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HOUSE BILL 53

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

SANDRA L. TOWNSEND

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 a device, including a  
demonstrator, that a consumer purchases or accepts transfer of  
in New Mexico that is used for a major life activity,  
including manual wheelchairs, motorized wheelchairs, motorized  
scooters and motorized wheelchair lifts that allow access to  
motor vehicles; hearing aids, telephone communication devices

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1 for the deaf, assistive listening devices and other aids that  
2 enhance a person's ability to hear; and voice-synthesized or  
3 voice-activated computer software, optical scanners,  
4 augmentative communication devices and Braille printers;

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

9 C. "consumer" means any of the following:

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

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

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

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

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

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

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

4 F. "early termination saving" means an expense or  
5 obligation that an assistive device lessor avoids as a result  
6 of both the termination of a written lease before the  
7 termination date set forth in the lease and the return of an  
8 assistive device to a manufacturer. Early termination saving  
9 includes an interest charge that the assistive device lessor  
10 would have paid to finance the assistive device or, if the  
11 lessor does not finance the assistive device, the difference  
12 between the total amount for which the lease obligates the  
13 consumer during the period of the lease term remaining after  
14 the early termination and the present value of that amount at  
15 the date of the early termination;

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

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

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

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

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

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

16 Section 3. OBLIGATIONS AND INTERESTS. --

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

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1 delivery to the consumer, the assistive device will be free  
2 from any nonconformity.

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

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

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

15 (2) accept return of the assistive device and  
16 refund to the consumer and to any holder of a perfected  
17 security interest in the consumer's assistive device, as their  
18 interest may appear, the full purchase price plus any finance  
19 charge amount paid by the consumer at the point of sale and  
20 collateral costs; or

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

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

3 D. The current value of the written lease equals  
4 the total amount for which that lease obligates the consumer  
5 during the period of the lease remaining after its early  
6 termination, plus the assistive device dealer's early  
7 termination costs and the value of the assistive device at the  
8 lease expiration date if the lease sets forth that value, less  
9 the assistive device lessor's early termination savings.

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

14 F. To receive a comparable new assistive device or  
15 a refund due pursuant to Paragraph (1) or (2) of Subsection C  
16 of this section, a consumer shall offer to transfer possession  
17 of the nonconforming assistive device to the manufacturer. No  
18 later than thirty days after the offer, the manufacturer shall  
19 provide the consumer with a comparable new assistive device or  
20 a refund. When the manufacturer provides the new assistive  
21 device or refund, the consumer shall return the nonconforming  
22 assistive device to the manufacturer, along with any  
23 endorsements necessary to transfer legal possession to the  
24 manufacturer.

25 G. To receive a refund due pursuant to Paragraph

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1 (3) of Subsection C of this section, a lessor shall offer to  
2 transfer possession of the nonconforming assistive device to  
3 the manufacturer. No later than thirty days after the offer,  
4 the manufacturer shall provide the refund to the lessor. When  
5 the manufacturer provides the refund, the lessor shall provide  
6 to the manufacturer any endorsements necessary to transfer  
7 legal possession to the manufacturer.

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

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

16 Section 4. EXEMPTION FROM ACT.--The Assistive Device  
17 Lemon Law does not apply to an assistive device that has been  
18 provided to a person free of charge or to a person when he  
19 provides an assistive device to a person free of charge.

20 Section 5. ATTORNEY GENERAL RULES--ARBITRATION.--The  
21 attorney general may adopt and promulgate rules necessary to  
22 carry out the provisions of the Assistive Device Lemon Law,  
23 including rules concerning arbitration of disputes arising  
24 from nonconforming assistive devices and failures to comply  
25 with the Assistive Device Lemon Law.

1           Section 6.   CONSUMER RIGHTS--ACTIONS--TREBLE DAMAGES. --

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

5           B.   In addition to pursuing any other remedy, a  
6 consumer may bring an action to recover actual damages or the  
7 sum of one hundred dollars (\$100), whichever is greater.  
8 Where the trier of fact finds that the party charged with a  
9 violation of the Assistive Device Lemon Law has willfully  
10 engaged in the violation, the court may award up to three  
11 times actual damages or three hundred dollars (\$300),  
12 whichever is greater, to the party complaining of the  
13 violation.

14           C.   The court shall award attorney fees and costs  
15 to the party complaining of a violation of the Assistive  
16 Device Lemon Law if he prevails.   The court shall award  
17 attorney fees and costs to the party charged with a violation  
18 of the Assistive Device Lemon Law if it finds that the party  
19 complaining of the violation brought an action that was  
20 groundless.

21           D.   In any class action filed under this section,  
22 the court may award damages to the named plaintiffs as  
23 provided in Subsection B of this section and may award members  
24 of the class such actual damages as were suffered by each  
25 member of the class as a result of a violation of the

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Assistive Device Lemon Law.

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3  
4  
5  
6 January 27, 1998

7  
8 Mr. Speaker:

9  
10 Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to  
11 whom has been referred

12  
13 HOUSE BILL 53

14  
15 has had it under consideration and reports same with  
16 recommendation that it DO PASS, amended as follows:

17 1. On page 2, between lines 20 and 21, insert the  
18 following new subsections:

19  
20 "D. "current value of the written lease" means the  
21 total amount for which that lease obligates the consumer during  
22 the period of the lease remaining after its early termination,  
23 plus the assistive device lessor's early termination costs and  
24 the value of the assistive device at the lease expiration date  
25 if the lease sets forth that value, less the assistive device  
lessor's early termination savings;".

FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

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

2. Reletter the succeeding subsections accordingly.

3. On page 6, strike lines 3 through 9.

4. Reletter the succeeding subsections accordingly.

5. On page 7, line 4, after “lessor” insert “and to any  
holder of a perfected security interest in the assistive device  
as his interest may appear”.

6. On page 7, strike lines 16 through 19 and renumber  
succeeding sections accordingly.,

and thence referred to the JUDICIARY COMMITTEE.

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SECOND SESSION, 1998

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Respectfully submitted,

\_\_\_\_\_  
Gary K. King, Chairman

Adopted \_\_\_\_\_

(Chief Clerk)

Not Adopted \_\_\_\_\_

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 10 For 0 Against

Yes: 10

Excused: None

Absent: None

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1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998  
3

4 February 4, 1998  
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6  
7 Mr. Speaker:  
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9 Your JUDICIARY COMMITTEE, to whom has been referred  
10

11 HOUSE BILL 53, as amended  
12

13 has had it under consideration and reports same with  
14 recommendation that it DO PASS, amended as follows:  
15

16 1. On page 8, line 20, strike "groundless" and insert in  
17 lieu thereof "an action that is frivolous or brought in bad  
18 faith."

19 Respectfully submitted,  
20  
21

22 \_\_\_\_\_  
23  
24 Thomas P. Foy, Chairman  
25

1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998

3 HCP/ HJC/ HB 53

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4 Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

5  
6 (Chief Clerk)

(Chief Clerk)

7  
8 Date \_\_\_\_\_

9  
10 The roll call vote was 9 For 0 Against

11 Yes: 9

12 Excused: Alwin, King, Luna, Sanchez

13 Absent: None

14  
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2 FORTY-THIRD LEGISLATURE  
3 SECOND SESSION, 1998

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4  
5 February 13, 1998

6 Mr. President:

7  
8 Your PUBLIC AFFAIRS COMMITTEE, to whom has been  
9 referred

10 HOUSE BILL 53, as amended

11  
12 has had it under consideration and reports same with  
13 recommendation that it DO PASS, amended as follows:

14  
15 1. Strike House Consumer & Public Affairs Committee  
16 Amendment 6.

17  
18 2. On page 1, strike lines 20 through 25 and on page 2,  
19 strike lines 1 through 4 and insert in lieu thereof:

20 "A. "assistive device" means manual wheelchairs,  
21 motorized wheelchairs, motorized scooters and motorized  
22 wheelchair lifts that allow access to motor vehicles; hearing  
23 aids, telephone communication devices for the deaf, assistive  
24 listening devices and other aids that enhance a person's ability  
25 to hear; and voice-synthesized or voice-activated computer

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

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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;".

Respectfully submitted,

\_\_\_\_\_  
Shannon Robinson, Chairman

Adopted \_\_\_\_\_ Not

Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

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No: 0

Excused: Boitano, Ingle, Smith

Absent: None

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