



# Colorado's Assistive Technology Lemon Law House Bill 97-1194

On April 30, 1997, Governor Roy Romer signed into law House Bill 97-1194, Concerning Self-Sufficiency For Persons With Disabilities By Assuring Reliable Assistive Technology. Following is a copy of the law.

**Section 1.** Article 1 of title 6, Colorado Revised Statutes, 1992 Rep. Vol., as amended, is amended By The Addition Of A New Part to read:

## **Part 4 - Warranties For Assistive Technology Act**

### 6-1-401. Legislative intent.

1. It is the intent of the general assembly to encourage and promote independent living and self-sufficiency for persons with disabilities and to reduce their need to rely on publicly funded supports. Of an estimated 49 million Americans with disabilities, approximately 70% of them are unemployed or underemployed. Having safe, reliable assistive technology represents a most essential need given the many barriers to independent living and self-sufficiency people with disabilities face.
2. The goal of meeting this essential need can be furthered by assuring that assistive

technology provided to persons with disabilities is of quality and is covered by adequate warranties to maintain their assistive technology in proper working condition, to assure availability of appropriate loaner replacement assistive technology while their own is being repaired, and to encourage manufacturers and dealers to cooperatively pool assistive technology resources for loaner purposes to assure availability without an undue burden.

3. The general assembly finds and declares it is in the state's best interest to adapt this **Part 4**.

6-1-402. Definitions. 6-1-402. Definitions. As used in this Part 4, unless the context otherwise requires:

- (1) "Collateral Costs" means expenses incurred by a

consumer in connection with repair of a nonconformity in a wheelchair, including the cost of an alternative wheelchair, if a loaner, as that term is defined in subsection (8) of this section, was not offered to the consumer, or other assistive device of service for mobility assistance. "Collateral Costs" shall not include the cost of hiring a personal assistant.

(2) "Consumer" means:

(a) A purchaser of a wheelchair, if the wheelchair was purchased from a wheelchair dealer or manufacturer for purposes other than resale;

(b) A person to whom a wheelchair is transferred for purposes other than resale, if such transfer occurs before the expiration of the express warranty applicable to such wheelchair;

(c) A person who may enforce the express warranty applicable to a wheelchair; or

(d) A person who leases a wheelchair from a wheelchair less or under a written lease.

(3) "Dealer" means a person or entity that is in the business of selling wheelchairs, or any agents of that person or entity.

"Dealer" includes an alternative warranty service provider.

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(4) (a) "Early termination cost" means any expense or obligation that a wheelchair lessor incurs as a result of:

(I) Terminating a written lease before the termination date set forth in the lease; and

(II) Returning the wheelchair to the manufacturer.

(b) "Early termination cost" includes any prepayment penalty under a finance arrangement.

(5) "Early termination savings" means any expense or obligation that a wheelchair lessor avoids as a result of performing the acts described in paragraph (a) of subsection (4) of this section. "Early termination savings" includes any interest charged that the wheelchair lessor would have paid to finance the wheelchair or, if the wheelchair lessor did not finance the wheelchair, the difference between the total amount the lessee was obligated to pay over the period of the lease term remaining after the early termination date and the present value of that amount on the early termination date.

(6) "Express warranty" means an express warranty as set forth in sections 4-2-313 and 4-2.5-210, C.R.S. and express warranty shall cover every part of a new wheelchair except the tires and batteries.

(7) “Lessor” means a person or entity that leases a wheelchair to a consumer or that holds the lessor’s rights under a written lease, or any agents of that person or entity.

(8) “Loaner” means a wheelchair that is provided to the consumer for use free of charge that is not required to have the functional capabilities equal to or greater than those of the original wheelchair but that meets the following conditions:

- (a) it is in good working order;
- (b) it performs at a minimum the most essential functions of the original wheelchair in light of the disabilities of the user;
- (c) it is usable by the consumer given the consumer’s impairments; and
- (d) any difference between the loaner and the original wheelchair does not create a threat to safety.

(9) “Manufacturer” means a person or entity that manufactures or assembles wheelchairs and any agents of the person or entity, including an importer, a distributor, an authorized service, a factory branch, a distributor branch, and warrantors of the manufacturer’s wheelchairs. “Manufacturer” does not include a dealer.

(10) “Modular assembly” means a device added to the wheelchair base to accommodate the special needs of the consumer, such as seating systems, tilt or recline systems, and specially adapted control modules.

(11) “Nonconformity” means a defect that substantially impairs the use, reliability, value, or safety of a wheelchair and that is covered by an express warranty applicable to such wheelchair or a component of such wheelchair. “Nonconformity” does not include a defect that is the result of abuse, neglect, or the unauthorized modification or alteration of a wheelchair by a consumer.

(12) “Reasonable attempt to repair” means that one of the following has occurred within the term of an express warranty applicable to a new wheelchair or within one year after first delivery of a wheelchair to a consumer, whichever occurs earlier:

- (a) the same nonconformity is subject to repair at least three times by the manufacturer, lessor, or any of the manufacturer’s authorized dealers; or
- (b) Because of a nonconformity, the wheelchair cannot be used by the consumer for an aggregate of at least thirty days or ten consecutive business days.

(13) "Replacement wheelchair" means a wheelchair of comparable quality, size, and function.

(14) "Selling dealer" means the entity that originally sold the wheelchair to the consumer and was involved in the design, assembly, fitting, and education of the consumer on the use and maintenance of the wheelchair.

(15) "Specially control module" means the technologically advanced electronic device of limited availability that contains the signal and output circuitry for a power wheelchair designed and assembled for use by a specific individual with severe limitations who is unable to use a standard control module.

(16) "Standard wheelchair" means a wheelchair that has a seat width and depth dimensions of sixteen to eighteen inches.

(17) "Wheelchair" means any wheelchair, scooter, or modular assembly, including a demonstrator, that is motor driven or manually operated that a consumer purchases or accepts transfer of in the state for the purpose of mobility assistance.

6-1-403. Express warranty required - authorized services.

1. a) Except as provided in subsection 2. of this section, a consumer who purchases or leases a new wheelchair either

directly or indirectly through a dealer or lessor shall receive an express warranty for such wheelchair. The manufacturer shall issue this express warranty that shall extend for not less than one year after first delivery to the consumer.

b) Except as provided in subsection 2. of this section, a selling dealer shall provide an express warranty for any modifications made by the dealer that shall also extend for not less than six months after first delivery to the consumer.

2. Notwithstanding the provisions of subsection 1. of this section, the warranty for the specialty control module shall be limited to the warranty provided by the manufacturer of such specialty control module or ninety days, whichever is longer.
3. If a manufacturer or dealer fails to furnish the express warranty required by this section, the wheelchair shall be covered by a warranty the same as if an express warranty had been provided by the manufacturer or dealer pursuant to this section.
4. Any entity that sells or leases wheelchairs in this state, including any entity that sells or leases through mail order or catalogue sales, shall designate an authorized service for such chairs that is located in this state in reasonable proximity to the consumer.

5. a) In the event that the selling dealer from whom the consumer purchased the wheelchair goes out of business or ceases to be an authorized dealer or service center for the manufacturer, or if the dealer or consumer moves or relocates to a location that makes it unreasonable for the consumer to seek warranty service from the selling dealer, or if the consumer is dissatisfied with the selling dealer, the consumer shall be responsible for contacting the manufacturer or another authorized dealer which will be responsible for facilitating the warranty service required with an authorized dealer, to be mutually agreed upon by the consumer and the manufacturer, which entity shall be referred to as the “alternative warranty service provider”.
- b) In the event that an alternative warranty service provider is designated pursuant to paragraph a). of this subsection 5. the consumer may only seek warranty service from such alternative warranty service provider.
- c) To the extent reasonable and possible, the manufacturer shall take into account the independent mobility resources of the consumer when determining the alternative warranty service provider pursuant to the provisions of this subsection 5.

6-1-404. Remedies.

1. If a new wheelchair does not conform to the applicable express warranty and the consumer reports the nonconformity to the manufacturer, the lessor, the selling dealer or the alternative warranty service provider, and makes the wheelchair available for repair within the warranty period, the nonconformity shall be repaired at no charge to the consumer. Any repairs performed pursuant to the provisions of this section shall be warranted for a period not less than the original warranty period. When the wheelchair is not safely moveable and there is no reasonable way for the consumer to deliver the wheelchair to the manufacturer or dealer, the manufacturer or dealer shall be responsible for the return of the wheelchair, or the wheelchair may be repaired on site at the option of the dealer.
2. If the manufacturer authorizes the dealer or lessor to make the repair, the dealer or lessor shall make the repair and then be reimbursed by the manufacturer for the dealer’s or lessor’s cost for parts, labor, and repair if the nonconformity is a manufacturer’s defect. A manufacturer shall respond to the dealer’s or lessor’s request for authorization to make a repair by the end of the business day that immediately follows the day such a request is made.
3. When a wheelchair covered by an express warranty is tendered by a

consumer to the manufacturer, selling dealer, alternative warranty service provider, or lessor for the repair of a defect, malfunction, or nonconformity to which the warranty is applicable, the consumer shall receive a loaner if the out-of-service period exceeds one day and shall keep the loaner until the requirements of section 6-1-405 or 6-1-406 are fulfilled. If the required loaner is not a standard wheelchair, the manufacturer or dealer shall make a good faith effort to make available alternative equipment that is usable by the consumer. The cost of the loaner shall be borne by the entity responsible for the defect requiring the repair or replacement of the wheelchair as provided in this section. The consumer shall have the duty to care for the loaner properly and to protect against any damage to the chair.

4. If a nonconformity is not repaired after a reasonable attempt to repair, the manufacturer or dealer who originally supplied or modified the wheelchair, as required by this section, shall:
  - a) If the wheelchair was purchased, take the following action at the direction of the consumer;
    - i) Accept a return of the wheelchair, provide a replacement wheelchair of equal or greater value, and refund any collateral costs to the consumer, a holder of a

perfected security interest in the wheelchair, or a third-party purchaser; or

- ii) Accept a return of the wheelchair and refund to the consumer, holder of a perfected security interest in the wheelchair, or third-party purchaser not more than the full purchase price plus any finance charge, sales tax, shipping costs, and collateral costs paid.

- b) If the wheelchair was leased, take all of the following actions at the direction of the consumer;

- i) Accept return of the wheelchair;

- ii) a) Refund to the lessor and any holder of a perfected security interest in the wheelchair the current value of the written lease.

- b) For purposes of the subparagraph ii)., "current value of the written lease" means the sum of the total amount for which the consumer is obligated during the term of the lease remaining after the early termination date, the dealer's early termination costs, and the value of the wheelchair on the lease expiration date, if the lease sets forth that value, less the lessor's early termination savings.

- iii) Refund to the consumer or third-party purchaser the

- amount paid under the lease plus any collateral costs.
5. a) In the event that a dispute arises as to the liability under this **Part 4** between or among a manufacturer, dealer, lessor, or consumer, and the consumer is covered by any third party insurer, such third party insurer shall not be relieved of any obligation to provide benefits covered under its plan or applicable law.
- b) In the event that a wheelchair is found to be defective, the third party payor described in paragraph a). of this subsection 5. shall have all rights of recovery, including the right to costs that the consumer would have had under this **Part 4**.

6-1-405. Remedies for consumers - conditions.

1. To receive a refund or replacement wheelchair, the consumer of a purchased wheelchair shall first offer to transfer the wheelchair with the nonconformity to the manufacturer, selling dealer, or alternative warranty service provider.
2. Within thirty business days after receipt of the offer described in subsection 1. of this section, the manufacturer or dealer shall provide the consumer with a refund or a replacement wheelchair.

3. When a manufacturer or dealer provides a consumer with a refund or a replacement wheelchair, such consumer shall return the wheelchair with the nonconformity, if such wheelchair is safely operable, to the manufacturer or dealer with any endorsements necessary to transfer possession to the manufacturer or dealer. When the wheelchair is not safely movable and there is no reasonable way for the consumer to deliver the wheelchair to the manufacturer or dealer, the manufacturer or dealer shall be responsible for the return of the wheelchair.

6-1-406. Remedies for consumers of leased wheelchairs - conditions.

1. To receive a refund due on a leased wheelchair, a consumer shall first offer to return the wheelchair with the nonconformity to the lessor.
2. Within thirty business days after receipt of the offer described in subsection 1. of this section, the lessor shall provide the consumer with a refund.
3. When a lessor provides a consumer with a refund, such consumer shall return the wheelchair with the nonconformity to such lessor.
4. A lessor shall offer to transfer to a manufacturer or dealer the possession of a wheelchair

returned pursuant to subsection 3. of this section. Within thirty business days after receiving such offer, the manufacturer or dealer shall remit the refund amount to the lessor. When the manufacturer or dealer makes such refund, the lessor shall provide the manufacturer or dealer with the endorsements necessary to transfer possession to the manufacturer or dealer.

6-1-407. Resale of a returned wheelchair - disclosure required.

A wheelchair returned pursuant to this **Part 4** by a consumer in this state, or by a consumer in another state under a similar law of that state, shall not be sold or leased again in this state unless full disclosure is made to the prospective consumer of the reasons for the return.

6-1-408. Other remedies - waiver of rights void.

1. This part shall not limit the rights or remedies available to a consumer under any other law of this state.
2. If a consumer waives the rights granted to consumers pursuant to this **Part 4**, such waiver shall be void as against public policy.
3. Notwithstanding the remedies that are available to a consumer pursuant to this **Part 4**, a consumer may pursue any other remedy, including an action to recover for damages

caused by a violation of this **Part 4**. If a manufacturer or dealer is found to have violated this **Part 4**, a consumer shall be awarded the amount of actual damages caused by the violation and reasonable attorney fees. The consumer may be awarded collateral costs and punitive damages.

6-1-409. Fraudulent acts.

Any manufacturer, dealer, or lessor that engages in conduct to delay making a final repair that is required as a consequence of the enforcement of warranties or duties under this **Part 4** with the intention of requiring payment of the cost of such repair to be made by a publicly funded program of public assistance, medical assistance, or rehabilitation assistance commits the crime of theft, which crime shall be classified in accordance with section 18-4-401(2), C.R.S., and which crime shall be punished as provided in section 18-1-105, C.R.S., if the crime is classified as a felony, or section 18-1-106, C.R.S., if the crime is classified as a misdemeanor.

6-1-410. Arbitration.

Disputes among manufacturer, dealers, and lessors concerning the enforcement of rights or remedies of consumers under this **Part 4** shall be subject to arbitration pursuant to the Colorado rules of civil procedure. The award of the arbitration panel shall be binding upon the parties and shall



only be subject to court review by trial de novo.

6-1-411. Defect notification.

1. A manufacturer shall be responsible for providing written notification to an owner, user, purchaser, dealer, lessor, or consumer of any known or discovered inherent defect in a wheelchair that affects the safety, usability, or reliability of that wheelchair. The manufacturer shall send such notification by first class mail to the last known address of the owner, user, purchaser, dealer, lessor, or consumer within fourteen days after learning of such a defect.
2. A manufacturer shall be responsible for the costs of providing the notification required in subsection 1. of this section and for all costs associated with correcting any defect described in subsection 1. of this section.
3. The provisions of this section shall apply without time limitations.

6-1-412. Disclosures.

1. Prior to the sale of any wheelchair, the seller shall disclose whether the wheelchair is new or used and whether any warranty applies to such wheelchair.
2. Upon delivery of a new or used wheelchair, the seller shall

advise the buyer of any warranty rights under this **Part 4** and the wheelchair's maintenance schedule and operating instructions and shall provide the buyer with a copy to the owner's manual.

3. The disclosure required pursuant to subsection 1. of this section and the advisement required pursuant to subsection 2. of this section shall be in writing and shall, in the case of buyer who is a person adjudicated not mentally competent, be provided to the guardian, parent, legal custodian, or primary caregiver of such person.

**Section 2. Effective date - applicability.** This act shall take effect July 1, 1997, and shall apply to sales and leases occurring on or after said date.

**Section 3. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

**Resources**

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303/837-8964 TTY

303/827-1208 Fax  
[www.uchsc.edu/atp](http://www.uchsc.edu/atp)

Assistive Technology Partners  
Western Slope Technical Assistance  
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2897 North Ave., Module 3A  
Grand Junction, CO 81501  
970/248-0876 Main  
970/248-0877 FAX/TTY  
[www.uchsc.edu/atp](http://www.uchsc.edu/atp)

The Legal Center for People with  
Disabilities and Older People  
455 Sherman St., Suite 130  
Denver, CO 80203  
303/722-0300  
800/288-1376  
[www.thelegalcenter.org](http://www.thelegalcenter.org)

The Legal Center for People with  
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322 N. 8<sup>th</sup> Street  
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