Rhode Island Assistive Technology Lemon Law Guide

What is the Rhode Island Assistive Technology Lemon Law?

The Rhode Island Assistive Technology Lemon Law (R.I.G.L. §6-45-1 through §6-45-7) is a consumer protection law that protects those people who purchase and use Assistive Technology (AT) in certain cases where the devices are defective.

What devices are covered under the AT Lemon Law?

The law defines Assistive Technology as “any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used or designed to be used to increase, maintain, or improve any functional capability of an individual with disabilities.” This applies not only to the whole device, but also to its individual components.

AT can range from something as simple as a rubber jar opener to something as complex as a smart home system that helps someone regulate their environment. Other examples of AT are screen readers, amplified telephones, augmentative communication systems and hearing aids.
Keeping Records of Your Device and Problems

How do you know if your device is a Lemon?

Your device is a Lemon if:

1. The device had one problem that affects its use, value, or safety that you reported to the manufacturer or dealer within the first year you had the device and which the manufacturer or dealer has already tried to repair at least twice in the first two years you had the device, or

2. The device was out of service for a combination of problems that affected its use, value, or safety for more than a total of thirty days in the first year.

If your device meets these criteria, you also need to report the problem promptly to the manufacturer or the vendor of the device, and you need to cooperate with all attempts to repair the device.

What if nothing is wrong with the device, but it’s wrong for me?

In some cases, you may have gotten a device that does not have the features required to meet your needs. For example, your wheelchair came with a joystick-style controller that you have difficulty using because of your disability. The law recognizes that, as the consumer, you are relying on the vendor’s expertise in selecting a device that meets your needs, and you may be able to file a claim.
Exception: There is an exception to this if a consumer states that they want a specific device and the consumer signs a waiver stating:

There is no warranty (guarantee) that this product will be fit for your particular needs. There is only a warranty (guarantee) that this product will be fit for the purpose that it ordinarily meets. This is because you have specified the product you want to buy instead of relying on the seller’s/lessor’s knowledge to help choose based on your particular needs.

How do I keep track of all this?

To be able to use the Lemon Law, you will need to provide documentation of all the problems you have had with the device and exactly when they occurred. To provide a good history you will need to save and keep track of all of your records.

You should also keep track of all repair orders, work receipts, and any other paperwork relating to functioning issues or repairs of your device. Even if you have repair receipts, you should also keep a log of what the problem was, when you informed the manufacturer or vendor of the problem, when they tried to fix it, and the number of days that the device out of service.

Save all paperwork including papers from

- before your purchase of the device, e.g., evaluations, prescriptions.
- the date of purchase and delivery, e.g., invoices, warranties, instruction books.
- after delivery, e.g., records of repair and any other correspondence.

**Keep a record** of the problems with the device, including a description of
- what exactly went wrong with your device.
- when the problem happened.
- who you contacted and what they told you.
- what action was taken to fix the problem.
- whether the action taken fixed the problem.
- the dates when your device wasn’t usable because of the problem(s).

**Can I get a loaner device while my device is being repaired under the AT Lemon Law?**

In certain cases, when a vendor or manufacturer has to take in your device for repairs, they must provide you with a loaner device. Your device does not have to have met the definition of a Lemon in order for you to be eligible for a loaner, just the following. A loaner must be provided if:
- the device continues to be out of service for **more than 7 days**, or
- not having your device would pose a threat to your safety, in which case they must provide you with a loaner **immediately**.
If you think your safety would be in danger if you do not have your device, tell this to the manufacture or vendor as soon as you call for repairs.

**Filing a Claim under the RI Lemon Law**

*What is my remedy if my device is a lemon?*

If you can show that your device meets the law’s definition of a lemon you have two options: you can ask for a **replacement** device or you can ask for a **refund**. You can only have one or the other. In order to get either, you must offer to return the device to the manufacturer or vendor.

If you decide to ask for a refund as your remedy, the manufacturer must provide it to you within **14 days** of your offer to return the device. You may not receive the entire price because it will be adjusted to take into consideration the use you got out of the device. As you probably will have used the device for some months, the manufacturer can deduct the amount that represents the use you got out of the device before the problems started. Usually this is calculated assuming that the “useful life” of a device is 5 years, unless you can prove the useful life of the device would have been longer. If you rented the device, there is a more complex calculation to determine the amount the manufacturer can deduct from your refund.

You can also ask to add more to your refund if you had to incur “**collateral costs.**” Collateral costs are the direct expenses you incurred because the device wasn’t functioning, such as if you had to pay out of pocket to rent a device when the dealer or manufacturer had your device for more than
seven (7) days and did not offer you a “loaner,” or you had to pay for repairs.

If you choose a replacement, the manufacturer must provide you with the replacement within 30 days of your offer to return the device. The device must be new, and it must be the same device or one which has the capabilities equal to or greater than the original device.

**How do I begin the process of filing a claim?**

You may begin the process by sending a “demand letter” to the manufacturer or vendor from whom you purchased the device. A sample demand can be found on our website drri.org. The Lemon Law does not require that you put your request in writing, but it is helpful to create a written record of your request and we strongly urge you to do so.


**Where do I send the letter?**

Generally, it is the manufacturer who is held responsible for the "lemon." However, you can send the letter to either the manufacturer, the vendor, or to both. (We would suggest that you send the letter to both.) In some cases, an “authorized dealer” may also be held responsible. You can usually find the address for the customer service for the manufacturer in the paperwork that came with your device.
What if the manufacturer doesn’t respond?

If the manufacturer doesn’t respond to your offer to return the device within 14 days (in the case of a refund) or 30 days (in the case of a replacement) they could be required to pay double the refund amount. In order to enforce this, you may eventually have to file a lawsuit. If you do have to file a lawsuit, you should seek the assistance of a lawyer. You should also consult with a lawyer regarding about any filing deadline you may have, which will be based on the type of remedy you are seeking.

For Legal Assistance relating to the AT Lemon Law, please contact:

Disability Rights Rhode Island, Inc.
33 Broad St, Suite 601
Providence, RI 02903
401-831-3150 (voice)
800-733-5334 (clients)
401-831-5335 (TTY)
401-274-5568 (fax)
http://www.drri.org

For other general questions about AT, please contact the ATAP partners:

Rhode Island Assistive Technology Access Partnership
(401) 462-7917
http://www.atap.ri.gov