

AN ACT

RELATING TO CONSUMER PROTECTION; ENACTING THE ASSISTIVE  
DEVICE LEMON LAW; ESTABLISHING A ONE-YEAR WARRANTY AND OTHER  
PROTECTIONS FOR CONSUMERS OF ASSISTIVE DEVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Assistive Device Lemon Law".

Section 2. DEFINITIONS.--As used in the Assistive  
Device Lemon Law:

A. "assistive device" means manual wheelchairs,  
motorized wheelchairs, motorized scooters and motorized  
wheelchair lifts that allow access to motor vehicles; hearing  
aids, telephone communication devices for the deaf, assistive  
listening devices and other aids that enhance a person's  
ability to hear; and voice-synthesized or voice-activated  
computer software, optical scanners, augmentative  
communication devices and Braille printers; including a  
demonstrator, that a consumer purchases or accepts transfer  
of in New Mexico that is used for a major life activity;

B. "collateral costs" means expenses incurred by  
a consumer in connection with the repair of a nonconformity,  
including the cost of obtaining an alternative assistive  
device;

C. "consumer" means any of the following:

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

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

(3) the person who can enforce the warranty;  
and

(4) a person who leases an assistive device from a lessor pursuant to a written lease;

D. "current value of the written lease" means the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the assistive device lessor's early termination costs and the value of the assistive device at the lease expiration date if the lease sets forth that value, less the assistive device lessor's early termination savings;

E. "dealer" means a person who purchases assistive devices for resale or lease to consumers;

F. "demonstrator" means an assistive device used primarily for the purpose of demonstration to the public;

G. "early termination cost" means an expense or obligation that an assistive device lessor incurs as a result of both the termination of a written lease before the

termination date set forth in that lease and the return of an assistive device to a manufacturer and includes a penalty for prepayment under a finance arrangement;

H. "early termination saving" means an expense or obligation that an assistive device lessor avoids as a result of both the termination of a written lease before the termination date set forth in the lease and the return of an assistive device to a manufacturer. Early termination saving includes an interest charge that the assistive device lessor would have paid to finance the assistive device or, if the lessor does not finance the assistive device, 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;

I. "manufacturer" means a person who manufactures or assembles assistive devices and agents of that person, including an importer, distributor, factory branch, distributor branch and any warrantors of the manufacturer's assistive device, but does not include an assistive device dealer;

J. "nonconformity" or "nonconforming" means a condition or defect that substantially impairs the use, value or safety of an assistive device that was purchased or whose acceptance of transfer occurred in New Mexico and that is

covered by an express warranty applicable to the assistive device or to a component of the assistive device, but does not include a condition or defect that is the result of abuse, neglect or unauthorized modification or alteration of the assistive device by a consumer; and

K. "reasonable attempt to repair" means, within the terms of an express warranty applicable to a new assistive device, that:

(1) a nonconformity within the warranty is subject to repair by the manufacturer, the manufacturer's authorized dealer or a lessor at least four times and a nonconformity continues; or

(2) the assistive device is out of service for an aggregate of at least thirty cumulative days because of warranty nonconformity.

### Section 3. OBLIGATIONS AND INTERESTS. --

A. A manufacturer who sells an assistive device to a consumer, either directly or through a dealer, shall furnish the consumer with an express warranty for the assistive device. The duration of the express warranty shall be not less than one year after first delivery of the assistive device to the consumer. In the absence of a written warranty from the manufacturer, the manufacturer shall be deemed to have expressly warranted to the consumer of an assistive device that for a period of one year from the

date of first delivery to the consumer, the assistive device will be free from any nonconformity.

B. If a new assistive device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, dealer or lessor and makes the assistive device available for repair during the warranty period, the nonconformity shall be repaired at no charge to the consumer.

C. If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer, at the direction of the consumer, shall:

(1) accept return of the assistive device and replace it with a comparable new assistive device and refund any collateral costs within thirty days;

(2) accept return of the assistive device and refund to the consumer and to any holder of a perfected security interest in the consumer's assistive device, 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; or

(3) if the consumer was a lessee, accept return of the assistive device, refund to the lessor and to any holder of a perfected security interest in the assistive device, as their interest may appear, the current value of the written lease and refund to the consumer the amount that

the consumer paid pursuant to the written lease plus any collateral costs.

D. A reasonable allowance for use may be charged to the consumer based on the number of days that the consumer used the assistive device before the consumer first reported the nonconformity to the manufacturer, dealer or lessor.

E. To receive a comparable new assistive device or a refund due pursuant to Paragraph (1) or (2) of Subsection C of this section, a consumer shall offer to transfer possession of the nonconforming assistive device to the manufacturer. No later than thirty days after the offer, the manufacturer shall provide the consumer with a comparable new assistive device or a refund. When the manufacturer provides the new assistive device or refund, the consumer shall return the nonconforming assistive device to the manufacturer, along with any endorsements necessary to transfer legal possession to the manufacturer.

F. To receive a refund due pursuant to Paragraph (3) of Subsection C of this section, a lessor shall offer to transfer possession of the nonconforming assistive device to the manufacturer. No later than thirty days after the offer, the manufacturer shall provide the refund to the lessor and to any holder of a perfected security interest in the assistive device as his interest may appear. When the manufacturer provides the refund, the lessor shall provide to

the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

G. No person shall enforce the lease against the consumer after the consumer receives a refund due pursuant to Paragraph (3) of Subsection C of this section.

H. No assistive device returned by a consumer or lessor in this or any other state because of a nonconformity shall be resold or re-leased in this state unless full disclosure of the reasons for return is made to any prospective buyer or lessee.

Section 4. ATTORNEY GENERAL RULES--ARBITRATION. --The attorney general may adopt and promulgate rules necessary to carry out the provisions of the Assistive Device Lemon Law, including rules concerning arbitration of disputes arising from nonconforming assistive devices and failures to comply with the Assistive Device Lemon Law.

Section 5. CONSUMER RIGHTS--ACTIONS--TREBLE DAMAGES. --

A. This section shall not be construed to limit rights and remedies available to a consumer under any other law.

B. In addition to pursuing any other remedy, a consumer may bring an action to recover actual damages or the sum of one hundred dollars (\$100), whichever is greater. Where the trier of fact finds that the party charged with a violation of the Assistive Device Lemon Law has willfully

engaged in the violation, the court may award up to three times actual damages or three hundred dollars (\$300), whichever is greater, to the party complaining of the violation.

C. The court shall award attorney fees and costs to the party complaining of a violation of the Assistive Device Lemon Law if he prevails. The court shall award attorney fees and costs to the party charged with a violation of the Assistive Device Lemon Law if it finds that the party complaining of the violation brought an action that was an action that is frivolous or brought in bad faith.

D. In any class action filed under this section, the court may award damages to the named plaintiffs as provided in Subsection B of this section and may award members of the class such actual damages as were suffered by each member of the class as a result of a violation of the Assistive Device Lemon Law. \_\_\_\_\_