

CS FOR HOUSE BILL NO. 451(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/7/98

Referred: Rules

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

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.

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

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

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

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

17 (B) accept return of the assistive technology device or mobility
18 aid and, within 30 days, refund to the consumer and to a holder of a perfected
19 security interest in the consumer's assistive technology device or mobility aid,
20 as their interest may appear, the full purchase price plus any finance charge,
21 amount paid by the consumer at the point of sale, and collateral costs, less a
22 reasonable allowance for use; a reasonable allowance for use may not exceed
23 the amount obtained by multiplying the full purchase price of the assistive
24 technology device or mobility aid by a fraction, the denominator of which is
25 1,825 and the numerator of which is the number of days that the assistive
26 technology device or mobility aid was used before the consumer first reported
27 the nonconformity to the dealer;

28 (2) with respect to a consumer who has leased the assistive technology
29 device or mobility aid from a dealer, accept return of the assistive technology device
30 or mobility aid, refund to the lessor and to a holder of a perfected security interest in
31 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.

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

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

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

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

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

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

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

26 (1) "assistive technology device" means an item, piece of equipment,
27 or product system, whether acquired commercially off the shelf, modified, or
28 customized, that is used or designed to be used to increase, maintain, or improve a
29 functional capability of an individual with disabilities; an assistive technology device
30 system that, as a whole, is within the definition of "assistive technology device," is
31 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

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

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

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

11 (4) "consumer" means

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

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

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

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

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

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

26 (7) "early termination cost" means any expense or obligation that a
 27 lessor incurs 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 device
 29 or mobility aid to a manufacturer; "early termination cost" includes a penalty for
 30 prepayment under a finance arrangement;

31 (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. APPLICABILITY.** This Act applies to sales and leases of assistive technology
11 devices or mobility aids entered into on or after the effective date of this Act.