

This is basic information and does not constitute legal advice.

Assistive Technology and the Lemon Law

What is an assistive technology device?

An assistive technology device is any device, including a demonstrator, that a person purchases or accepts in this state that is used to help a person in caring for himself or herself, performing “major life activities,” such as manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Neb. Rev. Stat. §69-2609 (Cum. Supp. 2002). Some devices include the following:

- Manual and motorized wheelchairs, motorized scooters, and other devices to help the individual’s mobility;
- Hearing aids, telephone communication devices (TTY), assistive listening devices, and other devices that will assist in the individual’s ability to hear;
- Voice synthesized computer modules, optical scanners, talking software, Braille printers, and other aids that enhance a sight-impaired individual’s ability to communicate;
- Environmental control units; and
- Any other assistive device that allows a person with a disability to enhance their ability to communicate, see, hear, or maneuver. Neb. Rev. Stat. §69-2603 (Cum. Supp. 2002).

How can a consumer make sure that he or she is getting a good product?

Nebraska has a law called the Assistive Technology Regulation Act or “Lemon Law” which helps to ensure that persons who need assistive devices will be getting products that are in good working condition and that reasonably meet their needs. Neb. Rev. Stat. §69-2601 (Cum. Supp. 2002).

How does the Assistive Technology Regulation Act or “Lemon Law” work?

If a person either buys or rents an assistive device he or she must be provided with an express warranty that will cover the product for at least one year after the delivery of the device. If the device does not work within that one year, the consumer may submit the device

for repairs and the device shall either be repaired or the consumer shall receive a replacement device or refund. Neb. Rev. Stat. §69-2614 (Cum. Supp. 2002).

What are the duties of the manufacturer?

When a manufacturer is in the business of making assistive technology devices, it must adhere to certain duties to ensure that it is producing a useful product for the consumer to assist him or her in a major life activity. Within the duties of the manufacturer, the manufacturer must accept a return of a device that does not conform to the consumer's needs. Within 30 days of the return of the device to the manufacturer, the manufacturer must provide a new assistive device that is comparable to the one returned to the consumer. The manufacturer also has the option of giving the consumer a refund in the amount the consumer paid for the device as well as any other costs associated with the device, but the manufacturer does *not* need to pay for any use of the product. So, if the product were used for awhile before it became defective and the consumer returned it to the manufacturer, the manufacturer will consider the costs the consumer paid for the device as well as any associated cost, then the manufacturer will consider how long the device has been used, how the device has been used, etc. and subtract a reasonable value of such use from the amount the consumer paid for the device.

How does a consumer receive a new assistive device or refund?

If a consumer believes his or her assistive device to be defective he or she must notify the manufacturer of the defect and return the device to the manufacturer once the manufacturer has delivered a working device to the consumer. If the consumer has leased the assistive device he or she must return the defective device to the dealer of the device who will then provide the consumer with a new assistive device or refund. Neb. Rev. Stat. §26-2615(2)(a), (b) (Cum. Supp. 2002).

What if the assistive device needs to be repaired?

If an assistive device is under warranty and needs to be repaired, the consumer may get a rental reimbursement of up to \$20 per day if the repair period takes longer than ten days or if the same defect on the device has been repaired on at least two prior occasions. Neb. Rev. Stat. §26-2618 (Cum. Supp. 2002).

What are the consumer's rights if the device is not repaired or replaced or if the consumer does not receive a refund within the time the device is covered under warranty?

If the consumer is not provided with a working assistive device in the event that his or her assistive device is defective and is still under warranty, he or she may elect to bring legal action for damages. If a court finds that the consumer should be awarded damages, he or she

may be entitled to monetary loss, costs, disbursements, reasonable attorney's fees, and any equitable relief the court considers appropriate. Neb. Rev. Stat. §26-2617 (Cum. Supp. 2002).

Disability Rights Nebraska has assisted individuals with assistive devices under the "Lemon Law" as is illustrated in the following two examples:

- An individual with paraplegia received a defective power wheelchair. Disability Rights Nebraska prepared a petition under the Nebraska "Lemon Law" and filed in the District Court for Lancaster County demanding damages due for the defective wheelchair. Settlement negotiations were successfully concluded and our client received a monetary settlement and a new wheelchair.
- An individual with paraplegia purchased a defective porch lift. Following an investigation, it was determined that the client had a cause of action under the Nebraska "Lemon Law." The client's porch lift had malfunctioned numerous times from exposure to the weather. A demand letter requesting a full refund was sent to the manufacturer and the manufacturer's dealer. Following negotiations with the porch lift manufacturer, a settlement agreement was reached. Our client received a monetary settlement that will allow him to purchase and install a permanent wheelchair ramp.