HB

451

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 18, 1998 **FURTHER REFERRALS:** **Judiciary**

Date of Committee Action: 4/3/98

The LABOR AND COMMERCE Committee considered: **HB 451**

HOUSE BILL NO. 451 **ASSISTIVE TECHNOLOGY & MOBILITY AIDS**

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

recommends it be replaced with the following committee substitute CSHB451(L+C) [X] the same title [ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____ [ ] fiscal note(s) _____

[X] zero fiscal note(s) LAW [ ] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
John J. Coghill	✓			
Pgm Brice	✓			
Gene Kubina	✓			
Joe Ryan	✓			
Vic Kohring	✓			

CHAIR'S SIGNATURE Norm Rokeberg 4-3-98

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB 451

Revision Date (Note if correction) | Dept. Affected Law
Title An Act relating to assistive technology devices and mobility aids for physically disabled persons. | BRU Civil Division | Component Fair Business Practices
Sponsor Representative Green
Requester House Labor and Commerce | Component Serial No. 2206

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

HB 451 adds a new Article to Title 45, Chapter 45 (Trade Practices) relating to warranties for assistive technology devices and mobility aids. The bill requires assistive technology devices and mobility aids be covered by an express warranty stating that the device or aid is free from any condition or defect that substantially impairs the use, value, or safety of the device or aid. The new Article further delineates the terms of repair and or refunds when the device or aid does not conform to the warranty.

This bill will have no fiscal impact on the Department of Law.

Prepared by Joan M. Kasson | Phone 465-5370
Division Attorney General's Office | Date 2/10/98
Approved by Commissioner, Bruce M. Botelho, Attorney General | Date 2/10/98
Agency Department of Law

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CS FOR HOUSE BILL NO. 451(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GREEN, Davies, Berkowitz

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

Sec. 45.45.630. Procedures for returns and refunds. (a) To receive a comparable new assistive technology device or mobility aid or a refund under AS 45.45.620(1), a consumer 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 consumer with the comparable new assistive technology device or mobility aid or with a refund. When the manufacturer provides the new assistive technology device or mobility aid or refund, the consumer shall return the assistive technology device or mobility aid having the nonconformity to the manufacturer, along with any endorsements necessary to transfer real possession to the manufacturer.

(b) To receive a refund under AS 45.45.620(2), a consumer shall offer to return 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 consumer. When the manufacturer provides the refund, the consumer shall return to the manufacturer the assistive technology device or mobility aid having 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

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

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

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

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

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

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

(F) environmental control units; and

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

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

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

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

(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;

(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

a lessor avoids 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 savings" includes an interest charge that the lessor would have paid to finance the assistive technology device or mobility aid or, if the lessor does not finance the assistive technology device or mobility aid, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination;

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

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

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

(A) a motorized or nonmotorized wheelchair;

(B) a scooter;

(C) an automotive crane;

(D) a van lift; and

(E) special hand controls for a motor vehicle;

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

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

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

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

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

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

Alaska State Legislature

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Representative Joe Green

District 19

Sponsor Statement

HB 451 - Warranties for Assistive Technology and Mobility Aids

HB 451 establishes an express warranty for technology designed to assist physically disabled persons. Under the terms of the bill, if a consumer reports a nonconformity to a manufacturer within a year of delivery, the manufacturer must repair or replace the equipment, or offer a refund of the purchase price.

Assistive technology and mobility aids for the physically disabled are not covered by "lemon laws" and consumer protection statutes in title 45. The automobile lemon law in chapter 45 makes no mention of wheel chairs. Similarly, the Unfair Trade Practices and Consumer Protection Act, found in chapter 50, makes no mention of assistive equipment. Yet, 11 states have passed such laws, and others are considering doing so.

Non-working assistive equipment can be not only inconvenient, but dangerous. Many of us have experienced the frustration of dealing with a non-responsive salesperson far from Alaska; imagine doing so without the benefit of the equipment you depend upon to communicate, or get around. When people lose their mobility, or ability to communicate, they may not be aware of, or may not be able to remove themselves from, dangerous situations. Assistive technology allows the physically disabled to operate in a manner most of us take for granted.

I ask for your support in enacting a law that affords basic protection to a group of consumers who already face obstacles unimagined by most of us.

Sectional Description of CSHB 451 (L&C)

Relating to warranties for assistive technology for physically disabled persons.

By Representative Joe Green

45.45.600. Express warranty required. Manufacturers who sell assistive technology or mobility aids, directly, or through a dealer, must furnish an express warranty for the equipment they sell. The duration of the warranty cannot be for less than one year. If the manufacturer fails to provide the warranty, the equipment will be covered as if the manufacturer had provided it.

45.45.610. Repairs of nonconformities. If a consumer reports a nonconformity to the manufacturer within one year after first delivery, the nonconformity shall be repaired.

45.45.620 Returns of nonrepairable goods; refunds. If the consumer makes a reasonable attempt, but fails, to get the nonconformity repaired, the manufacturer shall

> **A)** accept return of the nonconforming equipment, and replace it with "comparable new" equipment, or
> **B)** refund the full purchase price, collateral costs, and any finance charge to the consumer, or the full lease amount to the lessor.

45.45.630. Procedures for returns and refunds. Requires consumers to "offer to transfer possession" of the nonconforming equipment to the manufacturer in order to get the "comparable new" equipment, or a refund. Within 30 days after the consumer makes the offer, the manufacturer must act.

45.45.640. Leases unenforceable after refund. If you lease assistive equipment, and it is returned for a refund, the lease cannot be enforced.

45.45.650. Limits on sale or lease of returned mobility aids. If assistive equipment is returned for nonconformity, it can't be leased or sold to another consumer without full disclosure of the reasons for the return.

45.45.660. Rights may not be waived. Consumers cannot waive the rights granted to them under this legislation.

45.45.670. No limitation of other rights. Nothing in this bill limits rights or remedies available to consumers under other laws.

45.45.680. Action for damages authorized. A consumer may bring a legal action to recover damages resulting from a violation of the provisions of the bill. The court shall award 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 to a consumer who prevails in an action.

45.45.690. Definitions.

The following information on Assistive Technology Lemon Laws is from RESNA's publication RESNA TAP Bulletin (May 1995), which is a monthly publication of the RESNA Technical Assistance Project.

ASSISTIVE TECHNOLOGY LEMON LAWS

American consumers have long demanded warranties on large purchases such as automobiles and household appliances to protect themselves against the occasional dryer that no longer tumbles three weeks after purchased or the car that needs a new transmission one year after the purchase date. In other words, the proverbial "lemon." Individuals with disabilities are now demanding the same guarantees for purchases of assistive technology (AT).

Assistive technology for persons with disabilities is often an integral part of that person's ability to work, communicate, and live independently. Proper operation of equipment is critical to self-reliance. Yet, not all AT has a manufacturer's warranty. Some devices that carry a purchase tag of thousands of dollars carry only a 90-day or six-month warranty.

In many states, consumers of AT are standing up and speaking out, demanding replacement equipment, loaners while equipment is being fixed, free service on equipment and outright refunds! This issue of The TAP Bulletin examines assistive technology "lemon" or warranty legislation passed by states to date.

Twelve states have passed consumer protection legislation, commonly referred to as assistive technology "lemon laws." These states are: California, Georgia, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, New York, Pennsylvania, Washington, and Wisconsin. A few other states have similar legislation pending or are working on drafts for future introduction in their state legislatures.

Lemon laws typically demand a minimum one-year warranty on assistive equipment beginning on the date of delivery, not the purchase date. This is an important specification because some consumers wait weeks or months from the order date to the delivery date. While some state warranty laws cover all AT or AT over a specified dollar amount, most cover only motorized wheelchairs (see state-specific data chart).

Louisiana's "lemon law" is considered by many legal experts to be the nation's model AT lemon law because it contains the broadest coverage. The law applies to all assistive devices, without limits. To qualify as a lemon the product must have either broken two times for the same reason within the first year, or have been out-of-service 30 days for any reason within the first year. These provisions within Louisiana's AT lemon law give consumers of AT in Louisiana broader protection than in any other state in the country.

In contrast, New York's lemon law provides narrower coverage. To qualify as a lemon, the product must have been repaired four times for the same reason and been out-of-service 30 days within the first year, or have been out-of-service for 60 days for the same reason within the first year. New York's Technology Related Assistance for Individual's with Disabilities (TRAID) Project plans to undertake a review of the impact of their state's lemon law later this year (see page 2 for more on NY's law).

LOUISIANA

Due to efforts of the Louisiana Assistive Technology Access Network (LATAN), an equipment lemon law was passed, House Bill No. 1956, which provides warranties for new assistive devices, time limits for warranties, and nonconformity disclosure requirements. It defines terms such as: "collateral costs," "consumer/agency," "early termination cost," "early termination savings," "manufacturer," "assistive device," and "reasonable attempt to repair." It also provides for reimbursements and replacements.

MINNESOTA

In Minnesota, the Assistive Device Warranty Protection Act was signed into law by the governor May 19, 1995 and becomes effective August 1, 1995. It was a Department of Administration initiative that was started by the governor's advisory council on technology for people with disabilities and the department's Minnesota STAR Program. The AT lemon law protects the rights of people with disabilities in the purchase of assistive devices. While it does not alter any warranty that offers greater protection, it affords a basic level of consumer protection by providing that if a device is taken in for repairs three times in the first year for the same problem, or if it is in the repair process for over thirty days in the first year, then the device can either be returned for a full refund or exchanged for a new device at the consumer's option. The warranty does not include defects that result from misuse or alterations. It also has a provision that it is the manufacturer's responsibility to provide a replacement device or reimbursement for temporary replacement of assistive devices for the duration of the repair period.

PENNSYLVANIA

Pennsylvania's Motorized Wheelchair Warranty Act covers motorized wheelchairs for at least a year that have been repaired four times for the same nonconformity or have been out-of-service for an "aggregate" of at least 30 days. Like Minnesota's lemon law, it also does not cover defects resulting from abuse, neglect or unauthorized modifications by the consumer.

MARYLAND

Maryland Technology Assistance Program (TAP) researched national lemon law legislation. This resulted in the Motorized Wheelchair Warranty Enforcement Act signed into law by Governor William Donald Schaefer on April 12, 1994. This act defines a lemon as "a motorized wheelchair or scooter with a "substantial" defect, which the manufacturer or its authorized dealer has unsuccessfully attempted to repair at least four times, or which has been out-of-service because of "substantial" defects for a total of thirty calendar days within one year after first delivery to the consumer. The thirty days DO NOT have to be consecutive." [Tapping Technology, p 2. (Maryland TAP newsletter)]. Specific provisions of the bill include, but are not limited to: certain express warranties; duration of certain warranties; prohibiting resale of returned non-conforming wheelchairs without full disclosure; repair, return and replacement of wheelchair; procedures for return of certain non-conforming wheelchairs; any waiver of consumer rights is void under this Act; and authorization of consumer action for damages, fees, costs and other equitable relief (Provisions of the Motorized Wheelchair Warranty Enforcement Act fact sheet, Maryland TAP).

WISCONSIN

In Wisconsin, a law was enacted in 1992 also relating to motorized wheelchair warranties. Wisconsin Act 222 requires manufacturers to issue express warranties to consumers purchasing motorized wheelchairs with the duration of the warranty being one year after first delivery to the consumer. It also includes provisions in case a "reasonable attempt to repair" the wheelchair fails. Replacement of the wheelchair with a comparable new motorized wheelchair and refunding "collateral costs" is one option. Collateral costs is defined in this act as "expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative wheelchair or other assistive device for mobility" [Sec. 134.87 (a)]. The other option is accepting the return of the "lemon" and refunding the consumer. Collateral costs and usage of the device are considered in regard to refunds. If the consumer demands a refund, they may receive collateral costs as well. Other refund and replacement provisions are included in this act as well.

MICHIGAN

Michigan's lemon law (Public Act #54 of 1994) is similar to the above mentioned laws requiring an express warranty (one-year minimum) by the manufacturer and states, "If the manufacturer is found to have violated this act the courts shall award the consumer twice the amount of any damages plus attorney fees." [Tech 2000, p.3 (Michigan's AT project newsletter)]. The Michigan Tech Act project, Michigan Tech 2000, is currently working to amend this act, trying to get coverage for all AT and to extend the warranty from one year after first delivery to three years.

MISSOURI

The Missouri Assistive Technology Project (MATP) efforts to promote the passage of a one-year warranty and lemon protection for all assistive devices used by consumers with disabilities successfully passed the state legislature and was signed into law June 13, 1995.

A lemon is an assistive device with a substantial defect which rises in the device itself and not from consumer abuse. After attempting to repair the device four times, or being without the device for 30 days due to a substantial defect, the device can be returned to the manufacturer for a comparable device or refund. Project staff report that early opposition focused on arguments that distributors would make good faith efforts to work with consumers who purchased defective equipment to repair or replace the device and that distributors with unfair practices would be naturally weeded out of the market. The MATP was able to demonstrate that comparison shopping for AT is rarely possible, since only one manufacturer may produce a particular device or a third-party payor may fund only a single approved vendor. Therefore using the free market to address lemons is not practical.

Many devices are purchased with tax dollars through Vocational Rehabilitation or Medicaid and lemons bought with these dollars are a waste of public money on the initial purchase. The MATP is now beginning to disseminate information on the new statute to consumers and the general public through press releases to disability and advocacy related organizations.

NEW YORK

The Motorized Wheelchair Lemon Law (General Business Law § 670) enacted in August 1993, provides a minimum one-year warranty covering both parts and labor from the date of first delivery to the consumer. The lemon law covers

only motorized wheelchairs but includes those purchased, leased or transferred in New York to a consumer. A consumer is protected when purchasing a wheelchair previously returned to the manufacturer under New York's or a similar lemon law of another state. The manufacturer may not sell or lease the returned wheelchair again in New York unless full disclosure of the reasons for return is made to the prospective buyer or lessor. The law also incorporates an alternative arbitration program for disputes. Arbitration offers the consumers an option that may be less complicated, time consuming and expensive than choosing to go to court.

The Attorney General's office of New York State Department of Law prepared a booklet "New York's Motorized Wheelchair Lemon Law: A Guide For Consumers" to help consumers understand the warranty law and instructions for the NY State Arbitration Program. Page 3 of the guide states: "If the wheelchair does not conform to the terms of the written warranty and the manufacturer or its authorized dealer is unable to repair the wheelchair after a reasonable number of attempts during the first year, the consumer can choose a full refund or a comparable new replacement wheelchair."

An important consumer tip in this guide includes the necessity of the consumer keeping "careful records of all complaints and copies of all work orders, repair bills and correspondence." The consumer has the burden of proving he/she owns a lemon and must have documentation of repeated attempts to have it repaired. Under the arbitration program, a consumer who does not have all the documents, may request the arbitrator to direct the manufacturer to provide necessary information or to subpoena documents or witnesses.

MONTANA

The Montana Wheelchair Warranty Act was endorsed by the Montana Consortium for Assistive Technology and developed by MonTECH and the Montana Advocacy Program through an agreement with the Protection & Advocacy service. The law takes effect October 1, 1995 and will cover any manually-powered or motor-driven wheelchair, scooter or other motorized device that is used for mobility assistance and costs $500 or more. The act states that failure by the manufacturer to provide a written warranty (minimum one year) results in the wheelchair to be covered under warranty "for a period of 2 years following the date of delivery of the wheelchair to the consumer."[H.B. 0335 Sec.3 (3).]

SOUTH DAKOTA

DakotaLink (South Dakota's Tech Act project) is currently surveying consumers and manufacturers to lay the groundwork for AT lemon legislation. They seek to build upon the state's General Product Liability Law, which is based

upon the federal Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (P.L. 93-637). Signed into law in January 1975, P.L. 93-637 recognizes the need for minimum warranty protection for consumers, for consumer understanding of warranties, for assurance of performance and for better product reliability.

GEORGIA

Georgia Tools For Life worked to get the Assistive Technology Warranty Act (House Bill 93) and Motorized Wheelchair Warranty Act (Senate Bill 11) passed in Georgia State. The Assistive Technology Warranty Act covers AT devices defined as "any device or equipment with a retail cost of $1,000 or more, that assists a person with disabilities to perform specific tasks such as moving, walking, standing, speaking, breathing, hearing, seeing, grasping, or caring for himself or herself that would not be possible for such person without an assistive technology device." [H.B. 93 Sec.1 Art. 31 (1)].

CALIFORNIA

The California Civil Code contains two sections relating to AT warranties, Section 1793.02 Written Warranty to Accompany Assistive Devices and Section 1793.025, Warranty Requirements for Motorized Wheelchairs; Disclosure Requirements for Defective Wheelchairs. Section 1793.02 (a) states that all new and used AT sold at retail in California may be returned to the seller within 30 days of actual receipt by the consumer or completion of fitting by the seller, whichever occurs later. Civil Code Section 1793.025 (a) states that "the warranty shall be for a period of at least one year from the date of the first delivery of the wheelchair to the consumer." The wheelchair may be repaired four or more times bythe "manufacturer, lessor, or an agent of."

STATES WITH PENDING LEMON LAWS

The Massachusetts Assistive Technology Partnership Center is pursuing passage of a lemon law bill covering customized wheelchairs in Massachusetts. The Illinois Assistive Technology Project is working with the Attorney General's Office on the development of a warranty act that would cover all AT. In Utah a lemon law has been presented but not passed. The Utah Assistive Technology Program will introduce a lemon law again in 1996 as part of its legislative agenda.

To find out more about these lemon laws, contact the state Tech Act project directly. For state project contact information, see the state contact list.

ASSISTIVE TECHNOLOGY LEMON LAWS AT-A-GLANCE

STATE	TYPES OF AT COVERED	TO QUALIFY AS A LEMON THE AT MUST HAVE BEEN REPAIRED	OUT-OF-SERVICE FOR:
CA	motorized wheelchairs	4x for the same reason	30 days, any reason
GA	AT costing $1,000 or more	4x for the same reason	30 days, any reason
LA	all AT (any cost)	2x for the same reason within the first year	30 days, any reason within the first year
MD	motorized wheelchairs and scooters	4x for the same reason	30 days (do not have to be consecutive),
MI	motorized wheelchairs, manual wheelchairs & scooters	4x for the same reason	30 days within the first year
MN	all AT except electrical nerve stimulators	3x for the same reason	over 30 days within the first year

MO	all assistive technology	4x	30 days
MT	manually-powered wheelchairs, motorized wheelchairs, and scooters costing $500 or more	2x for the same reason	45 days
NY	motorized wheelchairs	4x for the same reason AND was out-of-service for 30 days within the first year	60 days, for the same reason within the first year
PA	motorized wheelchairs	4x for the same reason	at least "an aggregate of" 30 days
WA	motorized wheelchairs	4x for the same reason	30 days, any reason
WI	motorized wheelchairs	4x for the same reason	30 days, any reason

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