

1 reports the nonconformity to the manufacturer, the lessor, or any of the manufacturer's
2 authorized dealers and makes the assistive technology or mobility aid available for
3 repair before one year after first delivery of the assistive technology or mobility aid
4 to a consumer, the nonconformity shall be repaired.

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

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

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

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

25 (2) with respect to a consumer who has leased the assistive technology
26 or mobility aid from a dealer, accept return of the assistive technology or mobility aid,
27 refund to the lessor and to a holder of a perfected security interest in the assistive
28 technology or mobility aid, as their interest may appear, the current value of the
29 written lease, and refund to the consumer the amount that the consumer paid under the
30 written lease plus any collateral costs, less a reasonable allowance for use; in this
31 paragraph,

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

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

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

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

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

1 refund to the lessor. When the manufacturer provides the refund, the lessor shall
2 provide to the manufacturer any endorsements necessary to transfer legal possession
3 to the manufacturer.

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

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

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

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

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

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

23 (1) "assistive technology" means an item, piece of equipment, or
24 product system, whether acquired commercially off-the-shelf, modified, or customized,
25 that is used to increase, maintain, or improve functional capabilities of an individual
26 with a disability;

27 (2) "collateral costs" means expenses incurred by a consumer in
28 connection with the repair of a nonconformity including the costs of obtaining an
29 alternative assistive technology or mobility aid;

30 (3) "consumer" means

31 (A) the purchaser of an assistive technology or mobility aid, if

1 the assistive technology or mobility aid was purchased from a dealer or
2 manufacturer for purposes other than resale;

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

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

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

10 (4) "dealer" means a person who is in the business of selling assistive
11 technology or mobility aids;

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

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

19 (7) "early termination savings" means any expense or obligation that
20 a lessor avoids as a result of both the termination of a written lease before the
21 termination date set out in that lease and the return of an assistive technology or
22 mobility aid to a manufacturer; "early termination savings" includes an interest charge
23 that the lessor would have paid to finance the assistive technology or mobility aid or,
24 if the lessor does not finance the assistive technology or mobility aid, the difference
25 between the total amount for which the lease obligates the consumer during the period
26 of the lease term remaining after the early termination and the present value of that
27 amount at the date of the early termination;

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

30 (9) "manufacturer" means a person who manufactures or assembles
31 assistive technology or mobility aids and agents of that person, including an importer,

1 a distributor, factory branch, distributor branch, and any warrantors of the
2 manufacturer's assistive technology or mobility aids, but does not include a dealer;

3 (10) "mobility aid" means equipment or a device, including a
4 demonstrator, designed to assist the mobility of a physically disabled person, that a
5 consumer purchases or accepts transfer of in this state; in this paragraph, "device"
6 includes

7 (A) a motorized or nonmotorized wheelchair;

8 (B) a scooter;

9 (C) an automotive crane;

10 (D) a van lift; and

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

12 (11) "nonconformity" means a condition or defect that substantially
13 impairs the use, value, or safety of an assistive technology or mobility aid or a
14 component of the assistive technology or mobility aid, but does not include a condition
15 or defect that is the result of abuse, neglect, or unauthorized modification or alteration
16 of the assistive technology or mobility aid or a component of the assistive technology
17 or mobility aid by a consumer;

18 (12) "reasonable attempt to repair" means either of the following
19 occurring within the term of an express warranty applicable to a new assistive
20 technology or mobility aid or within one year after first delivery of the assistive
21 technology or mobility aid to a consumer, whichever is sooner:

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

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

27 * **Sec. 2. APPLICABILITY.** This Act applies to sales and leases of assistive technology
28 or mobility aids entered into on or after the effective date of this Act.