

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas *As Engrossed: S2/8/99 S2/18/99 S3/1/99 S3/4/99 S3/5/99 S3/8/99*

2 82nd General Assembly

A Bill

3 Regular Session, 1999

SENATE BILL 4

4
5 By: Senator Canada

For An Act To Be Entitled

9 "THE ARKANSAS WHEELCHAIR LEMON LAW ACT; AND FOR OTHER
10 PURPOSES. "

Subtitle

13 "THE ARKANSAS WHEELCHAIR LEMON LAW ACT. "

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

17 SECTION 1. For purposes of this Act:

18 (1)(A) "Assistive device" means a manual wheelchair, motorized
19 wheelchair, motorized scooter designed to enhance the mobility of a disabled
20 person, or van lift;

21 (B) "Assistive device" does not include a device having a value of less
22 than seven hundred fifty dollars (\$750);

23 (2) "Assistive device dealer" means a person who is in the business of
24 selling assistive devices;

25 (3) "Assistive device lessor" means a person who leases an assistive
26 device to a consumer, or who holds the lessor's rights, under a written lease;

27 (4) "Assistive device warranty" means the warranty attached to
28 assistive devices sold or leased by assistive device manufacturers or
29 assistive device dealers;

30 (5) "Collateral costs" mean expenses incurred by a consumer in
31 connection with the repair of a nonconformity, including the costs of
32 obtaining an alternative assistive device;

33 (6) "Consumer" means:

34 (A) The purchaser of an assistive device, if the assistive device
35 was purchased from an assistive device dealer or manufacturer for purposes
36 other than resale;

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

4 (C) A person who may enforce the warranty; and

5 (D) A person who leases an assistive device from an assistive
6 device lessor under a written lease;

7 (7) "Demonstrator" means an assistive device used primarily for the
8 purpose of demonstration to the public;

9 (8) "Early termination cost" means any expense or obligation that an
10 assistive device lessor incurs as a result of both the termination of a
11 written lease before the termination date set forth in that lease and the
12 return of an assistive device to a manufacturer pursuant to the provisions of
13 this Act. Early termination cost includes a penalty for prepayment under a
14 finance arrangement;

15 (9) "Early termination saving" means any expense or obligation that an
16 assistive device lessor avoids as a result of both the termination of a
17 written lease before that termination date set forth in that lease and the
18 return of an assistive device to a manufacturer pursuant to the provisions of
19 this Act. Early termination saving includes an interest charge that the
20 assistive device lessor would have paid to finance the assistive device or, if
21 the assistive device lessor does not finance the assistive device, the
22 difference between the total amount for which the lease obligates the consumer
23 during the period of the lease term remaining after the early termination and
24 the present value of that amount at the date of the early termination;

25 (10) "Manufacturer" means a person who manufactures or assembles
26 assistive devices and agents of that person, including an importer, a
27 distributor, factory branch, distributor branch and any warrantors of the
28 manufacturer's assistive device, but does not include an assistive device
29 dealer;

30 (11) "Nonconformity" means a condition or defect that substantially
31 impairs the use, value or safety of an assistive device, and that is covered
32 by an express warranty applicable to the assistive device or to a component of
33 the assistive device including, but not limited to any piece, part, or any
34 premanufactured and assembled part by the manufacturer or employee that fails
35 in use, but does not include:

36 (A) A condition of the device that is the result of abuse, neglect

1 or unauthorized modification or alteration of the assistive device by a
2 consumer; or

3 (B) A condition of the device that is the result of normal use
4 which may be resolved through a fitting adjustment, preventative maintenance
5 or proper care; and

6 (12) "Reasonable attempt to repair" means, within the terms of an
7 express warranty applicable to a new assistive device:

8 (A) Presenting the assistive device for repair of the same
9 nonconformity on at least three (3) separate occasions to the manufacturer,
10 assistive device lessor or any of the manufacturer's authorized assistive
11 device dealers; or

12 (B) The assistive device is out of service with no assistive
13 device available for loan for an aggregate of at least fourteen (14) calendar
14 days because of warranty nonconformity.

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16 SECTION 2. A manufacturer who, in the State of Arkansas, sells an
17 assistive device to a consumer shall provide to the consumer an express
18 warranty to continue no less than one (1) year after first delivery of the
19 assistive device. In the absence of an express warranty from the manufacturer,
20 the manufacturer shall be deemed to have expressly warranted to the consumer
21 of an assistive device that, for a period of no less than one (1) year after
22 the date of first delivery to the consumer, the assistive device will be free
23 from any condition or defect which substantially impairs the value of the
24 assistive device to the consumer.

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26 SECTION 3. If a new assistive device does not conform to an applicable
27 express warranty and the consumer reports the nonconformity to the
28 manufacturer, the assistive device lessor or any of the manufacturer's
29 authorized assistive device dealers and makes the assistive device available
30 for repair before thirty (30) days after return delivery of the assistive
31 device to a consumer, the nonconformity shall be repaired at no charge to the
32 consumer.

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34 SECTION 4. (a) A reasonable amount of time to fix a nonconformity shall
35 be thirty (30) calendar days with the exchange of a substitute of the
36 consumer's assistive device at the option of the consumer.

1 **(b) If, after a reasonable attempt to repair, the nonconformity is not**
2 **repaired, then at the direction of the consumer the manufacturer shall do one**
3 **of the following:**

4 **(1) Accept return of the assistive device and replace the**
5 **assistive device with a comparable new assistive device and refund any**
6 **collateral costs;**

7 **(2) Accept return of the assistive device and refund to the**
8 **consumer and to any holder of a perfected security interest in the consumer's**
9 **assistive device, as their interest may appear, the full purchase price plus**
10 **any finance charge paid by the consumer at the point of sale and collateral**
11 **costs, less a reasonable allowance for use. A reasonable allowance for use may**
12 **not exceed the amount obtained by multiplying the full purchase price of the**
13 **assistive device by a fraction, the denominator of which is one thousand four**
14 **hundred sixty (1,460) and the numerator of which is the number of days that**
15 **the assistive device was used before the consumer first reported the**
16 **nonconformity to the assistive device dealer; or**

17 **(3) With respect to a consumer who leases an assistive device from**
18 **an assistive device lessor under a written lease, accept return of the**
19 **assistive device, refund to the assistive device lessor and to any holder of a**
20 **perfected security interest in the assistive device, as their interest may**
21 **appear, the current value of the written lease and refund to the consumer the**
22 **amount that the consumer paid under the written lease plus any collateral**
23 **costs, less a reasonable allowance for use.**

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25 SECTION 5. **(a) The current value of the written lease equals the total**
26 **amount for which that lease obligates the consumer during the period of the**
27 **lease remaining after its early termination, plus the assistive device**
28 **dealer's early termination costs and the value of the assistive device at the**
29 **lease expiration date if the lease sets forth that value, less the assistive**
30 **device lessor's early termination savings.**

31 **(b) A reasonable allowance for use may not exceed the amount obtained**
32 **by multiplying the total amount for which the written lease obligates the**
33 **consumer by a fraction, the denominator of which is one thousand four hundred**
34 **sixty (1,460) and the numerator of which is the number of days that the**
35 **consumer used the assistive device before first reporting the nonconformity to**
36 **the manufacturer, assistive device lessor or assistive device dealer.**

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2 SECTION 6. (a) To receive a comparable new assistive device or a refund
3 due under the provisions of this Act, a consumer shall offer to the
4 manufacturer of the assistive device having the nonconformity to transfer
5 possession of that assistive device to that manufacturer. No later than
6 fifteen (15) calendar days after that offer, the manufacturer shall provide
7 the consumer with an assistive device or a refund. After the manufacturer
8 provides the new assistive device or refund, the consumer shall return to the
9 manufacturer the assistive device having the nonconformity to the manufacturer
10 or its dealer, along with any endorsements necessary to transfer ownership to
11 the manufacturer.

12 (b) To receive a refund due under the provisions of this Act, a person
13 who leases an assistive device from an assistive device lessor under a written
14 lease shall offer to return the assistive device having the nonconformity to
15 its manufacturer. No later than fifteen (15) calendar days after that offer,
16 the manufacturer shall provide the refund to the consumer. After the
17 manufacturer provides the refund, the consumer shall return to the
18 manufacturer the nonconforming assistive device.

19 (c) To receive a refund due under the provisions of this Act, an
20 assistive device lessor shall offer to transfer possession of the assistive
21 device having the nonconformity to its manufacturer. No later than fifteen
22 (15) calendar days after that offer, the manufacturer shall provide the refund
23 to the assistive device lessor.

24 (d) A consumer who prevails in any legal proceeding under this act is
25 entitled to recover as part of the judgment a sum equal to the aggregate
26 amount of costs and expenses, including attorney's fees based upon actual time
27 expended by the attorney, determined by the court to have been reasonably
28 incurred by the consumer for or in connection with the commencement and
29 prosecution of the action.

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31 SECTION 7. All provisions of this Act of a general and permanent nature
32 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
33 Revision Commission shall incorporate the same in the Code.

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35 SECTION 8. If any provision of this Act or the application thereof to
36 any person or circumstance is held invalid, such invalidity shall not affect

1 other provisions or applications of the Act which can be given effect without
2 the invalid provision or application, and to this end the provisions of this
3 Act are declared to be severable.

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5 SECTION 9. All laws and parts of laws in conflict with this Act are
6 hereby repealed.

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/s/ Canada

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