



Colorado's Facilitative Technology Lemon Law House Bill 98-1131

On April 10, 1998, Governor Roy Romer signed into law House Bill 98-1131, Concerning Self Sufficiency For Persons With Disabilities By Assuring Reliable Facilitative Technology. Following is a copy of the law.

Section 1. Article 1 of title 6, Colorado Revised Statutes, is amended by the Addition of a new part to read:

Part 5 - Warranties for
Facilitative Technology Act

6-1-501. Definitions. As used in this Part 5, unless the context otherwise requires:

1) "Collateral Costs" means expenses incurred by a consumer in connection with the repair of a nonconformity in a facilitative device, including the cost of an alternative facilitative device or service

(2) "Consumer" means:

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

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

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

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

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

"Dealer" includes an alternative warranty service provider.

(4) (a) “Early termination cost” means any expense or obligation that a facilitative device lessor incurs as a result of:

(II) Returning the facilitative device 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 facilitative device 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 facilitative device lessor would have paid to finance the facilitative device or, if the facilitative device lessor did not finance the facilitative device, 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 facilitative device.

(7) “Facilitative device” means a device that has a retail price equal to or greater than one hundred dollars and that is exclusively designed and

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

manufactured to assist a person with a disability with such person’s specific disability, through the use of facilitative technology, to be self-sufficient or to maintain or improve that person’s quality of life.

“Facilitative device” does not include wheelchairs as that term is defined in section 6-1-402 (17). “Facilitative device” does not include the following:

(a) Telephone communication devices for the hearing impaired and other facilitative listening devices except for hearing aids as defined in section 6-1-105.5 (1) (b) (I) and cochlear implants as defined in section 6-1-105.5 (1) (b) (II);

(b) Computer equipment and reading devices with voice input or output, optical scanners, talking software, Braille printers, and other aids and devices that provide access to text by a person with a disability;

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

(d) Voice recognition computer equipment, software and hardware accommodations, and other forms of

alternative access to computers for persons with disabilities; and

(e) Any other device, other than a wheelchair, that enables a person with a disability to communicate, see, hear, or maneuver.

(8) “Facilitative technology” means technology used to develop technological devices to be used exclusively for the purpose of assisting a person with a disability with respect to such person’s specific disability by facilitating or enhancing that person’s ability to be self-sufficient.

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

() “Loaner” means a facilitative device 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 facilitative device but that meets the following conditions:

(a) it is in good working order;

(b) it performs at a minimum the most essential functions of

(10) “Manufacturer” means a person or entity that manufactures or assembles facilitative devices and any agents of the person or entity, including a importer, a distributor, an

authorized service, a factory branch, a distributor branch, and warrantors of the manufacturer’s facilitative devices. “Manufacturer” does not include a dealer.

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

(12) “Person with a disability” means a person who is considered to have a mental or physical disability, impairment, or handicap for purposes of any other law of this state or of the United States, including any rule or regulation.

(13) “Reasonable attempt to repair” means that one the following has occurred within the term of an express warranty applicable to a new facilitative device or within one year after first delivery of a facilitative device 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 facilitative device cannot be used by the consumer for an aggregate of at least thirty days.

(14) "Replacement facilitative device" means a facilitative device of comparable quality, size, and function.

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

6-1-502. Express warranty required - authorized servicers.

(1) A consumer who purchases or leases a new facilitative device either directly or indirectly through a dealer or lessor shall receive an express warranty for such facilitative device. The manufacturer shall issue this express warranty that shall extend for not less than one year after first delivery to the consumer.

(2) If a manufacturer or dealer fails to furnish the express warranty required by this section, the facilitative device 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.

(3) Any entity that sells or leases facilitative devices in this state, including any entity that sells or

leases through mail order or catalogue sales, shall designate an authorized servicer for such facilitative devices that is accessible to the consumer.

(4)(a) In the event that the selling dealer from whom the consumer purchased the facilitative device 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 (4), the consumer may only seek warranty service from such alternative warranty service provider.

6-1-503. Remedies. (1) If a new facilitative device 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 facilitative device 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.

(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 within three business days after such a request is made.

(3) If a nonconformity is not repaired after a reasonable attempt to repair, the manufacturer or dealer who originally supplied or modified the facilitative device, as required by this section, shall;

(a) If the facilitative device was purchased, take the following action at the direction of the consumer:

(I) Accept a return of the facilitative device, provide a replacement facilitative device of equal or greater value, and

refund any collateral costs to the consumer, a holder of a perfected security interest in the facilitative device, or a third-party purchaser; or

(II) Accept a return of the facilitative device and refund to the consumer, holder of a perfected security interest in the facilitative device, 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 facilitative device was leased, take all of the following actions at the direction of the consumer:

(I) Accept a return of the facilitative device:

(II) (a) Refund to the lessor or any holder of a perfected security interest in the facilitative device the current value of the written lease.

(c) For purposes of this 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 facilitative device on the lease expiration date, if the least 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.

(1)(a) In the event that a dispute arises as to liability under this part 5 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 facilitative device is found to be defective, the third-party payor described in paragraph (a) of this subsection (4) shall have all rights of recovery, including the right to costs, which the consumer would have had under this part 5.

6-1-504. Remedies for consumer - conditions. (1) To receive a refund or a replacement facilitative device, the consumer of a purchased facilitative device shall first offer to transfer the facilitative device 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 facilitative device.

(3) When a manufacturer or dealer provides a consumer with a refund or a replacement facilitative device, such consumer shall return the facilitative device with the nonconformity to the manufacturer or dealer with any endorsements necessary to transfer possession to the manufacturer or dealer.

6-1-505. Remedies for consumers of leased facilitative devices - conditions.

(1) To receive a refund due on a leased facilitative device, a consumer shall first offer to return the facilitative device 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 facilitative device with the nonconformity to such lessor.

(4) A lessor shall offer to transfer to the manufacturer or dealer possession of the facilitative device 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.

6-1-506. Resale of a returned facilitative device - disclosure required. A facilitative device returned pursuant to this part 5 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.

6-1-507. Other remedies - waiver of rights void - limitation of coverage.

(1) This part 5 shall not limit the rights of remedies available to a consumer under any other law of this state.

(2) This part 5 shall be in addition to and shall not limit the rights or remedies available to a consumer under any manufacture's warranty with respect to a facilitative device or other technological device designed to be used by and assist a person with a disability, regardless of the retail price of the facilitative device or other technological device.

(3) If a consumer waives the rights granted to consumers pursuant to this part 5, such waiver shall be void as against public policy.

(4) Notwithstanding the remedies that are available to a consumer pursuant to this part 5, a consumer may pursue any other remedy, including an action to recover damages caused

by a violation of this part 5. If a manufacturer or dealer is found to have violated this part 5, 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.

(5) Nothing in this part 5 shall be deemed or construed to be a warranty to consumers of facilitative devices described in part 4 of this article 1.

6-1-508. 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 5 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.

6-1-509. Arbitration. Disputes among manufactures, dealers, and lessors concerning the enforcement of rights or remedies of consumers under this part 5 shall be subject to

arbitration pursuant to the Colorado rules of civil procedures. The award of the arbitration panel shall be binding upon the parties and shall only be subject to court review by trial de novo.

6-1-510. 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 facilitative device that affects the safety, usability, or reliability of that facilitative device. 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.

6-1-511. Disclosures. (1) Prior to the sale of any facilitative device, the seller shall disclose whether the facilitative device is new or used and whether any warranty applies to such facilitative device.

(2) Upon delivery of a new or used facilitative device, the seller shall

advise the consumer of any warranty rights under this part 5 and the facilitative device's maintenance schedule and operating instructions and shall provide the consumer with a copy of the owner's manual.

(3) This 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 a consumer 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. (1) This act shall take effect July 1, 1998, and shall apply to:

- (a) Sales and leases occurring on or after said date;
- (b) Offenses committed on or after said date.

Section 3. Safety clauses. 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

Assistive Technology Partners
601 E. 18th Avenue, Suite 130
Denver, CO 80203
303/315-1280 Main
800/255-3477 within Colorado

303/837-8964 TTY
303/827-1208 FAX
www.uchsc.edu/atp

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

The Legal Center for People with
Disabilities and Older People
455 Sherman St, #130
Denver, CO 80203-4403
303/722-0300
800/288-1375
303/722-0720 FAX
www.thelegalcenter.org

The Legal Center for People with
Disabilities and Older People
322 N. 8th Street
Grand Junction, CO 81501
970/241-6371
800/288-1375
970/241-5324 FAX
www.thelegalcenter.org

**For more information contact:
Assistive Technology Partners
601 East 18th Avenue, Suite 130
Denver, CO 80203**

**303.315.1280 office
303.837.1208 fax
303.837.3477 TTY
800.255.3477 toll free**

**generalinfo@at-partners.org
www.assistivetechologypartners.org**

This publication may be reproduced without the written permission of ATP
provided that the source is appropriately credited.