

SENATE BILL NO. 2286

Introduced by

Senators Wanzek, Mathern, Nething

Representatives Aarsvold, Kretschmar, Murphy

1 A BILL for an Act to create and enact a new chapter to title 51 of the North Dakota Century
2 Code, relating to assistive technology device warranties; and to amend and reenact section
3 50-06.2-02 and subsection 5 of section 50-06.2-03 of the North Dakota Century Code, relating
4 to assistive technology services.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 50-06.2-02 of the 1995 Supplement to the North
7 Dakota Century Code is amended and reenacted as follows:

8 **50-06.2-02. Definitions.** As used in this chapter:

- 9 1. "Assistive technology" includes assistive technology devices and assistive
10 technology services.
- 11 2. "Assistive technology device" means any item, piece of equipment, or product
12 system that is used to increase, maintain, or improve functional capabilities of
13 individuals with disabilities. The term does not include a device that is modified or
14 customized pursuant to consumer design and specifications.
- 15 3. "Assistive technology service" means any service that directly assists an individual
16 with a disability in the selection, acquisition, or use of an assistive technology
17 device. The term includes:
 - 18 a. Evaluating the needs of an individual with a disability, including a functional
19 evaluation of the individual in the individual's customary environment;
 - 20 b. Purchasing, leasing, or otherwise providing for the acquisition of assistive
21 technology devices by individuals with disabilities;
 - 22 c. Selecting, designing, fitting, customizing, adapting, applying, maintaining,
23 repairing, or replacing of assistive technology devices;

- d. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans or programs;
- e. Training or technical assistance for an individual with disabilities, or, where appropriate, the family of an individual with disabilities; and
- f. Training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities.

4. "Comprehensive human services" means services included in the comprehensive human services plan published by the state agency and human services required by state law or state agency regulation or federal law or regulation as a condition for the receipt of federal financial participation in programs administered under the provisions of this title.

~~2.~~ 5. "County agency" means the county social service board in each county of the state.

~~3.~~ 6. "County plan" means the county human services plan required by section 50-06.2-04.

~~4.~~ 7. "Family home care" means the provision of room, board, supervisory care, and personal services to an eligible elderly or disabled person by the spouse or by one of the following relatives, or the current or former spouse of one of the following relatives, of the elderly or disabled person: parent, grandparent, adult child, adult sibling, adult grandchild, adult niece, or adult nephew. The family home care provider need not be present in the home on a twenty-four-hour basis if the welfare and safety of the client is maintained.

~~5.~~ 8. "Human service center" means a regional center established under section 50-06-05.3.

~~6.~~ 9. "Qualified service provider" means a county agency or independent contractor which agrees to meet standards for service and operations established by the state agency.

~~7.~~ 10. "State agency" means the department of human services.

1 **SECTION 2. AMENDMENT.** Subsection 5 of section 50-06.2-03 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 5. Within the limits of legislative appropriations and at rates determined payable by
4 the state agency, to pay qualified service providers, which meet standards for
5 services and operations, for the provision of the following services as defined in the
6 comprehensive human service plan which are provided to persons who, on the
7 basis of functional assessments, income, and resources, are determined eligible
8 for the services in accordance with rules adopted by the state agency:

- 9 a. Homemaker services;
10 b. Chore services;
11 c. Respite care;
12 d. Home health aide services;
13 e. Case management;
14 f. Family home care;
15 g. Personal attendant care;
16 h. Adult family foster care; ~~and~~
17 i. Assistive technology; and
18 j. Such other services as the state agency determines to be essential and
19 appropriate to sustain individuals in their homes and in their communities and
20 to delay or prevent institutional care.

21 **SECTION 3.** A new chapter to title 51 of the North Dakota Century Code is created and
22 enacted as follows:

23 **Definitions.** In this chapter, unless the context otherwise requires:

24 1. "Assistive technology device" means any item, piece of equipment, or product
25 system that a consumer purchases or accepts transfer of in this state and which is
26 used to increase, maintain, or improve the functional capabilities of individuals with
27 disabilities.

28 a. The term includes:

- 29 (1) Manual wheelchairs, motorized wheelchairs, motorized scooters, and
30 other aids that enhance the mobility or positioning of an individual, such
31 as positioning features, the switches and controls for any motorized or

- 1 nonmotorized features, and hydraulic or nonhydraulic lifts or elevators
2 designed to transport an individual from one location or level to another
3 in private personal vehicles or private residences.
- 4 (2) Telephone communication devices for the deaf, assistive listening
5 devices, and other aids that enhance an individual's ability to hear,
6 except for hearing instruments excluded by subdivision b.
- 7 (3) Voice-synthesized computer modules, optical scanners, talking
8 software, braille printers, artificial larynges, voice amplification devices,
9 alternative augmentative communication devices, and other devices
10 that enhance an individual's ability to communicate, except for those
11 items excluded by subdivision b.
- 12 (4) Voice recognition computer equipment, software and hardware
13 accommodations, switches, and other forms of alternative access to
14 computers.
- 15 (5) Adapted environmental control units.
- 16 (6) Any other assistive device, instrument, apparatus, or any component,
17 part, or accessory that enables an individual with a disability to perform
18 tasks such as communicating, speaking, seeing, hearing, maneuvering,
19 moving, walking, standing, reaching, grasping, working, sleeping,
20 learning, or caring for oneself, or which are used or intended to be used
21 to assist, affect, or replace the structure or any function of the body of
22 an individual with a disability, except for those items excluded by
23 subdivision b.
- 24 b. The term does not include:
- 25 (1) Devices that are modified or customized pursuant to consumer design
26 and specifications;
- 27 (2) Hearing instruments as defined in subsection 2 of section 43-33-01;
- 28 (3) Eyeglasses;
- 29 (4) A surgical implant performed by a physician or surgeon; or
- 30 (5) A restoration or dental prosthesis provided by a dentist.

- 1 2. "Assistive technology device dealer" means a person who is in the business of
2 selling assistive technology devices.
- 3 3. "Assistive technology device lessor" means a person who leases an assistive
4 technology device to a consumer or who holds the lessor's rights under a written
5 lease.
- 6 4. "Collateral costs" means expenses incurred by a consumer in connection with the
7 repair of a nonconformity, including the costs of obtaining an alternative assistive
8 technology device or service to substitute for the absence, due to a nonconformity
9 or attempt to repair, of the device sold or leased to the consumer, if no loaner was
10 offered to the consumer.
- 11 5. "Consumer" means:
- 12 a. (1) The purchaser of an assistive technology device, if the assistive
13 technology device was purchased from an assistive technology device
14 dealer or manufacturer for purposes other than resale;
- 15 (2) A person to whom the assistive technology device is transferred for
16 purposes other than resale, if the transfer occurs before the expiration
17 of an express warranty applicable to the assistive technology device;
- 18 (3) A person who may enforce the warranty; or
- 19 (4) A person who leases an assistive technology device from an assistive
20 technology device lessor under a written lease.
- 21 b. A purchaser, transferee, or lessee of an assistive technology device may be,
22 but is not necessarily, the user of the device.
- 23 6. "Demonstrator" means an assistive technology device that would be new since its
24 manufacture, except only for its use primarily for the purpose of demonstration of
25 the device to the public or prospective buyers or lessees.
- 26 7. "Early termination cost" means any expense or obligation that an assistive
27 technology device lessor incurs as a result of both the termination of a written
28 lease before the termination date set forth in that lease and the return of an
29 assistive technology device to the manufacturer. The term includes a penalty for
30 prepayment under a finance arrangement.

1 8. "Early termination savings" means any expense or obligation that an assistive
2 technology device lessor avoids as a result of both the termination of a written
3 lease before the termination date set forth in that lease and the return of an
4 assistive technology device to a manufacturer. The term includes an interest
5 charge that the assistive technology device lessor would have paid to finance the
6 assistive technology device, or if the assistive technology device lessor does not
7 finance the assistive technology device, the difference between the total amount
8 for which the lease obligates the consumer during the period of the lease term
9 remaining after the early termination and the present value of that amount at the
10 date of the early termination.

11 9. "Loaner" means a device, provided to the consumer for use by the user free of
12 charge, that need not be new or be identical to or have functional capabilities equal
13 to or greater than those of the original device, but that meets the following
14 conditions:

- 15 a. It is in good working order;
16 b. If performs at a minimum the most essential functions of the original device, in
17 light of the disabilities of the user; and
18 c. Any differences between it and the original device do not create a threat to
19 safety.

20 10. "Manufacturer" means:

- 21 a. A person who manufactures or assembles assistive technology devices;
22 b. A person who manufactures or assembles a product that becomes a
23 component product of an assistive technology device system, to the extent
24 that the product is itself ordinarily an assistive technology device; and
25 c. Agents of a person described in subdivision a or b, including an importer, a
26 distributor, factory branch, distributor branch, and any warrantors of the
27 manufacturer's assistive technology devices, but the agents do not include an
28 assistive technology dealer or lessor, unless the dealer or lessor is also a
29 person described in subdivision a or b.

1 11. "Nonconformity" does not include a condition or defect that is the result of abuse or
2 unauthorized modification or alteration of the assistive technology device by the
3 consumer. The term means:

4 a. Any specific condition or generic defect or malfunction that substantially
5 impairs the use, value, or safety of an assistive technology device or any of its
6 component parts; or

7 b. Failure of the assistive technology device or a component of the assistive
8 technology device to conform to:

9 (1) Any applicable express warranties; or

10 (2) Any implied warranties, including but not limited to the implied warranty
11 of merchantability described in section 41-02-31, and the implied
12 warranty of fitness for a particular purpose described in section
13 41-02-32.

14 12. "Reasonable attempt to repair" means any of the following occurring within the
15 term of an express warranty applicable to a new assistive technology device or
16 within one year after first delivery of the assistive technology device to a consumer,
17 whichever is sooner:

18 a. The same nonconformity within the warranty is subject to repair at least four
19 times by the manufacturer, assistive technology device lessor, or any of the
20 manufacturer's authorized assistive technology device dealers, and the
21 nonconformity continues.

22 b. The assistive technology device is out of service for any reason for an
23 aggregate of at least thirty cumulative days because of warranty
24 nonconformities. These thirty days may be either consecutive or
25 nonconsecutive.

26 **Express written warranties for assistive technology devices.**

27 1. A manufacturer who sells an assistive technology device to a consumer, either
28 directly or through an assistive technology device dealer, shall furnish the
29 consumer with an express written warranty for the assistive technology device to
30 preserve or maintain the utility or performance of the assistive technology device.

2. The duration of the express written warranty may be not less than one year after first delivery of the assistive technology device to the consumer.

3. If a manufacturer fails to furnish an express written warranty to the consumer as required by this section, the assistive technology device is covered by an express warranty as if the manufacturer had furnished an express written warranty to the consumer as required by this section.

4. An express written warranty as required by this section must at a minimum expressly warrant that the assistive technology device:

a. Has no defects in parts or performance; and

b. Is free from any condition or defect that substantially impairs the value of the assistive technology device to the consumer.

Repair of new nonconforming assistive technology devices. If an assistive technology device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the assistive technology lessor, or any of the manufacturer's authorized assistive technology device dealers, and makes the assistive technology device available for repair before one year after first delivery of the assistive technology device to a consumer, the nonconformity must be repaired at no charge to the consumer regardless of whether the repairs are made after expiration of the warranty rights period.

Manufacturer's duty to provide reimbursement or a loaner for a temporary replacement of assistive technology devices during repair.

1. Whenever an assistive technology device covered by a manufacturer's express warranty is tendered by a consumer to the dealer or seller from whom it was purchased or exchanged for the repair of any defect, malfunction, or nonconformity to which the warranty is applicable, the manufacturer shall provide directly to the consumer for the duration of the repair period either reimbursement to cover collateral costs or a loaner. The applicable conditions are as follows:

a. The repair period exceeds ten working days, including the day on which the device is tendered to the manufacturer for repairs; and

b. The defect, malfunction, or nonconformity is the same for which the device has been tendered to the manufacturer for repair on at least two previous occasions.

2. The provisions of this section regarding a manufacturer's duty apply for the period of the manufacturer's express warranty or for two years from delivery of the assistive technology device to the consumer, whichever period of time ends sooner.

Replacement of nonconforming assistive technology devices.

1. If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer, at the direction of the consumer, shall accept return of the assistive technology device and replace it with a comparable new assistive technology device and refund of any collateral costs.

2. a. To receive a comparable new assistive technology device under this section, a consumer shall offer to transfer possession of the assistive technology device having the nonconformity to the manufacturer, along with any endorsements necessary to transfer legal possession to the manufacturer.

b. No later than thirty days after the consumer's offer to transfer the nonconforming assistive technology device, the manufacturer shall provide the consumer with a comparable new assistive technology device.

3. The consumer may elect either the remedy for replacement of the defective assistive technology device contained in this section or the remedy for refund, but not both.

Return of nonconforming assistive technology devices for refund.

1. If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer, at the direction of the consumer, shall accept return of the assistive technology device and shall:

a. Refund to the consumer and to any holder of a perfected security interest in the consumer's assistive technology device, as their interest may appear:

(1) The full purchase price plus any finance charge;

(2) The amount paid by the consumer at the point of sale; and

- 1 (3) Collateral costs less a reasonable allowance for use as defined in
2 subsection 3.
- 3 b. (1) Refund to the assistive technology device lessor and to any holder of a
4 perfected security interest in the assistive technology device, as their
5 interest in the assistive technology device, as their interest may appear,
6 the current value of the written lease as defined in subsection 2; and
- 7 (2) Refund to the consumer the amount that the consumer paid under the
8 written lease plus any collateral costs, less a reasonable allowance for
9 use as defined in subsection 3.
- 10 2. The current value of the written lease equals the total amount for which that lease
11 obligates the consumer during the period of the lease remaining after its early
12 termination plus the assistive technology device dealer's early termination costs
13 and the value of the assistive technology device at the lease expiration date if the
14 lease sets forth that value, less the assistive technology device lessor's early
15 termination savings.
- 16 3. A reasonable allowance for use may not exceed the amount obtained by
17 multiplying the full purchase price of the assistive technology device, or the total
18 amount for which the written lease obligates the consumer, by a fraction, the
19 denominator of which is one thousand eight hundred twenty-five and the numerator
20 of which is the number of days that the assistive technology device was used
21 before first reporting the nonconformity to the manufacturer, assistive technology
22 device dealer, assistive technology device lessor, or retail seller of the assistive
23 technology device.
- 24 4. a. To receive a refund due under this section, a consumer shall offer to transfer
25 possession of the assistive technology device having the nonconformity to the
26 manufacturer along with any endorsements necessary to transfer legal
27 possession to the manufacturer.
- 28 b. No later than thirty days after the consumer's offer to transfer the
29 nonconforming assistive technology device, the manufacturer shall provide
30 the consumer with a refund.

1 c. When provided with a refund by the manufacturer, the consumer shall return
2 the assistive technology device having the nonconformity to the manufacturer,
3 along with any endorsements necessary to transfer legal possession to the
4 manufacturer.

5 **Thirty-day return privilege.**

- 6 1. A manufacturer or assistive technology device dealer who recommends and sells
7 an assistive technology device to a consumer shall accept a return of the assistive
8 technology device within thirty days after the purchase if the assistive technology
9 device does not meet the particular needs of the person with the disability.
10 2. After a reasonable attempt has been made to repair the device, the manufacturer
11 or assistive technology device dealer shall provide a refund in conformity with this
12 chapter.

13 **Sale or lease of returned assistive technology devices.** No assistive technology
14 device returned by a consumer or assistive technology device lessor in this state, or by a
15 consumer or assistive technology device lessor in another state under a similar law of that
16 state, may be sold or leased again in this state unless full disclosure of the reasons for return is
17 made to any prospective buyer or lessee.

18 **Other remedies - Damages.**

- 19 1. This chapter does not limit rights or remedies available to a consumer under any
20 other law or contract.
21 2. Any waiver of rights by a consumer under this chapter is void.
22 3. In addition to pursuing any other remedy, a consumer may bring an action to
23 recover for any damages caused by a violation of this chapter. The court shall
24 award a consumer who prevails in an action to recover damages caused by a
25 violation of this chapter twice the amount of any pecuniary loss together with costs,
26 disbursements, and reasonable attorney fees, and any equitable relief that the
27 court determines is appropriate.