

HOUSE BILL NO. 436

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE DAVIES

Introduced: 2/18/98

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

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

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 or mobility aid" means any aid, including a
24 motorized or nonassistive technology aid, that a consumer purchases or accepts transfer
25 of in this state, including a demonstrator; in this paragraph, "aid" includes

26 (A) a motorized or nonmotorized wheelchair;

27 (B) a handicapped scooter;

28 (C) an automotive crane;

29 (D) a van or van lift;

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

31 (F) manual technology;

1 (G) computer software; and

2 (H) a hearing aid;

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

6 (3) "consumer" means

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

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

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

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

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

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

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

26 (7) "early termination savings" means any expense or obligation that
27 a lessor avoids as a result of both the termination of a written lease before the
28 termination date set out in that lease and the return of an assistive technology or
29 mobility aid to a manufacturer; "early termination savings" includes an interest charge
30 that the lessor would have paid to finance the assistive technology or mobility aid or,
31 if the lessor does not finance the assistive technology or mobility aid, the difference

1 between the total amount for which the lease obligates the consumer during the period
2 of the lease term remaining after the early termination and the present value of that
3 amount at the date of the early termination;

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

6 (9) "manufacturer" means a person who manufactures or assembles
7 assistive technology or mobility aids and agents of that person, including an importer,
8 a distributor, factory branch, distributor branch, and any warrantors of the
9 manufacturer's assistive technology or mobility aids, but does not include a dealer;

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

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

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

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

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