

DISABILITY RIGHTS OREGON

ASSISTIVE DEVICE LEMON LAWS



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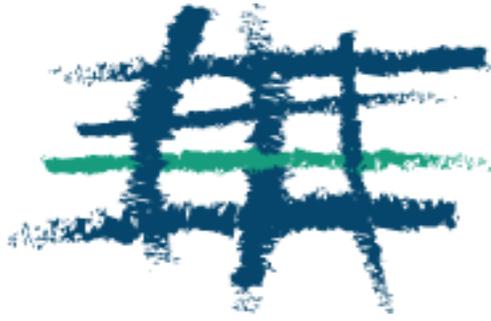
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DISABILITY RIGHTS OREGON

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Greetings!

This short pamphlet is meant to assist you in understanding and utilizing the Oregon Assistive Device Lemon Laws. While we may not have answered every question that may arise under these laws, we hope that you find this resource helpful. If you feel that the Assistive Device Lemon Laws apply to your situation, you may contact Disability Rights Oregon *and ask to speak with an Intake Specialist for assistance.*

Sincerely,

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What are the Relevant Laws?

Oregon Revised Statutes (ORS) 646A.460 to 646A.476

Website: <http://www.leg.state.or.us/ors/646a.html>

A manufacturer who sells or leases an assistive device...to a consumer, either directly or through a dealer, shall furnish, at a minimum, an express warranty that the device shall be free from any nonconformity... Even if the manufacturer does not furnish the express warranty described...the manufacturer shall be considered to have provided an express warranty. The duration of the warranty must be at least one year from the date of the delivery of the assistive device. ORS 646.462.

What is the Assistive Device Lemon Law?

The Assistive Device Lemon Law protects consumers who buy or lease defective wheelchairs, scooters, or aids that increase the mobility or positioning of a person using a wheelchair as well as consumers who buy or lease hearing aids. The law requires manufacturers to provide a warranty to repair wheelchairs, scooters, or hearing aids that have a “nonconformity.” In applicable situations, the manufacturer must either replace the defective device or refund a consumer’s money if the nonconformity cannot be repaired.

What Assistive Devices are Covered by the Assistive Device Lemon Law?

The Oregon Assistive Device Lemon Law covers only:

- Wheelchairs;
- Scooters;
- Aids that increase the mobility or positioning of a person using a wheelchair, such as a switch or control to operate the chair; and
- Hearing aids.

What is a Nonconformity?

A nonconformity is a condition or defect that substantially impairs the use, market value, or safety of an assistive device.

Following is a list of examples.

- The motor on the wheelchair breaks down
- The tires repeatedly lose air
- The hearing aid emits a constant hum

Nonconformities do not include problems that are the result of consumer neglect, abuse, or unauthorized modifications of the device. For hearing aids, problems that can be resolved through fitting adjustments, cleaning or proper care are not nonconformities.

Does the Manufacturer Have to Give an Express Warranty?

Yes, Manufacturers will be assumed to have provided an express warranty.

The warranty must:

- Be for at least one year;
- State that the assistive device is free from any nonconformity;
- Clearly identify the company or person making the warranty
- Clearly state the rights given to the consumer; and
- Clearly state how the consumer can exercise those rights.

The Assistive Device Lemon Law applies to a lease or purchase even if the manufacturer does not provide a warranty. Under the Assistive Device Lemon Law, the manufacturer is considered to have given the consumer an express warranty, whether or not it appears on the sale or leasing document.

What are the Manufacturer's and Dealer's Duties to Repair, Replace, or Refund?

During the warranty period, the manufacturer and any authorized dealers (including the one who sold the device) have certain obligations under the Assistive Device Lemon Law.

The manufacturer and dealers must:

- Repair any nonconformity at no cost to the consumer; and
- Offer the consumer a refund of their money (less a reasonable allowance for use) or a replacement device if:
 - The problem continues after two repair attempts; or
 - The device is out of service for a total of 30 days or longer (it does not need to be consecutive days).

For these duties to apply, the consumer must both (1) communicate to the manufacturer that there is a non-conformity and (2) make the assistive device available for repair. This must occur within one year of the assistive device being delivered to the consumer. Making the assistive device available for repair may entail delivery of the device to either the manufacturer or dealer. This will only be the case if doing so would be readily accessible to the consumer.

Will a Replacement Device Be Made Available While An Assistive Device is Being Repaired?

Yes, a loaner assistive device will be provided if:

- A. The absence of a loaner would be a threat to the safety of the user; or
- B. The assistive device is out of service for more than seven calendar days.

What if the Manufacturer Refuses to Repair, Replace, or Refund?

The Assistive Device Lemon Law provides two possible ways to resolve problems with a manufacturer. The consumer may (1) participate in dispute resolution procedure or (2) bring a court action.

Dispute resolution includes both arbitration and mediation. The advantage of this option is that it is:

- less expensive;
- the issue is often resolved more quickly; and
- the process is less formal than a court action.

If the consumer decides to choose dispute resolution, the manufacturer must participate.

You may obtain a list of individuals who are qualified to conduct dispute resolution procedures at either <http://www.doj.state.or.us/adr/pages/adr26.aspx> or the Department of Justice Alternate Dispute Resolution Coordinator's office in Salem at (503) 947-4570.

Consumers may instead choose to bring a court action (lawsuit) against the manufacturer for damages caused by the manufacturer's failure to comply with the law. Consumers should consult a private attorney for assistance. You should do this at the earliest convenience, as there are strict timelines involved with filing an action under the Assistive Device Lemon Laws. The Oregon State Bar's Lawyer Referral Service phone number is 1 (800) 452-7636.

What Are Your Responsibilities?

It is important that you protect your rights. Consumers should:

- Verify the warranty is in writing when purchasing or leasing assistive devices;
- Record the date you received your assistive device;

- Keep a written record of any problems with the device;
- Keep a written record of all of your communications with the manufacturer and dealer, including dates as well as names of people with whom you spoke;
- Keep a written record of any repairs made on the device, including saving any service receipts; and
- Use the AT device in the manner authorized.

Are There Any Other Laws Which May Help Consumers of Assistive Devices?

Yes.

Defective Devices: In addition to the Assistive Device Lemon Law, other consumer laws exist that may help you get a repair, replacement or a refund for a defective device.

Promises and Representations: People who sell or lease AT devices can be held to their promises and representations. For example, if you tell a seller you need a scooter to use on your farm and the seller promises the scooter he sold to you will work on uneven muddy ground, but this ends up not being true, warranty law may help you get a refund or replacement.

You should seek the advice of a private attorney if you wish to pursue either of these options. The Oregon State Bar's Lawyer Referral Service phone number is 1 (800) 452-7636.

Who Can You Contact If You Feel the Assistive Device Lemon Law Applies To Your AT Device?

You may contact:

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