

A Consumer's Guide to the Assistive Technology Devices Warranty

A Self-Advocacy Guide

5025 E. Washington
Suite 202
Phoenix, AZ 85034-2005
602-274-6287 (voice or TTY)
800-927-2260 (toll free)
602-274-6779 (fax)

100 North Stone Avenue
Suite 305
Tucson, AZ 85701
520-327-9547 (voice)
800-327-7754 (TTY)
800-922-1447 (toll free)
520- 884-0992 (fax)

www.azdisabilitylaw.org
center@azdisabilitylaw.org

Funding for this document is provided by the United States Department of Education, National Institute on Disability and Rehabilitation Research.

Federal and state law can change at any time. If there is any question about the continued validity of any information in the handbook, contact the Arizona Center for Disability Law or an attorney in your community.

The purpose of this guide is to provide general information to individuals regarding their rights and protections under the law. It is not intended as a substitute for legal advice. You may wish to contact the Arizona Center for Disability Law or consult with a lawyer in your community if you require further information.

This guide is available in alternative formats upon request.

A Consumer’s Guide to the Assistive Technology Devices Warranty

Table of Contents

What is an Assistive Technology Device?	1
Is there any law to protect me if I acquire a defective device?	1
How does this law work?.....	1
How do I know that the equipment I have acquired has a warranty?	1
Can I be required to waive my right to a warranty?	1
What should I do if my newly acquired assistive device fails to function during the one-year warranty period?.....	2
What if my assistive device is not repaired?.....	2
What happens to the devices that have been returned due to defects?	3
What can I do if the manufacturer fails to comply with the assistive technology lemon law?.....	3
Where can I file a consumer complaint?	3
APPENDIX A (Sample Demand Letter)	4
APPENDIX B (Text of A.R.S. §44-1351 et seq.)	5

What is an Assistive Technology Device?

Assistive Technology (AT) Device is defined as any item or piece of equipment that is used to increase, maintain or improve functional capabilities of individuals with disabilities. These devices are often referred to as durable medical equipment (DME).

Examples:

- ✧ Computers and computer accessories.
- ✧ Augmentative communication devices.
- ✧ Wheelchairs (manual or electric), and scooters.
- ✧ Magnifying glasses.
- ✧ Organizational aids.

Is There Any Law to Protect Me If I Acquire a Defective Assistive Technology Device?

Because Arizona recognizes it is critical that assistive devices acquired by and for consumers with disabilities function properly, the State has enacted the Assistive Technology Device Warranty, also called the Assistive Technology “**Lemon Law**.”

This law is designed to assure consumers that their assistive devices will be free from any defect, malfunction, or condition that substantially impairs its use, safety or value.

How Does This Law Work?

The law protects consumers who purchase or accept transfer (i.e., lease) of assistive devices within the state of Arizona. It requires assistive technology device manufacturers to give consumers a one year express warranty for newly purchased/leased assistive devices. Your rights under this law begin the moment you accept delivery of the equipment.

How Do I Know That the Equipment I Have Acquired Has a Warranty?

Simply by knowing that the Assistive Technology Lemon Law exists for your protection. A one year express warranty accompanies any assistive device leased or sold whether or not the dealer or manufacturer has informed you of its existence.

Can I Be Required to Waive My Right to a Warranty?

No. The Assistive Technology Lemon Law protects you even if the dealer/manufacturer requires you to sign a waiver.

What Should I Do If My Newly Acquired Assistive Device Fails to Function During the One-Year Warranty Period?

- ✧ First, keep a detailed journal. With each entry, include the following:
 - (1) The date and time malfunction occurred;
 - (2) A description of the problem;
Electric wheelchair did not stop when I let go of the joystick.
 - (3) Where you were when it occurred;
On a street corner waiting for the light to change.
 - (4) Any consequences due to the malfunction;
I rolled into the street before I had the right of way.

- ✧ Second, follow the requirements of the Assistive Technology Lemon Law. In order to receive the benefits of the warranty, you must take the following steps:
 - (1) Report any problem with the assistive device to the manufacturer; and
 - (2) Make the device available for repair.
 - (3) Document all discussions you have had with the manufacturer/dealer regarding the problem. Write down to whom you spoke, dates, times, and what response you received from them.

NOTE: If the problems you experience with your assistive device fall within the requirements of the statute (i.e., within the one year period, your device develops a defect, malfunction or condition that substantially impairs its use, safety or value), the manufacturer must repair the device at no charge.

What If My Assistive Device Is Not Repaired?

If the manufacturer does not repair the device after two attempts for the same problem, or if the device is **out of service for at least thirty (30) days for repair**, you may require the manufacturer/dealer to accept return of the assistive device and:

- (1) Replace it with a comparable new device;

OR

- (2) If you have acquired the device through a purchase, you request a refund for full purchase price plus any finance charge paid and any other associated costs minus a reasonable allowance for use.

- (3) If you are leasing an assistive device and request a refund, you are entitled to the amount paid under the written lease plus all other associated costs minus a reasonable allowance for use. After you receive a refund because of the return of the device, any prior lease shall be void.

NOTE: A manufacturer may refuse to replace an assistive device or may refuse to refund the purchase price if the problem does not substantially impair its use, safety, or value.

What Happens to Devices That Have Been Returned Due to Defects?

An assistive device returned within this state or within another state under a similar law may not be sold or leased again in the state of Arizona until full written disclosure of the reasons for the return is given to the prospective buyer/lessor.

What Can I Do If the Manufacturer Fails to Comply with the Assistive Technology Lemon Law?

If the manufacturer refuses to resolve your problem despite your requests, you may file a lawsuit in Superior Court. You may be awarded any costs associated with the loss of function of the device, expenses, and attorney fees.

You only have a limited amount of time in which you are permitted to file a claim in Superior Court. If you fail to file your claim within the allotted time, you can lose your right to a remedy altogether. Consult an attorney regarding specific deadlines which may apply to your case.

Where Can I File a Consumer Complaint?

Consumer complaints may be filed with:

Arizona State Attorney General
Consumer Complaint Division
1275 W. Washington
Phoenix, Arizona 85007
(602) 542-5763 or 1-800-352-8431

Arizona Center For Disability Law
5025 E. Washington Street, Suite 202
Phoenix, Arizona 85035-2005
Voice/TTY: (602) 274-6287
Toll-Free: (800) 927-2260
Fax: (602) 274-6779

(Appendix A)
Sample Demand Letter

NAME
TITLE
ADDRESS

DATE

Dear :

I am writing you in hopes of resolving the matter concerning my purchase of a defective [NAME DEVICE]. I received the [DEVICE] on [DATE]. Since [DATE], the [DEVICE] has continuously malfunctioned and as a result has been completely inoperable. Specifically, the [DEVICE] exhibits the following problems:

- 1)
- 2)
- 3)

Arizona Revised Statute § 44-1352, known as the Assistive Technology Lemon Law, mandates that an assistive technology device manufacturer give consumers a one-year express warranty for newly purchased assistive devices. These express warranties begin on the date of the initial delivery to the purchaser and provide that the assistive device will be free from any defect, malfunction or condition that substantially impairs its use, safety or value. The term "assistive device" refers to any piece of equipment that a disabled consumer buys or accepts transfer of within the State of Arizona.

Several repair attempts have been made. [GIVE HISTORY OF EACH ATTEMPT- INCLUDE DATE DEVICE WAS TAKEN IN FOR REPAIR AND DATE RETURNED]. I am sure that you understand the many safety issues that exist when I am forced to rely upon a defective [DEVICE]. It is so unreliable, I have lost my independence and my ability to maneuver safely through out my own home. Therefore, I am requesting that you resolve this breach of warranty claim in accordance with A.R.S. § 44-1354 by [**CHOOSE A REMEDY: refunding the original purchase price of the DEVICE, \$; OR replacing it with a comparable new DEVICE**].

It is urgent that we resolve this matter. I will be expecting your response to this letter no later than [DATE]. I can be reached at [YOUR PHONE NUMBER]. If this matter cannot be resolved informally, I will consider other remedies available to me.

Sincerely,

Name

(Appendix B)

Text of The Assistive Technology Device Warranty (A.R.S. §44-1351 et seq.)

44-1351. Definitions

In this article, unless the context otherwise requires:

1. "Assistive device" means any device, including a demonstrator, that a consumer purchases or accepts transfer of in this state and that is used to assist an individual with a disability as described in the Americans with disabilities act of 1990 (P.L. 101-336; 104 Stat. 328; 42 United States Code sections 12101 through 12213) in connection with a major life activity including mobility, vision, speech, communication, maneuvering and manipulation of a consumer's environment. Assistive device includes:
 - (a) A manual or motorized wheelchair, a motorized scooter and any device that enhances the mobility or functional capability of a consumer.
 - (b) A voice synthesized computer module, an optical scanner, talking software, a braille printer and any device that enables a sight-impaired consumer's ability to communicate.
 - (c) An environmental control unit, a motor vehicle modification or any other similar device that enables an individual with a disability to communicate, see, hear, speak, maneuver or manipulate the consumer's environment.
2. "Assistive device dealer" means a person who is in the business of selling new assistive devices.
3. "Assistive device lessor" means a person who leases a new assistive device to a consumer under a written lease or holds the rights of a lessor under a written lease.
4. "Collateral cost" means an expense incurred by an assistive device lessor or a consumer in connection with the repair of a nonconformity, including the costs of sales tax and of obtaining an alternative assistive device. Collateral cost includes the cost to the consumer of returning a nonconforming assistive device.
5. "Consumer" means any of the following:
 - (a) An individual or entity that purchases a new assistive device if the assistive device was purchased from an assistive device dealer or manufacturer for purposes other than resale.
 - (b) An individual or entity to which the assistive device is transferred for purposes other than resale and if the transfer occurs before the expiration of an express warranty applicable to the assistive device.
 - (c) An individual or entity that may enforce any warranty applicable to the new assistive device.
 - (d) An individual or entity that leases a new assistive device from an assistive device lessor under a written lease.

6. "Current value of the written lease" means the total amount for which the lease obligates the consumer during the period remaining after its early termination plus the assistive device dealer's termination costs and the value of the assistive device at the lease expiration date if the lease sets forth a date minus the assistive device lessor's early termination costs.
7. "Demonstrator" means an assistive device used primarily for the purpose of demonstration to the public.
8. "Early termination cost" means any expense or obligation, including a penalty for prepayment under a finance arrangement, that an assistive device lessor incurs as a result of both the termination of a written lease before the termination date written in the lease and the return of an assistive device to a manufacturer pursuant to this article.
9. "Early termination saving" means any expense or obligation that an assistive device lessor avoids as a result of both the termination of a written lease before the termination date written in the lease and the return of an assistive device to a manufacturer pursuant to this article, including either:
 - (a) An interest charge that the assistive device lessor would have paid to finance the assistive device.
 - (b) The difference between the total lease obligation amount 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, if the assistive device lessor does not finance the assistive device.
10. "Manufacturer" means a person who manufactures or assembles assistive devices and the agents of that person, including an importer, a distributor, a factory branch, a distributor branch or a warrantor of an assistive device but does not include an assistive device dealer.
11. "Nonconformity" means a defect, malfunction or condition that substantially impairs the use, safety or value of an assistive device and that is covered by an express warranty applicable to the assistive device or to a component of the assistive device, excluding a defect, malfunction or condition that is the result of either:
 - (a) An accident involving the assistive device or from abuse, neglect, modification or alteration of the assistive device by any person other than the manufacturer or the manufacturer's agent or distributor or an authorized assistive device dealer or assistive device lessor.
 - (b) Normal use that could be resolved through fitting adjustments, cleaning or proper use.
12. "Reasonable attempt to repair" means within the terms of an express warranty that applies to a new assistive device either:
 - (a) Any nonconformity that is covered by the warranty and that has been repaired at least twice by the manufacturer or the manufacturer's authorized assistive device dealer or the assistive device lessor and the same nonconformity continues.
 - (b) The new assistive device is out of service for repair for an aggregate of at least thirty cumulative days due to a nonconformity covered by the warranty.

44-1352. New assistive device, nonconformity, reasonable attempt to make a repair, reasonable allowance, options

- A. Except as provided in subsection B of this section, a manufacturer who sells an assistive device to a consumer, directly or through an assistive device dealer, shall give the consumer an express warranty against defects, malfunctions or conditions for the assistive device. The duration of the express warranty shall be for at least one year after the initial delivery of the assistive device to the consumer.
- B. In the absence of an express warranty from the manufacturer, the manufacturer is deemed to have expressly warranted to the consumer that the assistive device will be free from any defect, malfunction or condition that substantially impairs the use, safety or value of the assistive device. The duration of the express warranty shall be for at least one year after the initial delivery of the assistive device to the consumer.
- C. During the period of the express warranty, if a new assistive device does not conform to the express warranty and the consumer reports the nonconformity to the manufacturer, the manufacturer's authorized assistive device dealers or the assistive device lessor and makes the assistive device available for repair, the nonconformity shall be repaired at no charge to the consumer.\
- D. If the nonconformity is not repaired after a reasonable attempt to make a repair, a consumer, as defined in section 44-1351, paragraph 5, subdivision (a), (b) or (c), may direct the manufacturer to perform one of the following options and the manufacturer shall comply with the option chosen by the consumer:
1. Accept return of the assistive device and replace the assistive device with a comparable new assistive device and refund any collateral costs to the consumer and assistive device lessor.
 2. Accept return of the assistive device and refund to the consumer and to any holder of a perfected security interest in the assistive device the full purchase price plus any finance charge paid by the consumer at the point of sale and collateral costs minus a reasonable allowance for use. A reasonable allowance for use shall not exceed the amount obtained by multiplying the full purchase price of the assistive device by a fraction, the numerator of which is the number of days that the assistive device was used before the consumer first reported the nonconformity to the assistive device dealer and the denominator of which is one thousand eight hundred twenty-five.
- E. If the nonconformity is not repaired after a reasonable attempt to make a repair, a consumer, as defined in section 44-1351, paragraph 5, subdivision (d), may direct the manufacturer to perform one of the following options and the manufacturer shall comply with the option chosen by the consumer:
1. Accept return of the assistive device, replace the assistive device with a comparable new assistive device and refund any collateral cost to the consumer and assistive device dealer.
 2. Refund to the assistive device lessor and to any holder of a perfected security interest in the assistive device the current value of the written lease and refund to the consumer the

amount that the consumer paid under the written lease plus all collateral costs minus a reasonable allowance for use. A reasonable allowance for use shall not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the numerator of which is the number of days that the assistive device was used before the consumer first reported the nonconformity to the manufacturer, assistive device lessor or assistive device dealer and the denominator of which is one thousand eight hundred twenty-five.

44-1353. Replacement of assistive device, refund of monies, transfer of possession, limitations, disclosure

- A. A consumer, as defined in section 44-1351, paragraph 5, subdivision (a), (b) or (c), shall notify the manufacturer of a nonconformity. Within thirty (30) days after receiving notification of a nonconformity, the manufacturer shall provide the consumer with a comparable assistive device or a refund. After receiving the new assistive device or refund, the consumer shall return to the manufacturer the assistive device that has the nonconformity including any endorsements necessary to transfer physical possession to the manufacturer.
- B. A consumer, as defined in section 44-1351, paragraph 5, subdivision (d), shall notify the assistive device lessor and manufacturer of a nonconformity. Within thirty (30) days after receiving notification of a nonconformity, the manufacturer shall provide the consumer with a comparable assistive device or a refund. After receiving the refund or comparable assistive device, the consumer shall return to the manufacturer the assistive device that has the nonconformity.
- C. An assistive device lessor shall offer to transfer possession to the manufacturer of the assistive device that has the nonconformity. Within thirty (30) days after receiving the offer, the manufacturer shall provide the assistive device lessor with a refund. After receiving the refund, the assistive device lessor shall provide the manufacturer with any endorsements necessary to transfer legal possession to the manufacturer.
- D. A person shall not enforce the lease against the consumer after the consumer receives a refund pursuant to this section.
- E. An assistive device returned by a consumer or assistive device lessor in this state or by a consumer or assistive device lessor in another state under a similar provision shall not be sold or leased again in this state unless full written disclosure of the reasons for the return is made to the prospective buyer or lessee.

44-1354. Assistive device dealers, lessors, notice

At the time the consumer takes possession of the assistive device, the assistive device dealer or assistive device lessor shall give the consumer the following written notice in fourteen (14) point bold-faced type: By law the manufacturer is deemed to have provided to you, the purchaser of an assistive device, a one-year warranty that begins on the date of the initial delivery to you. This warranty provides that the assistive device will be free from any defect, malfunction or condition that substantially impairs its use, safety or value.

To ensure that you receive the benefits of this warranty, within one year after the initial delivery to you of the assistive device, you must report any problem with the assistive device to the manufacturer,

authorized assistive device dealer or assistive device lessor and make the assistive device available for repair by the manufacturer, authorized assistive device dealer or assistive device lessor.

During the warranty period, if any defect, malfunction or condition cannot be repaired after two attempts or if your assistive device is out of service for at least thirty (30) days for repair of any defect, malfunction or condition that substantially impairs the use, safety or value of the assistive device, you are entitled to either a comparable new assistive device or a refund of the full purchase price plus any finance charge and collateral cost minus a reasonable allowance for use. If you are leasing an assistive device you are entitled to either a comparable assistive device or a refund of the amount paid under the written lease plus all collateral costs minus a reasonable allowance for use.

The warranty provided to you by law does not cover any defect, malfunction or condition that results from an accident involving the assistive device or from neglect, modification or alteration of the assistive device by any person other than the manufacturer or the manufacturer's agent or distributor or an authorized assistive device dealer or assistive device lessor and the warranty relieves the manufacturer of liability for repairs in these instances.

A manufacturer may refuse to replace an assistive device or may refuse to refund the purchase price if the problem does not substantially impair the use, safety or value of your assistive device.

A contract or agreement for the sale or lease of an assistive device cannot void any of these rights.

44-1355 Exemption, waiver of rights, action to recover damages, attorney fees

- A. An assistive device dealer is not liable to a manufacturer for a refund if the assistive device dealer makes a repair in a manner that is consistent with the manufacturer's instructions.
- B. This section does not limit any rights or remedies available to a consumer under any other law. Any waiver of rights by a consumer is void.
- C. In addition to any other remedy, a consumer may bring an action in superior court to recover damages caused by a violation of this section. The court may award the prevailing consumer triple the amount of any pecuniary loss plus costs, disbursements and attorney fees. The court may also award any equitable relief deemed appropriate by the court.